

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**August 26, 2013**

Those present at 7:00 pm:

Presiding: Deputy Mayor Jerry Clifton, District 2  
District 1 Mark Morehead  
District 3, Doug Tuttle  
District 4, Margrit Hadden  
District 5, Luke Chapman  
District 6, A. Stuart Markham

Absent: Mayor Vance A. Funk, III

Staff Members: City Manager Carol Houck  
City Secretary Renee Bensley  
City Solicitor Bruce Herron  
Community Affairs Officer Dana Johnston  
Finance Director Lou Vitola  
Planning & Development Director Maureen Feeney Roser  
Public Works & Water Resources Director Roy Simonson

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1. The regular Council meeting began with a moment of silent meditation and the Pledge of Allegiance.
2. MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT ITEM #9-A-1, RESOLUTION 13-\_\_\_: RECOGNIZING CPL. PATRICK CRAIG FOR HIS OUTSTANDING SERVICE TO THE CITY OF NEWARK, BE MOVED TO ITEM #2.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Mr. Markham read the resolution which was unanimously endorsed by Council recognizing Cpl. Craig for his heroic action in rescuing two women who were trapped under the Paper Mill Road Bridge after severe storms and flash flooding.

**(RESOLUTION NO. 13-AA)**

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

**A. Public**

**09:08**

Georgia Wampler, East Park Place, complained about noise, music and vulgarity that awakened her on Saturday night from a UD sponsored event on the Green scheduled from 11:00 p.m. to 1:00 a.m. Ms. Wampler's property was about ¼ mile away from the event. She asked why the City had a noise ordinance if they were going to give permission to violate it and also asked why the University did not hold the event indoors.

Ms. Houck explained misinformation was given. A noise waiver was not issued for the event and the City Manager was the only City representative who could issue one. Past waivers were negotiated to reach an agreement on conditions such as turning music down at 10:00 p.m. and ending the event by 11:00 p.m. Ms. Houck advised that measures were in place between the University and the City to ensure two weeks notice of an event would be given to the City in advance as part of requests for future events.

4. Brian Dunigan, Orchard Road, was concerned that the gate accessing the Frazer Field soccer area behind Caffé Gelato and the Little Bob was recently locked, making public access extremely difficult. He asked for more information to be provided.

5. Michael Suh, owner of Mizu Sushi Bar on E. Main Street, experienced flooding on 8/13 from a severe storm. The water ran over the sidewalk and into his store, ruining the hardwood floors. Mr. Suh distributed photos of the flooding to Council and reported the damages were close to \$4,000 including new floors, loss of profits, wages and loss of food. He said the flooding also impacted Sweet and Sassy and Margherita's Pizza. Mr. Suh met with City staff and made them aware of the severity of the damage. He was told that excess debris was found in the sewer lines and that construction off Main Street could have contributed to the drainage problem. Mr. Suh felt this could have been prevented if proper maintenance had been done and noted there was another storm in June that caused similar flooding on Main Street. He hoped to see a program implemented through the cooperation of small businesses, City Hall and the DNP to assist and/or aid businesses in times of need such as setting up a disaster relief fund program, notification of construction or new traffic patterns, etc.

Mr. Clifton asked Mr. Simonson to address the issue of construction debris in the sewer system and what could be done to prevent it. Mr. Simonson thought there was an accumulation of debris over time and was not likely construction debris. Recently acquired camera equipment was being used to survey the storm sewers, and arrangements were made with a contractor to clean them out once more definitive areas were identified since the City did not have equipment to clean pipes as big as those in the storm system nor to get out the quantity of debris that might be found.

Ms. Hadden asked if the drain holes were screened in construction areas. Mr. Simonson said they were screened but there were possible problems from the silt bags hanging into the drainage chamber – one of these was found and removed.

In making plans going forward to improve problematic storm drainage systems, Mr. Simonson said every design needed to factor in the cost of the improvements versus the benefit. The last storm deposited 1.3" in just over 15 minutes. Mr. Clifton asked about creating a fund to upgrade the storm systems that would be paid for as other areas of the City were developed. Mr. Simonson reported that State stormwater runoff requirements were changing dramatically and would go into full effect on January 1. It may be necessary or prudent for the City to come up with something like that because some developers may find it difficult to comply fully.

