

CITY OF NEWARK DELAWARE

COUNCIL MEETING MINUTES

November 11, 2013

Those present at 4:30 p.m.:

Presiding: Acting Mayor Jerry Clifton
District 1, Mark Morehead (arrived 4:55 p.m.)
District 3, Doug Tuttle
District 4, Margrit Hadden
District 5, Luke Chapman
District 6, A. Stuart Markham

Staff Members: City Manager Carol Houck
City Secretary Renee Bensley
City Solicitor Bruce Herron
Community Affairs Officer Dana Johnston
Deputy City Manager Andrew Haines
Electric Director Rick Vitelli
Finance Director Lou Vitola
Assistant Finance Director Wilma Garriz
IT Manager Joshua Brechbuehl
Newark Police Department Chief Paul Tiernan
Parks & Recreation Director Charlie Emerson
Planning & Development Director Maureen Feeney Roser
Public Works & Water Resources Director Roy Simonson
Purchasing Administrator Cenise Wright

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- A. Executive Session pursuant to 29 *Del. C.* §10004 (b)(9) for the purpose of discussing personnel matters in which the names, competency and abilities of individual employees are discussed (City Manager & City Secretary).
- B. Executive Session pursuant to 29 *Del. C.* §10004 (b)(4) and (6) for the purpose of a strategy session involving legal advice or opinion from an attorney-at-law with respect to pending or potential litigation and discussion of the content of documents, excluded from the definition of “public record” in 29 *Del. C.* §10002 where such discussion may disclose the contents of such documents.

Council entered into Executive Session at 4:30 p.m. and returned to the table at 6:58 p.m. Mr. Clifton advised that no action was necessary by Council at this time.

1. The regular Council meeting began at 7:00 p.m. with a moment of silent meditation and the Pledge of Allegiance. Council recognized veterans for their service to our country.

2. **PUBLIC HEARING FOR 2014 GENERAL OPERATING BUDGET AND 2014-2018 CAPITAL IMPROVEMENT BUDGET**

06:22

Ms. Houck, Mr. Vitola and Mr. Haines presented the 2014 General Operating Budget. A PowerPoint presentation was used to highlight the most significant parts of the budget. (Secretary’s Note: The PowerPoint presentation is available on the City’s website.) Mr. Vitola discussed the public utility business model and noted the City subsidized the General Fund with the utility margins. Mr. Haines outlined highlights of changes to the IT Department. Council decided not to adopt the budget tonight as they wanted additional time to continue to consider it at the 12/9/13 meeting.

Following questions and comments from Council, the Chair opened the discussion to the public.

Comments were received from State Representative John Kowalko, Newark residents Amy Roe, Catherine Ciferni, Anne Mehring, Pat Wisniewski, Donna Means, Carol McKelvey, Jeff Lawrence, Cathy Johnston and Lesley Purcell.

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

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: TO STRIKE THE REFERENCE TO THE PROPOSED DATA CENTER PROJECT FROM THE BUDGET MESSAGE ON PAGE 2, PARAGRAPH 2.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

3. STATEMENT FROM BRUCE HERRON, CITY SOLICITOR REGARDING TDC:

02:48:26

“Late this past Friday the City received a response to its November 1 letter seeking more information regarding the proposed power plant use by The Data Center. We are reviewing the information provided and the City’s response will be forthcoming within the next week.”

4. 1. ITEMS NOT ON PUBLISHED AGENDA

A. Public

02:49:58

Karen Barker, District 3, spoke about TDC working behind the scenes to get their business pushed through and requested public speakers to identify their address (statement attached to the minutes).

5. Catherine Ciferni, a Newark resident, expressed concerns regarding the protocol and procedures used during the Comprehensive Plan meeting.

6. John Kowalko read a statement from UD Professor and City resident John Morgan regarding TDC and the City’s noise ordinance (attached to the minutes).

7. Margaret Cassling, District 1, said the power plant project should not be identified as a data center.

8. Donna Means, District 5, discussed the Board of Adjustment variance at Corbit and New London and asked about parking for the Lang Development project at 7 and 15 S. Main Street.

9. Nancy Willing, a Newark resident, addressed ethics for Boards and Commissions and hoped the City would consider changes being made by New Castle County for Board of Adjustment hearings.

