

**CITY OF NEWARK
DELAWARE
COUNCIL MEETING MINUTES
July 14, 2014**

Those present at 6:00 p.m.:

Presiding: Mayor Polly Sierer
District 1, Mark Morehead
District 2, Todd Ruckle
District 3, Rob Gifford
District 4, Margrit Hadden
District 5, Luke Chapman
District 6, A. Stuart Markham

Staff Members: City Manager Carol Houck
Deputy City Secretary Alice Van Veen
City Solicitor Bruce Herron
Community Affairs Officer Dana Johnston
Deputy City Manager Andrew Haines
Finance Director Lou Vitola
Planning & Development Director Maureen Feeney Roser
P & D Development Supervisor Mike Fortner

EXECUTIVE SESSION

A. 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 6:00 p.m. and returned to the table at 6:52 p.m.

MOTION BY MR. GIFFORD, SECONDED BY MR. MOREHEAD: THAT THE CITY MANAGER BE AUTHORIZED TO RETAIN JOHN PARADEE, ESQ. TO ADVISE AND REPRESENT THE BOARD OF BUILDING APPEALS AT AN UPCOMING HEARING REGARDING AN APPEAL FILED BY PILGRIM BAPTIST CHURCH. IT IS NECESSARY TO RETAIN OUTSIDE COUNSEL TO REPRESENT THE BOARD BECAUSE THE CITY SOLICITOR WILL ADVOCATE ON BEHALF OF THE CODE OFFICIAL’S POSITION AT THE HEARING.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Ruckle, Sierer.
Nay – 0.

The following statement was read by City Solicitor Bruce Herron: “In view of the University of Delaware’s announcement concerning termination of the TDC lease the parties in the Superior Court appeal of the Board of Adjustment decision have agreed, subject to the approval of the Court, to extend all briefing deadlines for 30 days to allow time for evaluation of the next steps regarding the zoning verification. We anticipate having a path forward established prior to the next Council meeting. With respect to the public sponsorship of TDC’s DEDO grant application the City Manager has just signed a letter to the department which has now been sent and is posted on the City website.”

1. The regular Council meeting began at 7:00 p.m. with a moment of silent meditation and the Pledge of Allegiance.

2. MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: TO MOVE ITEM 5A, SPECIAL USE PERMIT REQUEST OF TED LAKE, BEFORE ITEM 1A.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Ruckle, Sierer.
Nay – 0.

3. MOTION BY MR. GIFFORD, SECONDED BY MR. MOREHEAD: TO REMOVE ITEM 6A1, DISCUSSION REGARDING TDC'S INFRASTRUCTURE GRANT, FROM THE AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Ruckle, Sierer.
Nay – 0.

4.
 5. **RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:**
 - A. Request of Ted Lake for a Special Use Permit for a Customary Home Occupation at the Residence Located at 308 Vassar Drive

05:45

Mr. Fortner presented the application which was before Council a month ago when Mr. Lake changed his proposed business model – he would not be detailing customer's cars at his home but would provide a mobile service and travel to the customer's location. A provision was added by Council that if Mr. Lake moved from his home at 308 Vassar Drive or sold the house, the Special Use Permit would be invalid.

Mr. Morehead advised Mr. Lake that Council received a letter alleging Mr. Lake had already started the business based on vehicles being detailed in his driveway. Mr. Morehead believed this was incorrect since he noticed vehicles in the driveway two houses down from Mr. Lake where it appeared someone was detailing cars.

Public Comments:

Kathy Donlan, 735 Bent Lane, would have objected to the Special Use Permit but all of her concerns were addressed.

Council Comments:

Mr. Morehead reported that the initial request for home detailing was changed to administrative activities only with no other indication of a home business. He pointed out the City was in the process of reevaluating home businesses in general.

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

MOTION BY MR. MOREHEAD, SECONDED BY MR. RUCKLE: TO APPROVE THE SPECIAL USE PERMIT AS REQUESTED WITH THE STIPULATION THAT THE PERMIT WOULD BE INVALID WHEN MR. LAKE VACATED 308 VASSAR DRIVE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Ruckle, Sierer.
Nay – 0.