Ms. Houck reported that the Downtown Newark Partnership has already begun thinking about how they would implement an emergency fund for its members.

6. Tim Toole, Lark Drive, addressed the issue of The Data Centers and the related power plant. He supported the development of jobs on the STAR Campus as proposed in UD's 2011 Master Plan for a science, technology and research facility similar to the Delaware Biotechnology Institute. Mr. Toole said there was no mention of redeveloping the site as an industrial complex, and there were many questions regarding the size and scope of the project. He pointed out that the public was told the addition of a 248 megawatt gas fired power plant was required for the proposed Data Centers. It was his understanding that a 248 megawatt power plant could provide enough electricity for the City and possibly for New Castle County. Use of the word "incidental" appeared to be completely misleading to the needs of The Data Centers. Mr. Toole said other large data centers operated within New Castle County, and information should be made available as to the requirements to provide power to The Data Centers. His previous experience with the City was that it always acted in the best interest of its citizens in an open and transparent manner, and the current uproar resulted from a lack of information, the secrecy surrounding the development and the failure to provide sufficient information to react positively or negatively to the project.

7. Ed Wirth, Arbour Drive, expressed concern regarding the proposed development of The Data Centers which he said appeared to be well done, but the associated power plant was totally out of order. The plant was not commensurate with the character of

the property or with UD's Science and Technology Campus Master Plan. Mr. Wirth believed the potential environmental problems, emissions, noise, runoff problems, etc. would be unfavorable to the neighbors and Newark. He also thought the incidental and subordinate classification to avoid public zoning was questionable. Mr. Wirth stated comments were heard this was a start-up company, and it was not listed by NASDAQ or in a directory of Pennsylvania companies. Mr. Wirth was concerned about having a power facility and 900,000 square foot data center in the hands of a company with no history and said more homework was necessary.

Mr. Wirth also had concerns about the large amount of crude oil rail cars in the local railroad yard and asked if there was a documented disaster plan in effect for both the railroad company as well as the City. He said noise levels should be studied in the yard as well as the leading engines blowing their horns excessively.

8. Beth Sheridan, Dove Drive, asked that Council keep the City's and community's concerns in the forefront. Regarding the power plant at The Data Center's proposed project her home was less than one mile away and she had concerns about noise and environmental pollution. Her concern was about the 248 megawatt power plant which she thought was far beyond what was needed and asked if that could be located someplace else. In the UD proposal there was a radius map which showed people and communities within 200, 400 feet and 800 feet who would be even more impacted from the project. She asked for consideration of their quality of life and welfare as a community and the storm drainage around the facility.

9. Amy Roe, a District 4 resident, asked if legal counsel had been hired to review the Chancery Court and zoning issues as discussed at the 8/12 Council meeting. Ms. Houck reported that Mr. Walton had been retained, and a report was expected from him shortly. Ms. Roe asked if the report would be made public. Mr. Clifton replied that he planned to discuss the issue later in the meeting since this would be an attorney-client privileged communication and Council would have to agree to release the report.

Ms. Roe said information released by the City about the 9/3 meeting on The Data Center's proposed project was misleading because it did not mention a power plant. She asked for clarification that the power plant would be discussed at the meeting and, if so, said the notice should be revised and reissued. She believed the neighbors had a right to know the meeting would be about a power plant.

Ms. Roe did not feel that members of the public who wanted to speak at Council meetings should be asked to state their address on the record since this policy was previously agreed to by Council. Ms. Bensley would ensure the City's request to speak forms would specify "address/district optional".

Ms. Roe expressed concern with the 3 minute time limit on public speaking.

10. Anna Grosso, Radcliffe Drive, talked about the potential WAWA on South Main Street. She was not opposed to the idea of a convenience store but was opposed to an auto-centric use located where there was a lot of investment put towards bike lanes, crosswalks, etc. She felt development occurring on the site should be oriented towards the street, parking should be in the rear and mixed uses should be promoted. Ms. Grosso thought this would be a valuable redevelopment opportunity and said the needs of all Newark residents should be considered in that area, not just those driving cars.