10. Linda Grant, Newark resident, expressed opposition to a power plant.

11. Amy Roe, District 4, requested clarification about a letter regarding zoning for TDC, that the City’s responses to questions regarding TDC be appended to the minutes of the meetings where they were presented, that the grant application for TDC to DEDO dated April 2013 be appended to the minutes of tonight’s meeting, and for City Council to use its authority to fact find, investigate and exercise those duties.

12. Afton Clark-Sather, a Newark resident, was concerned about the quality of life in Newark if the power plant goes through.

13. Gary Loikith, a Newark resident, felt it was inappropriate to have a power plant in an area surrounded by residential neighborhoods. He did not object to a data center.

14. Jeff Lawrence, a Newark resident read a prepared statement (attached to the minutes) regarding TDC's zoning verification.

15. Amir Haghghat, a Newark resident, asked why this project was secretive if it was good for the community. His issue was with the power plant, not the data center.

16. Jen Wallace, District 3, commented on the additional questions raised at the 10/28 meeting and discussed the 11/1/13 letter from Ms. Feeney Roser to Duffield Associates regarding zoning verification for TDC's proposed power plant. Ms. Wallace had concerns that the City acted as TDC's public sponsor and that residents need to make FOIA requests to obtain information readily available to Council.

17. Rob Gifford, District 3, was concerned about the pollution and large amount of power that would be produced and asked Council to be sure to review every piece of information.

18. Anne Mehring, a Newark resident, opposes the power plant and the data center and supported an investigation as mentioned by Ms. Roe. She does think a zoning verification should be given without all the facts.

19. Martin Willis, a New Castle resident and union boiler-maker, said if TDC's project is approved, one of those jobs will be his. He asked that the project be given the same consideration as any other project that comes before Council.

20. Stephanie Herron, read a prepared statement from Dr. Len Schwartz (attached to the minutes).

21. Connie Merlet, a Newark resident, commented about changes in facts stated by TDC. She finds it confusing that the unions and the Chamber of Commerce both back the project. It disturbs her that the Governor appears concerned with climate change but supports TDC. She asked if TDC will have to shut down if they exceed Newark's legal noise level.

22. State Representative John Kowalko expressed pride in his constituents for speaking up regarding TDC. He feels the residents, the unions and City Council have been misled in this matter. He asked Council to carefully review responses from Duffield Associates.

23. Leslie Purcell, District 1, was concerned the City Manager signed as the public sponsor for the power plant without Council being involved. She requested the City consider a moratorium on apartments.

24. 1-B. UNIVERSITY

04:14:19

(1) **Administration** – Rick Deadwyler, Jr., University of Delaware Director of Government Relations, deferred his comments to another meeting due to the lateness of the meeting.

25. 1-B (2) STUDENT BODY REPRESENTATIVE: (Left due to lateness of meeting)

26. 1-C. COUNCIL MEMBERS

04:15:21

Council members recognized all the veterans who performed an invaluable service to our country.

Council members expressed appreciation to Mr. Clifton for serving as Acting Mayor.

Mr. Markham

- Regarding Bill 13-37 (Clarifying the Conditions for Special Noise Waivers) – Mr. Markham felt the noise verification process should be spelled out before issuing a certificate of occupancy and after construction the City should follow up for compliance.

- Mr. Markham referenced the telephone poll related to TDC which he stated did not come from a Council member.

Mr. Chapman

- Mr. Chapman said the phone call on Wednesday evening related to TDC's proposed project was not generated by him.

Ms. Hadden

- Ms. Hadden endorsed using the "Inform Me" system to notify residents about the candidates' forum for the Mayoral election. Council directed staff to pursue this option.

Mr. Tuttle

- Mr. Tuttle suggested that Council (in light of adopting more abbreviated minutes) examine the practice related to appending written statements to the minutes.

Mr. Morehead

- Mr. Morehead encouraged everyone to vote in the Mayoral election on 11/26.
- Mr. Morehead referenced a Delaware Transit Corporation workshop where he learned that DART's paratransit system will see a hefty fare increase. Newark used to run that way as well – Council opposed raising costs on a regular basis but was now moving them closer to the cost of living every year.

Mr. Clifton

- Mr. Clifton pointed out that density has illegally doubled in some apartment complexes designed with an attached den for each bedroom. Staff was requested to research how this unintended use could be controlled.