5.
 1. **ITEMS NOT ON PUBLISHED AGENDA**
 - A. Public

14:22

Helene Johnson, District 1, suggested the meters on Main Street be covered on graduation day at the University as an expression of thanks from the City to the students and families who support Newark.

John Morgan, District 1, addressed issues regarding customary accessory uses and cited accessory abuses. He asked why Council should approve minor special uses but was unable to vote on potential major accessory uses. He brought to Council's attention gaps in the City's zoning ordinance which could unexpectedly permit other unusual accessory uses in both residential and business districts. He proposed that for each type of zoning district there should be a specific list of permitted accessory uses which must be customary within the City as opposed to anywhere else and that any other proposed accessory use must be approved by a majority vote of Council following a procedure similar to Special Use Permits. He also recommended a definition of neighborhood which included nearby properties on the other sides of fences, roads or railroad tracks.

Anne Maring, District 1, thought the City needed to close loopholes and have major development plans approved by Council. She suggested a site review committee appointed with subject matter experts to support Council.

Jackie LaGasse, District 3, thanked the Council members who represented the community through the struggle in the power plant matter. She felt one person should not be able to make decisions on major projects.

Jeff Lawrence, District 3, referenced the Council/staff retreat and felt bad decisions were made in the past regarding the chain of command in the City. He also expressed concerns about the relationship between the City and the Downtown Newark Partnership.

Brett Zingarelli, District 4, also voiced concerns about the relationship between the City and the Downtown Newark Partnership.

Len Schwartz, District 3, asked Council to rescind the zoning approval given for the TDC project based on UD's withdrawal of its support.

Amy Roe, District 4, spoke regarding the University's recent decision about the power plant. She voiced concerns with DEMEC's response to her FOIA requests and asked that any FOIA policy established by DEMEC mirrored that of the City's.

Nancy Willing, District 3, discussed Ms. Roe's experience at DEMEC with her FOIA request. She said a newly formed Town and Gown committee formed at the request of Council would be a public body and would be required to post meeting notices and provide minutes.

Jen Wallace, District 3, asked the City not to renew lobbyist Bob Maxwell's contract because according to the Public Integrity Commission there were no reports filed of any lobbying done on the City's behalf by Mr. Maxwell. She was concerned about Mr. Maxwell's association with Delawareans for Environmental & Economic Development as Legislative Committee Co-Chair. Ms. Wallace then made a statement for the Newark Residents against the Power Plant.

Ms. Hadden requested Mr. Herron re-read his previous statement for the benefit of the public who were not present following the Executive Session. Mr. Markham asked that he also read Ms. Houck's letter to Delaware Economic Development Office Cabinet Secretary Alan Levin (posted on City's website).

Catherine Ciferni, District 2, wanted clarification on the procedures outlined by Ms. Sierer for directing all comments through the Chair. Ms. Ciferni felt if the Chair did not recognize the person who wished to speak the record would be censored. As Chair Ms. Sierer said she had the authority to ask all who were speaking at the meeting to be recognized. Ms. Hadden believed it was standard Parliamentary procedure that comments and permission to speak should be directed to the facilitator of the meeting. Ms. Sierer said this procedure was for all in attendance and it was how formal meetings were run.

6. 1-B. ELECTED OFFICIALS

59:25

State Representative John Kowalko asked Council to withdraw TDC's zoning verification. He did not feel the environmental compliancy laws of Delaware were protecting anybody in the State but were protecting businesses. He requested the City have a dialogue with the State.

7. **1-C. UNIVERSITY**

(1) Administration

01:07:00

Mr. Deadwyler issued the report regarding UD's alumni weekend and mug night. Improvements included leadership accountability adjustments to insure the right people were making the decisions to address issues related to the events and work with City leadership and the community. Mr. Deadwyler introduced Patricia Reilly who would be leading the next alumni weekend.