## 11. 1-B. UNIVERSITY

54:06

(1) **Administration** – Mr. Clifton welcomed Rick Deadwyler, Jr., University of Delaware Director of Government Relations. Mr. Deadwyler looked forward to working with the City and being able to share activities and issues with Council and with the community. He heard the concerns about the weekend event and noted the plan was to welcome back first year students while giving them an opportunity to enjoy the campus at an alcohol free event. The noise impact and the disruption were unanticipated for which he apologized. The University echoed the concerns about the vulgarity and obscenities and there would not be an event of that format at that time in the future.

Mr. Clifton questioned the system of checks and balances and said when neighbors started calling the UD Police Department they were effectively shut down. Mr. Deadwyler noted the performer was shut down early and offered to help with the internal investigation and questioning to help support the response.

Mr. Markham asked Mr. Deadwyler to encourage the student body representative to attend and participate in future Council meetings.

Ms. Hadden appreciated Mr. Deadwyler coming to Council meetings to share information and build a relationship and was happy to hear the performance over the weekend was contrary to University ideals and standards and would not happen again.

**12. 1-B (2) STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

**13. 1-C. COUNCIL MEMBERS**

**01:03:55**

**Mr. Markham**

- Mr. Markham asked for a photo timeline of the solar project at McKees Park where the work had begun. He looked forward to learning a completion date.
- Mr. Markham requested a report on the percentage of Smart Meters installed and after the project's completion would like a report analyzing proposed vs. actual savings.
- Mr. Markham referenced a Newark Housing Authority article in the paper where a question was raised about methane gas and suggested sending them the City's report which said there was none.
- Mr. Markham pointed out a DNREC news briefing that plastic bags are no longer accepted in single stream recycling. He knew the CAC had been talking about this for a while and thought it would be helpful to inform residents where bags could be recycled.
- Mr. Markham commended Mr. Simonson for creative thinking in using mussels to clean the reservoir and growing fresh water mussels to put out in the streams.

**14. Mr. Chapman**

- Mr. Chapman had no comments at this time.

**15. Ms. Hadden**

- Ms. Hadden met with the City Manager and the Planning Director to discuss rental permit types and rentals in general.
- Ms. Hadden attended the Battle of the Bars police canine fund raiser established in memory of Paco, the Madison Drive Annual Picnic where there was a good turnout to discuss home ownership in College Park, and a Traffic Committee meeting.
- Ms. Hadden visited the Newark Senior Center to participate in a tour of their kitchen facilities and the entire site. It was one of just a handful of accredited senior centers in the United States and served approximately 70,000 meals a year. Ms. Hadden would like to see the City's subvention (which was established in the 1980's) increased from \$50,000 to a total of \$60,000 based on the increased request for meals.
- Ms. Hadden toured the Beasley co-generator power plant in Smyrna.

**16. Mr. Tuttle**

- Mr. Tuttle announced he was commencing his last year of teaching at the University and in light of that event, he did not plan to seek reelection to Council in April.

**17. Mr. Morehead**

- Mr. Morehead stated that the room capacity for The Data Center/power plant meeting on 9/3/13 might not accommodate all his constituents. Thus, some residents asked him to state questions on the record so they may be answered at the meeting. The questions are for the University, the State, the City and The Data Centers about the

power plant exclusively. The folks who asked him to pose the questions on their behalf understood there were some extremely high paying jobs at The Data Centers. The data center was not the issue; the issue was the power plant according to District 1 residents.

### Questions

Zoning – To the City and University combined about the specifics of the permissibility of a power plant on the STAR campus in the City next to established neighborhoods.

Size of power plant – The City of Newark uses approximately 100 megawatts of power on a hot summer afternoon, which includes everything in the University at this point in time. This power plant has gone on record saying they are producing 248 megawatts of electrical power, which is 2.5 times the need of the City on a hot day. Given that the City already has their own 100 megawatts, it does not need this extra 248 megawatts.

Water usage – It is understood that United Water is supplying the water to the site. There will be approximately 250 gallons per minute being injected into the turbines if the way other people run their turbines is consistent with this plan. The question comes to the City specifically, not from an environmental perspective so much as is there is a connection between United and the City's power from the City's water system and what will that load do to the City's water system?

