

**CITY OF NEWARK
DELAWARE
COUNCIL MINUTES
ORGANIZATIONAL MEETING**

April 19, 2011

Those present at 7:00 PM:

Presiding: Vance A. Funk, III, Mayor

Council Members: District 1, Mark Morehead (upon his swearing in)
District 2, Jerry Clifton
District 3, Doug Tuttle
District 4, David J. Athey
District 5, Ezra J. Temko
District 6, Stu Markham, Jr.

Staff Members: City Manager Kyle Sonnenberg
City Secretary Patricia M. Fogg
Assistant to the City Manager Charles Zusag
Finance Director Dennis McFarland
Community Affairs Officer Dana Johnston

1. CERTIFICATION BY ELECTION BOARD OF COUNCIL MEMBERS

The following letter, dated April 14, 2011, was submitted by the Election Board:

“Honorable Mayor and Members of City Council:

We, the Election Board of the City of Newark, hereby certify that on April 12, 2011, the following was elected Council Member in Election district One for a two-year term. There being only one candidate for the office of Council Member in Election Districts Two and Four, we hereby declare the following candidate elected for a three-year term and the following candidates elected for a two-year term; said candidates are entitled to assume office without formal election pursuant to Section 10-19 of the Code of the City of Newark, and 15 Del.C. Section 7555(j):

Mark R. Morehead	COUNCIL MEMBER, DISTRICT 1
George J. Clifton	COUNCIL MEMBER, DISTRICT 2
David J. Athey	COUNCIL MEMBER, DISTRICT 4.

Respectfully submitted,

Newark Election Board”

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THE CERTIFICATION BY THE ELECTION BOARD BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Athey, Clifton, Funk, Markham, Temko, Tuttle.
Nay – 0.

2. OATH OF OFFICE GIVEN TO COUNCIL MEMBERS
(Charter – Section 1102)

City Secretary Patricia Fogg administered the Oath of Office to Council Members Morehead, Clifton and Athey.

3. ELECTION OF DEPUTY MAYOR

Mr. Clifton was unanimously elected Deputy Mayor upon nomination by Mr. Athey.

4-A. ELECTION OF OFFICERS

- **City Treasurer**

Ms. Patricia M. Fogg was unanimously appointed treasurer for a one-year term upon nomination by Mr. Markham.

4-B. INTERVIEWS AND APPOINTMENT OF CITY SOLICITOR

Kevin Baird, Esq. of the law firm Baird Mandalas LLC, presented his qualifications for the City Solicitor's position. The primary reasons he felt he was the best candidate were: the breadth and depth of municipal experience he would bring to the table since he had represented several municipalities over the past few years; the breadth and depth of municipal litigation experience and his familiarity with state and federal district courts, its judges and procedures; and he felt best suited to the job based on his motivation and drive to provide the highest level of service to his municipal clients.

Mr. Baird announced that two new lawyers were being added to the firm and that the firm would be opening a new office in the City at 269 E. Main Street.

Mr. Baird confirmed to Mr. Funk that he would not charge travel time to the City. Mr. Funk said he perceived one of the City's weaknesses was its relationship with State legislators and asked what experience Mr. Baird had in that area. Mr. Baird said he worked with several State legislators on the PLUS process and worked directly with legislative attorneys getting charter changes and charter amendments passed.

Mr. Athey questioned how much of the workload would be handled by Mr. Baird. Mr. Baird responded that he would be the primary person responsible for every issue with the City although for cost effectiveness to the City, lower level might be handled by an associate/paralegal. Mr. Athey asked if the law firm's business continued to grow, would the City be deferred to another attorney. Mr. Baird assured Mr. Athey that he would continue to serve as Newark's Solicitor.

Bruce Herron, Esq. of the law firm Losco and Marconi, stated there were several reasons he felt well qualified for the position of City Solicitor. First and foremost was his 15 years of experience as the City's Deputy Solicitor. In that role he had primary responsibility for prosecution in the Alderman's Court, but he also drafted contracts and ordinances, reviewed ordinances, provided advice to City staff, sat with the Board of Adjustment and provided advice to Council. He asked Council to consider his years of experience along with the more intense experience of the past four months while he served as Interim City Solicitor and prosecutor for the Alderman's Court.