Mr. Ruckle hoped the alumni event would remain in the City and would adhere to the approved times.

Dr. Charles Riordan was present to discuss the University's announcement of the termination of the lease with TDC. Dr. Riordan led the efforts of the University's internal working group.

Dr. Riordan outlined the process taken by the University. In late 2009 the University purchased the 271 acre former Chrysler site and reappointed it as the STAR Campus. In early 2010 the STAR Campus Steering Committee was developed to include members of the administration to vet potential tenants for the site. A proposal was received from TDC in 2011 to occupy 43 acres at the northwest corner of the campus. In 2012 the proposal reached a point where it was brought forward to the STAR Steering Committee and based on that assessment and due diligence the University felt the project had merits aligning with their vision for the campus. In late 2012 a land lease was signed between 1743 Holdings and TDC. The purpose of the land lease was to allow both parties the opportunity to continue due diligence to make sure the project was suitable to move forward. In 2013 the internal working group was constituted ultimately with a membership of seven University leaders to evaluate the merits of TDC's proposal and the fit for the STAR Campus. External consultants were enlisted to help evaluate the impact of the project for the environmental impact of the cogeneration CHP and energy delivery and assessment. Based on evaluations from the consultants, input from TDC and the working group as well as others with access to that information, non-disclosure agreements were signed so the University would be provided with the most current, up-to-date information on their plans and their designs. It was with that information in hand that the University rendered the report with its findings and its recommendation that the TDC project was not in the best interest of the STAR Campus and the project and land lease were terminated.

Dr. Riordan commented that the University was fully committed to public-private partnerships and would continue looking for additional developments to come to fruition at the STAR Campus. Second, Newark is a community populated with a large number of caring, interested, committed individuals. The majority of the rhetoric and dialogue on the topic was of the highest caliber. Ultimately the scientific and the analytical data collected from TDC and evaluated led the University to the conclusion they felt was in the right interest of the University.

Mr. Ruckle asked what the University was doing to try to attract more businesses to the site. Mr. Riordan reported DelleDonne Associates and Bancroft were working to finish off the south end of the administration building which was scheduled to open in early 2015. That side of the building would be occupied by a number of private sector ventures that synergize with the research and student internship opportunities already in play on the north side of the building. Individuals working for the University and 1743 Holdings were "pounding the pavement" to bring the right types of partners to the campus.

Mr. Gifford asked if there was a new vision for the STAR Campus and if the City would be kept abreast of any updated plans. Dr. Riordan replied the STAR Campus website continued to be refreshed but there had not been a change in their vision for the campus. There was a planning grant in the State budget approved on July 1 that allocated \$3 million to UD for the cyber security initiative that would take place on the STAR Campus.

Mr. Gifford asked if the original master plan was still on the website and if that was still the guideline for the more concrete items. Dr. Riordan responded the 2011 master plan was current although it was continually updated. The University was working with external planners and consultants on a new master plan particularly focused on a 40 acre parcel of land by the Newark Train Station migrating along South College Avenue to the Health Sciences Complex. Completion of the preliminary work was expected in the fall, and the revised master plan would be presented at that time. Dr. Riordan said a CHP on the campus was worth considering since ultimately energy in some form would be needed whether it would be generated there or would come in from the grid.

Mr. Morehead asked Dr. Riordan if the four page report was the full report or a summary. Dr. Riordan replied it was a public summary of the report and the rest would remain internal. Mr. Morehead thought there was an understanding in the community that a data center was appropriate for the University given the effort to become a premier security and cyber security center. He stated the power plant was oversized by more than twice. It was clear to him the City would need time to build and budget for an appropriately sized substation to support future development.

Mr. Markham encouraged the University to have working groups much earlier in the process in order to vet projects more thoroughly. He stated there was a huge investment incurred by the University, by the residents and by the City. Dr. Riordan noted this was difficult work and there was extensive vetting throughout the process and there were always lessons learned. The University would make efforts to do better each and every time. At the end of the day this was about building relationships which were complex and took time.