Emissions – Regarding stack emissions and heat, The Data Center proposes effectively five 747 jet engines running 24/7. These engines run with approximately 30-40% efficiency, so if they are putting out 248 megawatts of electrical power, they are using up to four times that and wasting 750 megawatts of heat from the fuel source. That heat is being sold to the University as part of the understanding as steam but several hundred megawatts of that have to be going up the stacks as exhaust. The question is what effect would that have on the localized environment – Arbour Park, Devon etc.

Natural gas usage – The City is very familiar with natural gas in a power plant application as part of DEMEC, which owns Beasley. Beasley runs two of these engines currently in Smyrna in an industrial park. As Council person Hadden alluded there was a visit last Friday to view those engines in operation, understand sound levels and so forth. Those engines use 450,000 cubic feet of natural gas. They produce 100 megawatts so this facility would be producing 248 megawatts. The question is, are we looking at more than a million, possibly a million and a half, a million and a quarter something cubic feet of natural gas. The question is where is that natural gas coming from and what effect does that have on our natural gas supply and the environment.

STAR Campus use – To the University, isn't the University required to provide an education, not a business venture? This is a cash business venture with the rental of clean rooms and it is a sale of electricity first. It is a sale of 248 megawatts of electricity in order to finance the clean rooms. So the question is to the UD specifically.

Noise – It is possible as we found out with Beasley to spec a design such that you buy the quietest engines available currently, add optional noise reduction/noise suppression technology to the exhausts, and build the buildings airtight, sound tight. In the absence of information from The Data Centers and the focus stated on their website of lowest cost of operation, are The Data Centers going to be specking quiet engines or are they going to spec loud engines because it is cheaper. They are several percent different in the cost of construction to do that, so the question is to The Data Centers about that.

Similar question – The Data Center's website currently indicates lowest cost of ownership being their primary target and one would read into that their finances and so forth, their profit margins and so forth. There is no apparent discussion on The Data Centers.com of being a responsible public citizen. They are very proud of this being a patent-pending brand new technology – they thought it up, they are implementing it. It is extreme engineering at its best. It is really clever. There is no discussion of concern at all for the neighborhoods and where it is located. So the question from the residents of District 1 who may not be the most affected by this is, are we going to hear this and will it affect our quality of life or are you guys going to be responsible citizens in our town.

Financing – The Data Centers have already lined up \$580 million in financing and yet they don't have any plans. This is shrouded in secrecy and yet they have signed a 75-year lease fully banking on not only coming forward with the \$580 million but adding a similar amount of money before this is all done. It is hard to imagine that folks who can a billion dollars of financing don't have any plans to share with the neighborhoods.

Mr. Morehead said he personally was questioned as to when Council was informed. He found out most of the information from a News Journal article earlier this summer.

Question to the University about taxable commercial space in the STAR Campus – There are a number of questions about the accessory use definition of the power plant. The Data Center says it plans to use 112MW of power and has an efficiency factor of 1.2 indicating a need for 134MW of power. How is the excess an accessory use?

The gas turbines use a technology called selective catalytic reduction in their exhaust cleaning using a liquid ammonia supply. There are questions about the safety and security of having a liquid ammonia tank on site.

There were many questions about the science technology advanced research moniker of the University as well as the green energy portion of the University's marketing, environmental sustainability questions and accessory use.

Mr. Morehead reviewed the profiles of management staff found on The Data Centers website and asked where is the staff member who knows how to run a power plant?

It was agreed that Mr. Morehead's questions be entered into the record. Mr. Markham said if other Council members wanted to add questions to that it would be a good option and Mr. Morehead did not object to that. Mr. Clifton would like the City Manager at a future meeting to address at least the specific questions that Council has had for the Data Center. Ms. Houck advised this would be after the meeting on 9/3, which would be recapped, videotaped and put on Channel 22.

Mr. Clifton said his understanding was that the power plant would be built first. Mr. Morehead said the website would indicate that possibility and want to draw the inference it was to finance the remaining construction. Mr. Clifton thought that was a question that needed to be asked as to how this was going to be built and in what order.