Mr. Herron also asked Council to consider his new association with the firm of Losco and Marconi where there were four attorneys in the firm, all of whom were experienced in municipal law. Another factor he asked Council to consider was that a substantial portion of his private practice over the past 20-plus years was devoted to the representation of Delaware municipalities in

litigation. Further, Mr. Herron developed solid and productive relationships with City staff and with department heads.

Mr. Funk verified that Mr. Herron would not charge the City for travel time. He also asked if Mr. Herron had any experience with the State legislature. Mr. Herron said that he worked with staff counsel in the legislature on various issues involving the City over the years and had some dealings with Bob Maxwell, the City's lobbyist.

Mr. Athey asked how Mr. Herron would approach the City's workload. Mr. Herron responded that he would be the primary point of contact as he had been during the past four months and that he would continue to be the prosecutor in the Alderman's Court, although at some point he would recommend the appointment of another member of his firm as the Deputy Solicitor.

While Mr. Clifton respected the Baird Mandalas firm, he was concerned about their level of municipal experience. He recognized Mr. Herron's 26 years of experience working with City school districts and housing authorities, and he respected the institutional knowledge and experience he brought to the table.

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT BRUCE C. HERRON BE APPOINTED AS CITY SOLICITOR OF THE CITY OF NEWARK.

Mr. Athey pointed out a counter side to Mr. Clifton's point of view. He felt by always deferring to institutional knowledge there was never a change or opportunity for fresh insight or different perspectives.

Mr. Markham said he was looking for someone who could reach out beyond the City. He was leaning toward somebody who had contacts in Dover, who had experience directly with the University and who had major rental experience. He was looking for new excitement – somebody who really wanted to be here and wanted to serve Council and move the City forward.

Mr. Temko thought both candidates were qualified and would be assets to the City. He believed wanting a fresh perspective was something to consider when thinking about policy solutions, but when it came to objective legal analysis, he thought institutional knowledge was more important.

Mr. Tuttle thought the City was fortunate to have applications from comparable, well-qualified candidates. On one level he said it would be difficult to make a bad choice which was a positive for the City. However, he believed Mr. Herron deserved serious consideration based on his service to the City which was well regarded.

Mr. Funk felt the interviews were not necessary since he believed when you had a good Deputy he deserved recognition and should be promoted.

Mr. Morehead came down on the side of experience with the City.

Mr. Athey remarked that this was not an appointment for life as the City Solicitor served at the pleasure of Council. Mr. Funk agreed the appointment did not mean lifetime employment. He was impressed with the Baird Mandalas firm and looked forward to having them next door to his Main Street office.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

Aye – Athey, Clifton, Funk, Markham, Morehead, Temko, Tuttle.
Nay – 0.

(Secretary's note: The appointment of Mr. Herron was effective immediately at the hourly rate of \$130.00.)

5. BOARD APPOINTMENTS

Council voted unanimously to make the following appointments:

Board of Sidewalk Appeals (One appointment – Two-Year Term)

James Dunson, Robert Detwieler

Board of Building Appeals (Three appointments – Five-Year Term)

Edward F. Trahan

6. RULES OF PROCEDURE – Resolution Presented

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Athey, Clifton, Funk, Markham, Morehead, Temko, Tuttle.

Nay – 0.

(RESOLUTION NO. 11–E)

7. REQUEST FOR EXECUTIVE SESSION RE LABOR NEGOTIATIONS

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT COUNCIL ENTER INTO EXECUTIVE SESSION WITHOUT THE PRESS TO DISCUSS LABOR NEGOTIATIONS.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Athey, Clifton, Funk, Markham, Morehead, Temko, Tuttle.

Nay – 0.

Council entered into Executive Session at 7:27 PM and returned to the table at 8:15 PM. Mr. Funk advised that no action was necessary.

8. Meeting adjourned at 8:17 PM.

Patricia M. Fogg, CMC
City Secretary

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