Ms. Sierer asked a question posed by a member of the audience. Did the University have any plans to build housing for graduate students on the STAR Campus? Dr. Riordan said there were no specific plans at this stage but it was an opportunity the University was considering.

Mr. Deadwyler responded to Mr. Gifford's question as it related to communication and stated he was the contact point for government relations and the community.

8. **1-C-2. STUDENT BODY REPRESENTATIVE:** None

9. **1-D. LOBBYIST:** None

10. **1-E. CITY MANAGER:**

01:34:29

Ms. Houck reported there were efforts to include interns in various departments throughout the City – currently there were eight on board.

11. **1-F. COUNCIL MEMBERS**

01:35:19

Mr. Chapman

- Had nothing to discuss.

Ms. Hadden

- Worked with constituents on issues.
- Met with citizens to clarify the *Newark Post* article regarding efforts to bring back the former Town & Gown Committee.

Mr. Markham

- Enjoyed Newark's Fourth of July celebration and suggested residents be allowed to view fireworks from the reservoir.
- The solar park was moving along and the ballasts were going up.
- The Curtis Paper Mill Park was progressing with an October opening projected.
- Reported the contract was expiring for Robert Maxwell, the City's lobbyist, who did not respond to the RFP. Ms. Sierer noted only two Council members responded to be on the review committee to bring the applications for the lobbyist to Council. A discussion ensued about the composition of the review committee. Ms. Houck suggested the ranking of the two applicants take place first by the review committee and then the applicants would give a presentation to Council. The rankings by Ms. Sierer and Mr. Markham would be completed by the end of the week.
- The retirement of the Planning Commissioner in District 6 created a vacancy for that position and Mr. Markham was seeking interested applicants.

Mr. Morehead

- Attended City Secretary Renee Bensley's wedding.
- Attended the Rental Housing Needs Assessment Committee meeting and was concerned the consultant was asking the committee directly for topics for information. It was his understanding the consultant would gather and digest the information and present best practices – Mr. Morehead reiterated during the meeting that had been Council's expectation. He was concerned a small number of people sitting at the table were driving this forward from concept through data gathering.
- Questioned how the parking Smart Meters could make three times the revenue. It seemed to him the City would have to either increase the rates, reset the time previously paid or increase the usage. When Council said the time would not be reset, how would the meters make more money? Mr. Vitola said it came down to consumer preference. People with no change would prefer to swipe a card and pay for the maximum amount regardless of how long they anticipated their stay. Both the University and the City's pilot showed many consumers do that, driving the revenue higher. No rate increase and the reset only account for a small portion of the expected revenue increase. Mr. Morehead asked if there was time left on the meter when the next person came to put in their maximum amount (two hours), at some point did the meter run out of time? Mr. Vitola said no, the meter would not exceed two hours. Mr. Morehead reported the electronic readout on the meters stated payment was required Monday through Saturday 8 a.m. to 1 a.m. and asked about paying for Sunday. Ms. Feeney Roser reported the meters also run on Sunday beginning at 1 p.m. and staff would check that the meters display the correct Sunday payment hours.
- The outside consultant for the Council/Staff retreat mentioned a strategic plan – Mr. Morehead said Council did not have a workable format for this, for example there currently was not an up-to-date property inspection code and questions abounded about the Downtown Newark Partnership – the Code stated the purpose of the Partnership shall be to advise Council on matters requiring Council action concerning economic development enhancement of downtown Newark. He had concerns about various subcommittees working with staff and wanted to get a list of who was working with staff on Council's behalf on what issues. He suggested each Council member generate a list of initiatives and then decide how to move forward. Ms. Sierer agreed that developing a strategic plan was a good idea. She suggested after generating their lists Council should have a workshop open to the public and begin the process there. Mr. Gifford pointed out some of the strategic planning was in the Comprehensive Plan and Council should focus on that first. Further, some issues that do not belong in the Comp Plan could be rolled over into a strategic plan. Mr. Morehead planned to give his list to the City Secretary and it was suggested that one person consolidate Council's lists.
- The Governor was quoted as saying the City asked him for his support of the data center project. He knew that did not come for Council and wanted to understand where it came from. Ms. Houck had no idea – she never saw the quote but heard it tonight but had no conversation with the Governor.
- The City's press release talked about a fast track application processing model – he was unaware of this model. Ms. Feeney Roser explained the Planning & Development Department set development reviews at a certain time frame and it was much quicker than was done in any other municipality or the County. The City had four to six months for a project to get to the Planning Commission and then on to Council.