Mr. Morehead clarified that he was happy to support the project if the company plans to be a responsible citizen of Newark. He represented his district and people had strong feelings about the project. Many questions were coming due to the complete vacuum of information and cult of secrecy that The Data Centers forced on the City, on the City Manager with the non-disclosure agreement, and by not reaching out to Council to bring them on board. Having one mass meeting would not fit the bill. His district is expressing frustration and he is just the mouth piece. Mr. Clifton asked if Mr. Morehead objected to other Council members adding questions to his list. Mr. Morehead thought it was appropriate. Mr. Clifton wanted to know what is being built first. Ms. Hadden asked if Council could email their questions to the City Secretary to be included. Mr. Clifton stated that since this conversation was public that the public also should know what additional questions were sent to keep people informed as to what Council is asking. Mr. Clifton asked Ms. Houck to address questions Council has for The Data Centers at a future meeting. Ms. Houck reiterated there would be a recap and the 9/3 meeting would be videotaped and posted on Channel 22.

#### **18. Mr. Clifton**

- Mr. Clifton toured the Senior Center with Ms. Hadden, and he also hoped the City would increase their subvention.
- Mr. Clifton referenced Ms. Roe's earlier question during public comment about whether the City would release the report from outside counsel Max Walton. Since the report is attorney-client privileged communication, Council had to agree to its release. Ms. Houck thought Council intended to make the document public all along, and Mr.

Markham agreed it should be. Mr. Herron saw no reason why the opinion should not be made public. He added that Mr. Walton undertook the assignment with the expectation that his opinion would be made public. Mr. Tuttle pointed out that the purpose of the 9/3 meeting is not to debate Mr. Walton's opinion but to obtain more details about the proposal. Mr. Clifton thought it was a matter of strategizing in public as to what avenues would be used if The Data Centers moved forward, and Mr. Walton's report was one of the foundations that would help determine that direction. Mr. Chapman agreed with Mr. Tuttle that regardless of the opinion, the report would not carry any weight on 9/3 and he did not see a need to rush along its release before it could be viewed by Council.

**19. 2. APPROVAL OF CONSENT AGENDA**

**01:47:44**

Ms. Bensley read the Consent Agenda in its entirety.

- A. Approval of Regular Council Meeting Minutes – August 12, 2013
- B. Receipt of Alderman's Report – August 8, 2013
- C. Resignation of Peggy Brown from the Planning Commission

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

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Funk.

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

- A. Recommendation to Purchase a Replacement Backhoe from State of Delaware Contract No. GSS12663 – Heavy Equipment – ***Postponed from August 12, 2013 Meeting by Request of Council***

**01:48:18**

Ms. Houck noted that Council was provided with additional information that there were two regular backhoes, one landscaper with a backhoe attachment and one front end loader. Mr. Markham said after the conversation about stormwater issues on Main Street, he had no questions. Mr. Tuttle thought the explanation was reasonable. Mr. Clifton thanked Mr. Simonson for the detailed explanation.

MOTION BY MR. MARKHAM, SECONDED BY MR. CHAPMAN: TO AUTHORIZE PURCHASE OF ONE CASE 590SN LOADER BACKHOE FROM EAGLE POWER & EQUIPMENT CORPORATION AT A TOTAL COST OF \$80,637 AFTER TRADE-IN OF ONE EXISTING PIECE OF EQUIPMENT AND IN ACCORDANCE WITH STATE OF DELAWARE CONTRACT NO. GSS12663.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Funk.

**21. 4. SPECIAL DEPARTMENTAL REPORTS:**

- A. Special Reports from Manager & Staff
    - 1. Hazard Mitigation Plan Amendment – Public Works and Water Resources Director
- Resolution 13-\_\_:** Amending the All Hazard Mitigation Plan for the City of Newark, Delaware

**1:50:05**

Mr. Markham said the amendment allowed the City to receive grant funding by doing a wording change.

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THE RESOLUTION BE ACCEPTED AS PRESENTED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Funk.