27. 2. APPROVAL OF CONSENT AGENDA

04:29:35

Ms. Bensley read the Consent Agenda in its entirety.

- A. Approval of Regular Council Meeting Minutes – October 14, 2013
- B. Approval of Regular Council Meeting Minutes – October 28, 2013
- C. Receipt of Alderman's Report – October 29, 2013
- D. Receipt of Planning Commission Meeting Minutes – October 1, 2013
- E. ***First Reading* – Bill 13-37** – An Ordinance Amending Chapter 20A, Noise, Code of the City of Newark, Delaware, By Clarifying the Conditions for Special Waivers – ***Second Reading* – December 9, 2013**
- F. ***First Reading* – Bill 13-38** – An Ordinance Amending Chapter 27, Subdivisions, Code of the City of Newark, Delaware, By Creating Procedures for Address Assignment for Subdivisions and Street Names and Renaming Subdivision and Land Development Plans or Streets – ***Second Reading* – December 9, 2013**
- G. ***First Reading* – Bill 13-39** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Amending the Management Salary Plan and Position Titles in the Management Assignments to Yearly Salary Plan – ***Second Reading* – December 9, 2013**
- H. ***First Reading* – Bill 13-40** – An Ordinance Amending Chapter 30, Water, Code of the City of Newark, Delaware, By Increasing the Water Rates Effective January 1, 2014 By 7.2% – ***Second Reading* – December 9, 2013**
- I. ***First Reading* – Bill 13-41** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Establishing a Court Security Fee – ***Second Reading* – December 9, 2013**
- J. ***First Reading* – Bill 13-42** – An Ordinance Amending Chapter 30, Water, Code of the City of Newark, Delaware, By Creating a Stormwater Utility and Establishing Related Stormwater User Charges – ***Second Reading* – December 9, 2013**
- K. ***First Reading* – Bill 13-43** -- An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Increasing the Yearly Pay Rates of the Mayor and Council Members – ***Second Reading* – December 9, 2013**

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

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

28. 3. **ITEMS NOT FINISHED AT PREVIOUS MEETING:** None

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

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

04:31:59

Mr. Vitola presented the statement for the nine months ended September 30, 2013. He agreed in the new Finance policy statement that any known seasonal revenue or seasonal expenses or those with timing differences should be budgeted accordingly and not just arbitrarily spread.

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THE FINANCIAL STATEMENT ENDING SEPTEMBER 30, 2013 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

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

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

A. **Bill 13-33** – An Ordinance Amending the Zoning Map of the City of Newark, Delaware, By Rezoning from MI (General Industrial) to RA (Multi-Family Dwellings – High Rise Apartments) 0.708 Acres at 178 South Chapel Street (***See Item 8A***)

04:39:49

(Note: The public hearings for 7-A and 8-A were held at this time.)

Ms. Bensley read Bill 13-33 by title only.

MOTION BY MR. MOREHEAD, SECONDED BY MR. CHAPMAN: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 13-33.

Lisa Goodman, Esq., represented applicants Chris Cochran and Lisa Bartolozzi. Also present was Rick Longo from Hillcrest Associates. The applicant sought rezoning, subdivision and site plan approval for the ten unit townhouse apartment project at 178 S. Chapel Street. The zoning change proposed was from manufacturing (MI) to RA. Ms. Goodman pointed out MI was inappropriate for the area which the Comprehensive Plan called for to be residential. The apartments would contain six bedroom units, each with their own bath. The applicant agreed to a voluntary deed restriction of one person per bedroom per unit. Code required three parking spaces per unit – the project would have four parking spaces per unit, all contained within the building.

Regarding ADA accessibility, the units were being designed with elevator shafts but were not currently proposed to have elevators in them.

According to Ms. Goodman the site plan approval process meant Council was approving the actual drawings and that what you see is what you are going to get.

The Chair opened the discussion to the public. Comments and questions were received from Jim McKelvey, District 4, Leslie Purcell, District 1 and Rob Gifford, District 3. There being no further comments forthcoming, the discussion returned to the table.

Council comments regarding the rezoning:

Mr. Morehead felt the MI zoning was out of place and that rezoning to residential made sense.

Mr. Tuttle believed the rezoning was more compatible with the neighboring properties and the Comprehensive Plan.