This was part of the City's economic development strategy. Mr. Morehead's concern, specifically with TDC, was Newark was pledged before Council was aware of the project. Ms. Feeney Roser explained this was the development approval process – TDC came through STAR Campus zoning which was a different process and something the City might want to revisit.

Mr. Ruckle

- Attended the City Secretary's wedding which was a great event.
- Referred to the preventable death of a constituent in a fire and looked to the community to start a group to check face-to-face on the elderly. Ms. Hadden reported New Castle County had a program that contacted people by phone at their request.
- Wanted more family-oriented programs available for children at the City's parks which he felt were underutilized.
- Announced that Newark is open for business and the University should focus on businesses that fit into the City's plan.
- Was advised that Arenas restaurant was putting illegal posters on Main Street.

Mr. Gifford

- Relieved the University made their decision on the power plant/data center and believed it was one of the many steps towards renewing relationships between the City and the University. He hoped to see future events for UD alumni in Newark and that things would go smoothly.
- Recognized community members and their efforts and encouraged everyone to stay involved in Newark activities, especially the Comprehensive Plan.
- Regarding the City's lobbyist Robert Maxwell, there was no report of dollars spent for 2013-2014 and there was \$50 spent for 2012. Mr. Gifford wanted to make sure Mr. Maxwell was lobbying for the City and hoped this information could be obtained from his final report.
- Regarding the Downtown Newark Partnership there was a lot of discussion at the last meeting for on-street parking, and he wanted to know if this was part of their purview. He suggested Council have a larger discussion about the DNP.
- The DNP meeting was not on the Newark calendar and the minutes were only available through December 4, 2012. He would like those added to the City's website. He also highlighted an issue with the Parking Committee and Merchant's Committee which meet at overlapping times (9:30 and 10:00 a.m.) in the City Manager's conference room and at Louviers Federal Credit Union. This created a conflict for those wanting to attend both meetings.
- Details of on-street parking – Mr. Gifford wondered if part of the reason for the extra revenue was that spaces were available but some people were choosing not to pay – if everyone paid and the spaces were utilized, there was not three times more time during the day to make the extra revenue. Given that Council provided extra direction to keep time on the meters between space users, Mr. Gifford asked to see the new financials based on that decision. Mr. Markham asked for confirmation from the 6/23/14 minutes about Council's direction as he believed there was no consensus or direction given by Council about the meter clearing during the meeting.

Secretary's clarification of the 6/23/14 minutes:

Mr. Markham asked if the meter clearing feature could be disabled while utilizing the vehicle detection option. Mr. Chapman replied it could. Ms. Houck and Ms. Feeney Roser said staff direction was all that was needed on that point. Mr. Markham would not attach it to the contract but would instead give direction to staff. Mr. Markham asked if Mr. Chapman wished to bring this up for direction to get the consensus of Council. Mr. Chapman said he would do so at a later time. (There was no further discussion.)

- Mr. Gifford asked for clarification about the on street vs. off street parking in the mission for the DNP at a future meeting.
- Regarding the Rental Housing Needs Assessment Committee, Mr. Gifford appointed his representative with the understanding he would be reviewing the information – he was not sure he advertised it to him correctly if he was going to be doing a lot more work than just reviewing the consultant's report. Mr. Gifford said that

needed to be cleared up as well. Mr. Haines will follow up on the concerns expressed by Council and report back to them.