**(RESOLUTION NO. 13-BB)**

**22. 5. FINANCIAL STATEMENT:** *(Ending July 31, 2013)*

**1:50:50**

Mr. Vitola presented the unaudited Financial Statement for the first seven months of the year which showed a consolidated Operating Surplus of \$1.9 million stronger than expected, an improvement of about \$700,000 from June. The majority of the positive variance was attributed to the Governmental Funds where revenues exceeded expectations. The same themes persisted from the last several months. Permit revenues were strong with development at the STAR Campus and on East and South Main Streets. Transfer taxes tracked higher than anticipated in one-time transfers and recurring transfers in recent months. Grants and property taxes continued to be stronger than expected. In previous periods, strong revenues were partially offset by higher expenses. Part of that was due to encumbering large known projects early in the year, but now through seven months the costs have normalized and were under budget. The Enterprise Funds as a whole were also outperforming the budget through July. Electric purchases continued to be better than the budget and the wholesale cost for kilowatt hours improved in June with the start of DEMEC's 2014 plan year. Sewer expenses tracked higher than the budget, which will continue throughout the year with a solution to that problem being presented under Item #7 on the agenda. Water sales lagged due to the wet spring and summer, the straight line method used to spread what was intended to be a half-year water rate increase over the entire year, and the delay in the implementation of that rate increase from July 1 to September 1. The deficit in the other fund that persisted most of the year due to timing differences normalized to the point that the deficit was now less than the budget which was a good sign. Part of that was due to lower vehicle maintenance expenses since May. The RSA pass back grew to \$1.9 million through July. The cash balance was \$30.9 million as of July 31 consisting of \$6.7 million in the Operating accounts, \$3.4 million in the Smart Meter account, and \$20.5 million in the Reserve accounts.

Mr. Vitola and Ms. Houck met with Fitch ratings via conference call following up on the 2011 ratings in connection with the refunding debt. The call went well, and the analysis will give an answer to Mr. Markham's request regarding reserve requirements.

Mr. Vitola made progress on identifying the changes Ms. Hadden wanted to see in the financials so there will be a draft soon outlining some of the changes. The memo will also be a request for Council to identify any changes they might want to see.

Mr. Markham asked if lower vehicle maintenance costs could be attributed to the GPS project. Mr. Vitola said not this early, one of the vehicles experienced a high spend in March/April which threw it off but then it normalized over the last several months.

Mr. Markham requested Mr. Vitola make an entry on the financial statement to show how the solar project was being paid back once the first bill was received. He wanted to see entries for other large projects as well.

MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: THAT THE JULY 31, 2013 FINANCIAL STATEMENT BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Funk.

**23. 6. RECOMMENDATIONS ON CONTRACTS & BIDS:**

- A.** Recommendation to Award Contract No. 13-12, LeRoy Hill Park Baseball Field Improvements

**01:57:07**

Ms. Houck referenced the staff memo dated 8/19/13 which recommended the award of Contract No. 13-12 providing for the removal and the replacement of turf and soil and installation of a subsurface drainage system in the outfield at the LeRoy Hill Park baseball field. Four bids were received and Reybold Construction was the lowest bidder. The firm recently completed work for the City, and the Public Works and Water Resources Department was satisfied with their work. Funding was available from the Capital Budget totaling \$45,000 with a contribution of \$20,000 from the Little League, cash in lieu of payment land dedication funds of \$13,500 that were required to be used in a park project and Delaware Land and Water Trust grant funds of \$78,500. If the contract was awarded as recommended, it would be contingent on the land and water fund being approved at the next meeting of that group on 9/13. The contract would not be initiated until that occurred. It was therefore recommended to award Contract No. 13-12 to Reybold Construction for the total amount of \$157,000.

Mr. Chapman asked if this project was spelled out in the budget approved last year. Ms. Houck replied that it was for \$65,000 total (\$45,000-Capital and \$20,000-Little League), and the other funding became necessary because of the cost of the project.

MOTION BY MR. TUTTLE, SECONDED BY MR. MOREHEAD: THAT CONTRACT NO. 13-12 BE AWARDED TO REYBOLD CONSTRUCTION GROUP, LLC, IN THE TOTAL AMOUNT OF \$157,000.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Funk.

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

- A.** **Bill 13-26** – An Ordinance Amending Chapter 25, Sewer, Code of the City of Newark, Delaware, By Adding a Subsection Setting the City Portion of the Sewer Flow Rate Effective September 30, 2013

**01:59:56**

Ms. Bensley read Bill 13-26 by title only.