Mr. Clifton thought this was on target with the Comprehensive Plan and blended with the surrounding community which was student housing.

Ms. Hadden said the project fits with the Comprehensive Plan use for the area and rezoning to residential made sense.

Mr. Chapman agreed it was obvious that MI zoning was out of place and the rezoning to RA made complete sense with the surrounding properties.

Mr. Markham added the project did fit the Comprehensive Plan and would not have a negative impact on nearby properties.

Question on the Motion for item 7-A (rezoning) was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

(ORDINANCE NO. 13-33)

33. 7-B. BILL 13-35 – AN ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLES, CODE OF THE CITY OF NEWARK, DELAWARE, BY DELETING THE LOCATION OF A TRAFFIC CONTROL DEVICE AND UPDATING REFERENCES TO “ELKTON ROAD” TO “SOUTH MAIN STREET”

05:15:15

Ms. Bensley read Bill 13-35 by title only.

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 13-35.

Mr. Simonson explained after renaming Elkton Road to South Main Street inconsistencies were discovered in the Code regarding the designation of the intersections. The amendment would correct the inconsistency. The bill would also delete the reference to a traffic control device that had been removed and no longer existed.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

(ORDINANCE NO. 13-34)

34. 7-C. BILL 13-36 – AN ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLES, CODE OF THE CITY OF NEWARK, DELAWARE, BY UPDATING SPEED LIMITS TO MATCH THE RECOMMENDATIONS OF THE DELAWARE DEPARTMENT OF TRANSPORTATION

01:48:11

Mr. Simonson reported that due to an error in Amendments 4 and 5 of the bill, staff asked that the bill be postponed.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT BILL NO. 13-36 BE POSTPONED TO THE DECEMBER 9, 2013 COUNCIL MEETING.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

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

A. Request of Bartolozzi, LLC for the Major Subdivision and Site Plan Approval of 0.708 Acres Located at 178 South Chapel Street in Order to Construct Ten Six-Bedroom Townhouse Style Apartments to be Known as East Village at South Chapel Street. *(Resolution & Agreement Included)*

(The public hearing for this item was held under 7-A.)

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

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

(RESOLUTION NO. 13-HH)

36. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:

A. Council Members:

1. Discussion of Candidates and Selection of a Nominee for the Position of Deputy Alderman

05:21:07

A discussion ensued about the qualifications of the three applicants for the position of Deputy Alderman – Vance Funk, IV, Donald Gregory and Christopher Sipe.

MOTION BY MR. TUTTLE, SECONDED BY MR. CHAPMAN: THAT THE CITY SECRETARY DRAFT A RESOLUTION TO BE SUBMITTED TO GOVERNOR MARKELL NOMINATING VANCE FUNK, IV TO THE POSITION OF DEPUTY ALDERMAN.

MOTION DEFEATED. VOTE: 3 to 3.

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

MOTION BY MR. MOREHEAD, SECONDED BY MR. CLIFTON: THAT THE CITY SECRETARY DRAFT A RESOLUTION TO BE SUBMITTED TO GOVERNOR MARKELL NOMINATING DONALD GREGORY TO THE POSITION OF DEPUTY ALDERMAN.

MOTION PASSED. VOTE: 4 to 2.

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

37. 9-B. OTHERS: None

38. Meeting adjourned at 12:48 a.m.

Renee K. Bensley
City Secretary

November 11, 2013

My name is Karen Barker and I live on Apple Road in Newark. My Apple Road neighbor, Lauri Herman, and I wrote this statement together. I am speaking for both of our households.

Neither of us have spoken to Council about this before but we felt it was time.

You have probably all heard the saying "It is better to beg forgiveness than to ask permission". This must be the operating procedure of The Data Center LLC. They have been working behind the scenes for years with OUR City manager and the University of Delaware and even our Governor to get their business plan pushed through for a data center, but more significantly, for a huge, 279MW power plant. Once this is approved by City Council and by DNREC, this would be built and then later they could be oh so apologetic if... they don't actually supply as many jobs as they claim... or the types of jobs are more temporary or less desirable or pay a lot less than they predict... or they have more and higher smokestacks than they've said so far... or there is more pollution and more cancer and more danger for children and the elderly and families. "Oh, we're so sorry, we thought none of these things would happen."