Ms. Sierer

- Thanked the University and the members of the community for their presentations and Deputy Mayor Markham for chairing the last meeting during her absence. She also thanked those who sent her well wishes.
- Attended the Design Committee meeting, the DNP meeting and the Delaware State Police Academy graduation where two Newark Police officers graduated.

12. 2. **ITEMS NOT FINISHED AT PREVIOUS MEETING:** None

13. 3. **SPECIAL DEPARTMENTAL REPORTS:**
A. Special Reports from Manager & Staff: None

14. 4. **ORDINANCES FOR SECOND READING & PUBLIC HEARING:** None

15. 5. **RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:**
A. Request of Ted Lake for a Special Use Permit for a Customary Home Occupation at the Residence Located at 308 Vassar Drive

(See item #4)

16. **5-B. INTRODUCTION AND UPDATE ON 2014 COMPREHENSIVE PLAN – PLANNING & DEVELOPMENT DEPARTMENT**

02:20:45

Mr. Fortner reviewed the draft Comprehensive Plan V through a PowerPoint presentation. The Plan came with the unanimous recommendation of the Planning Commission. Mr. Fortner would present an overview of the draft Plan and explain Council's role in the process and the key features of the plan and then discuss a path forward to getting Council's approval.

Initial public outreach began on June 2, 2012 at *Newark Day*. Thus far, a series of 31 monthly public workshops were held for the community. Mr. Fortner reviewed the following topics: The purpose for the Plan; the timeline for public meetings, workshops and hearings; the key features of the plan – restructure of chapters, community profile and vision and the use of strategic plan elements

Mr. Fortner explained the next step forward was for Council to review the Plan and adopt it. The document was available to be viewed online and the first Council workshop was scheduled for Monday, October 20 at 7:00 p.m. in Council Chambers. In the meantime Council should submit any questions or comments regarding the Plan prior to that meeting

Public Comment:

Anne Maring, District 1, stressed the Comprehensive Plan was the City's strategic plan for the future and it should not be pushed through the process based on events over the last year. She shared her questions and concerns regarding the Plan and would submit them to Mr. Fortner.

John Morgan, District 1, suggested a review of the 100 year flood line before allowing development of vacant land. The parking garage may solve the parking problem but would aggravate the traffic problem. He urged the City to work with County and State officials to try to raise the quality of the public schools.

Catherine Ciferni discussed access for paratransit and thought there should be a better review process for future development. She recommended more outreach to the Newark High School students and greater evaluation of an economic engine for all of Newark beyond the Downtown Newark Partnership and a comprehensive, ongoing cultural plan.

17. 6. **ITEMS SUBMITTED FOR PUBLISHED AGENDA:**
A. Council Members:

1. Further Discussion of Council's Prior Motion Regarding TDC's Infrastructure Grant Application and Potential Motion – Councilman Gifford

(Removed from agenda – see item 3)

18. **6-B. OTHERS:** None

19. **7. RECOMMENDATIONS ON CONTRACTS & BIDS:** None

20. **8. FINANCIAL STATEMENT:** None

21. APPROVAL OF CONSENT AGENDA

03:31:45

Mr. Gifford removed item 9B (Approval of Special Council Meeting Minutes) from the Consent Agenda to correct the start time of the meeting from 7:00 p.m. to 8:00 a.m.

Ms. Van Veen read the Consent Agenda as amended.

- A. Approval of Council Meeting Minutes – June 9, 2014
- C. Approval of Council Meeting Minutes – June 23, 2014
- D. Receipt of Alderman's Report – June 24, 2014
- E. Receipt of Planning Commission Meeting Minutes – June 3, 2014
- F. Appointment of Karie Simmons of the Newark Post to the Downtown Newark Partnership to Fill the Vacant Media Representative Term to Expire July 15, 2015.

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.
Nay – 0.

22. Meeting adjourned at 10:22 p.m.

Alice Van Veen
Deputy City Secretary