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 13-26.

Mr. Vitola reviewed the ordinance clarifying the sewer rate structure. A 2009 action allowed the Finance Director to pass on County rate changes to the City's sewer users leaving no citation in the Code for three components of the sewer rate. Those components should always be equal to the County rate, are published on the website, and could be changed without Council action. The City's flow rate is a fourth component of the rate that can only be changed by Council and should be cited in the Code.

Second, the City flow rate should be increased to meet current operating costs, capital costs and margin requirements. That rate was not changed since 2010.

In the Code, sewer rate was defined with a calculation. Little q in the calculation was used to identify the total flow rate in the form of a fee per thousand gallons consumed or discharged into the sewer. Little q consisted of both the County flow rate (their charge for treatment) plus the City flow rate (the City's charge to operate and maintain the collection and transmission system). The City collected the sewer, sent it to the County and the County handled the treatment. For that reason Mr. Vitola believed q should be segregated and clearly identified. He proposed a q1, the City flow rate, which would be codified and could only be changed by Council. That rate was currently \$2.7684 cents per 1,000 gallons. The County flow rate would become q2 and together

with B and S (the unit charges for the treatment of the contaminants) would continue to be equal to the County's fees and not a rate set in the Code.

As for the rate increase, the City's financial policies called for margins of at least 20% in the utility funds. The 2013 sewer budget targeted a margin of 23.6% but due to higher than expected costs of treatment and imperfect budget assumptions, put the City on pace for a 13.6% margin, almost \$540,000 worse than the budget. The City's ability to address this problem with cost control alone was limited. 60% of the total sewer charges met the County charges on a dollar for dollar basis, leaving 40% of the fee to meet all the operating expenses, capital expenses and margin requirements in the sewer utility. Mr. Vitola proposed that the City's component of the flow rate be increased to \$3.1482 per 1,000 gallons. That rate will not recover the margin that was eroded from 2010 through today and would not get us on target for the 23.6% margin that was budgeted – it took the margin to 20% going forward from today. Mr. Vitola was not using 2013 volume to derive the rate because the volume was depressed due to the wet year and would result in an overstated increase. He looked back at 2011, 2012 and part of 2013, assumed a minor increase for growth and divided the dollar margin deficiency over that larger volume assumption to arrive at the new rate of \$3.1482.

For a typical family that consumed 200 gallons of water per day, the increase would result in a sewer bill that was \$2.28 higher in a month or less than \$7 per quarter. He understood that each of the recent rate increases could not be viewed in a silo. The County increase was costing residents \$.97 per month for the average family, and the water rate increase would cost residents \$1.82 per month. This recommended increase would bring the cumulative effect of the rate increases up to \$5.07 per month for the average customer. This increase would go into effect for usage after October 1, so the new rates would not show up until the late October or early November billings.

It was Mr. Clifton's understanding that the County increased their rates effective July 1 and asked if the City would be a quarter of the year in the arrears from the time the County started billing the new rate. Mr. Vitola said in this year, yes, and the reason was that the County Executive put forth a budget in March 2013 for the County's fiscal 2014 which started July 1, 2013 targeting 0% sewer increases. This was the City's notice in March and would have been the impetus for the Finance Director's ability to make those changes to institute the same rate change without Council action. The announcement in March by April would have provided the City time to notify residents of the change effective July 1. While the County Executive wanted a zero sewer rate increase, resulting in no increase planned by the City, County Council included a sewer rate increase in their final budget. On June 20 an email was received saying rates would be increased 3.9% and that was the first increase Mr. Vitola came to Council with in late July. Mr. Vitola said after getting the email he should have immediately taken action to get it in as soon as possible. At the second July meeting the three increases were passed on, so there was a lag. This increase was the slice of the rate that was in Council's purview to cover the City's collection and transmission part of sewer operations. This model made sense so all the County's changes on a dollar for dollar basis could be passed through and then Council had the ability to review the City's rate and what is needed to generate the margins to be used to pay for equipment, etc.