Every time The Data Center or their supporters put out any information, the numbers change. The first description of the power plant was described by the UD as being small, like a backup power supply for an IKEA. Then it jumped to 248MW and now it has jumped again to 279MW. Only one smokestack was shown in the TDC drawings on Sept 3, and now there are 10 of them, each 165 ft tall!! The average salaries were listed in the \$60K range, but \$40k more recently and where originally, the jobs were described as high-powered professionals, at the UD faculty senate, TDC's CEO described them as mostly security and equipment movers. Supporters have said that The Sierra Club supports this and that is absolutely not true.

We need ALL of this process to be clear and transparent and NOTHING this company has done has been clear or transparent in the least. The CEO of TDC has tried to start other companies like this and been rejected more than once. We know this because when questioned at the UD Faculty Senate meeting, he said so. He has never actually built a data center or a power plant. This is a HUGE RED FLAG. Repeatedly, the

News Journal has printed letters to the editor supporting TDC that state incorrect information as fact. Given all of this, WHY would we trust this man or his supporters or his company?

The information that we concerned citizens, and especially the Newark Residents Against the Power Plant, have gathered and discovered about TDC and its power plant and about these types of power plants, has been much more consistent and backed by documented research and facts. We have had to use the Freedom of Information Act to obtain important information about meetings and documents that were not made public - things we citizens needed to know about.

Given all of this, we thank City Council for taking the time to sift through all the materials to understand this issue, and we urge Council to stand against having this enormous power plant built in the middle of 30,000 residents and students here in Newark. We don't want to look back in future years and say "If only we had known then what this project really was, we would never have allowed it to go forward." We need the truth.

Thank you.

In the name of transparency, ~~I~~ we would like to request that each speaker identify where they live so we'll know who are Newark residents and who are not.

John Morgan's statement at the Newark City Council Meeting on November 11, 2013

For over 30 years I have lived on Kenilworth Avenue in the Cherry Hill development and have been a faculty member in the Dept. of Physics at UD. Two weeks ago I urged that the primary duty of our City Council should be not to provide temporary construction jobs for the proposed large gas-fired power plant on the STAR Campus, but to safeguard the quality of life of the long-time residents of Newark in the surrounding neighborhoods. The article on the front page of Sunday's *News Journal* about Ernie Delle Donne's plans to build on the STAR Campus both a 10-story office building and a 225-room hotel, which will create many construction jobs and many more well-paying permanent jobs, shows that there is no need to rush to approve the plans to build TDC's power plant simply to create construction jobs there for people who live in northern Delaware.

This evening I would like to focus on our city's noise ordinance, which was crafted many years ago mainly to address issues of noises arising occasionally from residences and small businesses, not on the continuous noise from the gas turbines of a large power plant. Occasional noise from a neighboring house or a nearby business during the day is usually little more than a nuisance, which can often be alleviated simply by closing an open window, or going to a different room in one's house. At night, however, noise can be not just an annoying nuisance but a serious health hazard, if it prevents one from falling asleep in one's own bedroom.

On p. 19 of their summary of the Q&A at the Town Meeting on September 3, The Data Centers claimed that "The City of Newark has stringent noise requirements". In fact, Newark's noise ordinance, which allows 52 dBA at night, is not nearly as stringent as those of some other cities, such as San Diego, which has an upper limit of 40 dBA in single-family residential areas. Similarly, the noise ordinance in Portola Valley (near Stanford in the heart of the Silicon Valley) specifies that during nighttime hours the maximum permitted average noise level is 40 dBA outside and 30 dBA inside, and explains

"Steady noise of sufficient intensity, above 35 dBA, and fluctuating noise levels above about 45 dBA have been shown to affect sleep."

As I explained at our university's Open Meeting on October 14, and as I've illustrated in the attached copy of my slides, Newark's current noise ordinance would allow the nighttime noise from TDC's gas turbines to be 52 dBA at its property line about a quarter-mile from their turbines, and hence 46 dBA half a mile from them, 40 dBA one mile from them, and 34 dBA two miles from them. Hence it seems likely that the nighttime noise from this power plant could disrupt the sleep of the residents of Newark who live within one mile of it, and possibly also those who live up to two miles from it.