Mr. Chapman asked what communication was planned to announce the rate changes. Mr. Vitola said there would be notices on the bills of the increase in addition to a website disclosure and Channel 22 notification. Mr. Vitola thought a one page diagram walking through the formula would be helpful to customers who wanted to learn how it breaks down. Mr. Chapman asked it be user-friendly from an accessibility standpoint. He preferred having it printed with every bill or as a line item in the online bill with the equation in a hyperlink that could be viewed online without separately going to the City's website. Mr. Markham was not sure everyone would understand the formula and suggested allowing customers to enter their water usage on the City's website and have it calculate the old and the new rate which could be reused at any point in time.

Mr. Markham stated this money was used for infrastructure projects such as stormwater, purchasing equipment, fixing sewer and water lines, rusted pipes, etc., so the margin was available for repairs as well to plan for the future. Mr. Vitola added some

of the margin was used to transfer into the General Fund to supplement it because the General Fund runs a deficit and takes utility transfers.

The Chair opened the discussion to the public.

Tom Uffner, District 4, asked for a BOD definition. Mr. Simonson said biological oxygen demand was a measure of the capacity of the wastewater to consume oxygen in the treatment process and as such, the higher the BOD, the more energy needed to treat it. Oxygen had to be pumped into the treatment process to treat the waste. A homeowner could not impact that number. In the calculation there were system assumptions that were made – residential/commercial waste from every industry was characterized over the years. Digging down into that calculation industry standards were taken for the strength of residential waste so there was a set residential BOD and SS contribution. Homeowners can lower water consumption as it related to the sewer rate.

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

Question on the Motion was called.

MOTION PASSED. VOTE: 6 to 0.

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

Nay – 0.

Absent – Funk.

**(ORDINANCE NO. 13-27)**

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

**26. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:**

**A. Council Members:**

- 1. Resolution 13-\_\_:** Recognizing Cpl. Patrick Craig for His Outstanding Service to the City of Newark

**(SEE ITEM #2)**

**27. 9-A-2. ELECTION OF CHAIRMAN PRO TEMPORE TO PRESIDE OVER SEPTEMBER 9, 2013 COUNCIL MEETING**

**02:16:00**

Mr. Clifton noted with the potential of an absence of the Mayor and Deputy Mayor at the 9/9 Council meeting, the Charter did not address a continuity of government for another Council member to preside over the meeting as Chairman Pro Tempore.

In a bigger picture, should something happen to four members of Council, Mr. Clifton did not think there was anything in the City or State Code as to how the continuity of government would continue. He asked that those legal issues be reviewed.

Mr. Clifton suggested amending the last paragraph to read, "The chairman pro tempore chosen through this election will be limited to presiding until the swearing in of the next Mayor."

Mr. Chapman thought what made the most sense was for the individual to be the next most senior Council member.

Ms. Hadden nominated Mr. Markham for the position of Chairman Pro Tempore to serve until the next Mayor is sworn in.

Mr. Tuttle said the simplest way to correct this was in the absence of the Mayor or Deputy Mayor to designate the senior member of Council to serve as the Mayor Pro Tempore in the absence of the Mayor.

MOTION BY MS. HADDEN, SECONDED BY MR. CHAPMAN: THAT COUNCIL MEMBER MARKHAM BE ELECTED TO SERVE AS THE CHAIRMAN PRO TEMPORE THROUGH THE SWEARING IN OF THE NEXT MAYOR.

MOTION PASSED. VOTE: 6 to 0.

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

Nay – 0.

Absent – Funk.

Council requested Ms. Bensley develop an ordinance establishing the order of Council to serve as Chairman Pro Tempore in the absence of the Mayor and Deputy Mayor.

**28. 9-B. OTHERS:**

**02:22:49**

1. **EXECUTIVE SESSION PURSUANT TO 29 DEL. C. §100004 (B)(2) FOR THE PURPOSE OF DISCUSSIONS ON SITE ACQUISITIONS FOR PUBLICLY FUNDED CAPITAL IMPROVEMENTS**

Council entered into Executive Session at 9:15 pm and returned to the table at 10:12 pm. Mr. Clifton advised that no action was necessary by Council at this time.

**29. Meeting adjourned at 10:13 pm.**

Renee K. Bensley  
City Secretary