In the past month I have heard a few non-experts compare the 52 dBA noise from gas turbines with the noises made in our yards by songbirds or crickets. There are at least three crucial differences between these types of noises. Some of the noise from gas turbines is of much lower frequency than the noises made by songbirds and crickets (typically between 2000 and 8000 Hertz), and hence it has much greater power to penetrate the glass windows and even the walls of houses. Another is that the noises emitted by these small animals fall off much more quickly with distance than does the noise from a large source such as a power plant. A third is that songbirds do not normally sing during the night, and crickets chirp at night only in the summer, when nights are warm and most residents of Newark have their windows closed and their air conditioners running.

I hope that as a matter of urgency the City Council will review Newark's noise ordinance, compare it with the more sophisticated noise ordinances of other cities, perhaps hire a professional consultant to provide expert guidance on noise levels, and then revise our city's noise ordinance so that it accords with the best available research on controlling noise in residential areas, especially at night.

Jeff Lawrence

Residents recently got a copy of The Data Center’s application to the State of DE for \$7.5M. Examining the document reveals that TDC sold a much different story to the state than ~~is~~ to the residents of Newark. When TDC representatives came to the city for a request for zoning verification, the city was not able to verify, pending final plans. I am sure other public comments will provide specifics. On November 4th, 2013 The News Journal published an article discussing this. In that article, Maureen Feeney Roser, Newark’s director of planning and development was quoted, saying:

“To date, Newark has received conflicting and inconsistent statements from individuals representing the Data Center regarding the scope and/or intended uses for the power plant and the project as a whole”

Councilman Morehead was quoted, saying:

“The grant application says it’s a power plant, first and foremost. If that’s true, their credibility is zero.”

Having superficially reviewed the grant proposal, I would have to agree with the two above comments. However, City Manager Houck was quoted, saying:

“We anticipate that they’ll be giving us information sufficient enough to confirm where their plans are, and that they match the requirements of the accessory use” under the code.

This seems to be a very different opinion. I am confused as to why City Manager would be so optimistic as to the outcome – it almost seems as if there is a vested interest to ensure this project goes through...

Dr Schwartz had to leave

File: /home/schwartz/markell-letter.txt

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Governor Markell wrote a Delaware Voice column that appeared on Sunday berating residents of Newark for opposing the power plant/data center proposed for the UD Star Campus on the site of the old Chrysler assembly plant. He repeated his previous statement that the community needed to "stop saying no."

There was no community opposition to the Fisker takeover of the GM plant. That was like-for-like, car plant for car plant. You will also recall that it failed miserably, with a loss to Delaware taxpayers of more than \$20 million, due at least in part to wishful thinking and lack of oversight by the Markell administration.

Here we have a shell of a company with no discernable resources, no experience in either power plant or data center construction, that refuses to provide either its financial or engineering plans. We do know that, at a proposed 248 megawatts, the power plant, if built, will produce more power than used by the city of Newark, UD, and any conceivable data center. We also know that it will be a blight on the surrounding residential neighborhoods. And once again we discover that the Delaware Economic Development Office, has committed millions of dollars to this project.

According to the News Journal (10/1/2013) Delaware is doing poorly compared to other states in housing price recovery. In fact many of the houses in Newark purchased in recent years may be worth less than their mortgage balances. At the last Newark city council meeting a real estate agent stated that buyers are already being scared away by the proposed power plant. It would take little more to push us over the edge where people start walking away from their properties and our neighborhoods begin to collapse.

So Governor, do we ever get to say "no"?

Again I want to emphasize the almost total lack of disclosure by DTC. Many of you know that in order to place a garage or even a shed, behind your house you require one or more permits from the City of Newark. The permitting process requires you to supply complete drawings of proposed project before any permits can be issued. Yet here we have a \$1 billion project about which almost no significant information has been disclosed. I state this as my professional opinion as a Professor of Mechanical Engineering and a Registered Professional Engineer.

Finally, in the document submitted to DEDO, the Delaware Economic Development Office, on April 12, 2013, DTC states that they have the "first of its kind innovative data center design" with several stated advantages over existing facilities. They then state that "A provisional patent has been awarded." Actually there is no such thing as a Provisional Patent. There is a provisional patent application (PPA) which is always accepted provided that the filing fee is paid, about \$100.

The US Patent and Trademark Office web site clearly states that "a PPA is not examined" so nothing could be "awarded". Thus the award claim is purposely misleading because it implies that a US government agency has given some sort of approval to their plans.