

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

October 13, 2008

Those present at 7:30 pm:

Presiding: Mayor Vance A. Funk, III
District 1, Paul J. Pomeroy
District 2, Jerry Clifton
District 3, Doug Tuttle
District 4, David J. Athey
District 5, Ezra J. Temko
District 6, A. Stuart Markham

Staff Members: Assistant to the City Manager Carol S. Houck
Assistant to the City Manager Charles Zusag
City Secretary Patricia M. Fogg
City Solicitor Roger A. Akin
Captain John Potts, NPD
P&D Planner Michael Fortner

1. The meeting began with a moment of silent meditation and pledge to the flag.

2. MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THE AGENDA BE AMENDED BY ADDING ITEM 1-A, PROCLAMATION TO NEWARK POLICE DEPARTMENT, TO THE AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

3. **1-A. PROCLAMATION TO NEWARK POLICE DEPARTMENT**

Mr. Tuttle read the proclamation which was unanimously endorsed by Council, recognizing the Newark Police Department for their incredible performance in bringing closure to the home invasion incidents and the rate of successful arrests in recent street crimes.

Mr. Pomeroy said the proclamation was a tribute from Council to recognize the high profile as well as the day-to-day activities of the Police Department, and he felt it was a great honor to serve in a City with the dedicated men and women of the department.

Captain Potts thanked Council for the recognition on behalf of Chief Tiernan and the members of the Police Department. He said the department worked long hours over the past month, and the tribute would put some spring back into their step.

4. **2. CITY SECRETARY'S MINUTES FOR COUNCIL APPROVAL**

A. Regular Council Meeting of September 22, 2008

There being no additions or corrections to the minutes, they were approved as received.

5. 3. ITEMS NOT ON PUBLISHED AGENDA

A. Public

Ivan Nusic, 26 Wakefield Drive, was grateful for the citizen watch phone notification he received alerting residents to recent crimes in the City which he felt was a very beneficial program.

6. Amy Roe, 19 Sunset Road, was pleased Council would consider a revision to the Code for the purchased power cost adjustment. She found it encouraging that the City was being responsive to concerns raised about the retroactive rate increase announced on August 26th. She was pleased the City had updated the electricity information provided on the "Where Does All That Electricity Go?" web page and appreciated Mr. McFarland's response to her concerns regarding her overestimated billing problems.

Ms. Roe made several requests to improve energy awareness. She would like to see the electricity sources displayed on the City's website, in the municipal newsletter and on utility bills. She wanted the bill to include a pie chart with the energy sources and a carbon footprint calculation as well as a bar scale by which energy consumption could be compared to other residential users. She considered feedback about energy consumption to be valuable and felt it might encourage the community to adopt more sustainable practices. She would like similar information to be provided about the energy sources contributing to the voluntary green energy subscription program and wanted to know if the City's green energy fund surcharge and voluntary green energy subscription program were created so the City's municipal electric utility could be exempt from the state's renewable energy portfolio standard. Ms. Roe preferred that the City adopt a more aggressive renewable energy portfolio standard than the state. At a minimum, though, she would like the City's voluntary green energy subscription program to provide truly green energy and asked that the City provide greater transparency in regard to its energy sources and the environmental impact.

7. 3-B. UNIVERSITY

1. Administration – There were no comments forthcoming.

8. 3-B-2. STUDENT BODY REPRESENTATIVE

Colin Craft, 141 W. Main Street, a Student Government Association representative, announced a campus safety walk on Wednesday, 10/15/08 at 6:30 p.m. A walk was planned around campus with UD safety officials and students to address areas identified as posing safety concerns.

9. 3-C. COUNCIL MEMBERS

Mr. Athey issued a reminder about the Comprehensive Plan Workshop meeting on 10/16/08 at 7:00 p.m. Ms. Houck said the latest Plan would be on the City's website in the next few days.

10. Mr. Temko said several of Ms. Roe's comments were being addressed, and there would be a staff report at the November 11th Council meeting detailing the sources of the green energy subscription program. Energy Star billing would also be discussed which would compare individual usage in similar homes. He also expected to discuss whether the City should be un-exempted from the state's renewable portfolio standards or create its own portfolio standards.

11. Mr. Temko thanked Senator Sorenson for attending the meeting and for coordinating a meeting with DeIDOT on 10/16/08 to discuss the Hillside/New London Road intersection. Mr. Temko welcomed the public's comments regarding traffic signalization at that location.

12. Mr. Temko announced that as of October 1st the City collected CFL's (compact fluorescents) for recycling.

13. Mr. Temko was pleased the City was moving ahead with recycling which would start in June. He encouraged single-stream recycling on Main Street but was told the \$30,000 cost was not currently budgeted. Mr. Temko voiced his support to include this project in the budget.

14. Mr. Temko discussed the capacity of the Council Chamber in order to accommodate large groups. Ms. Houck said plans were being made to have chairs and a sound system available to be placed in the lobby for such instances.

15. Mr. Tuttle commended DeIDOT for the work on Christina Parkway and on Elkton Road which was a significant improvement in spite of being a temporary repair.

16. Mr. Markham reported that DEMEC made a commitment to purchase power from Bluewater Wind, and Ms. Houck added this would put the City over 19% in renewables.

17. Mr. Markham would like an automated call-in system to be implemented for meter readings which he felt would eliminate some of the estimated bill issues.

18. Mr. Markham asked if the Comprehensive Plan could be modified after being adopted. Mr. Athey said although the state required updating every five years, it could be updated on a more frequent basis if desired by the City.

19. Mr. Markham encouraged donations to save the Curtis Paper Mill stack through the www.curtispapermill.com website. Ms. Houck gave an update on the site and expected grass to be planted by next spring.

20. Mr. Pomeroy thanked Ms. Roe for her comments and indicated Bluewater Wind was an important step forward in the City's energy portfolio.

21. Mr. Pomeroy thanked Senator Sorenson, Councilman Tuttle, Chief Tiernan, Lt. DeGhetto and Cpl. Bryda who attended a community meeting on public safety related to some concerns in Christine Manor and Nottingham Green. He said the residents were very appreciative of the Police Department's efforts on their behalf.

22. Mr. Clifton commended the Police Department on the tremendous closure rate and said the department was the best in the country. He hoped citizens recognized the diligence and hard work of the department.

23. Mr. Clifton remarked that Newark lost several prominent citizens and great Newarkers this week, Marvel Joos Reid, the mother of Linda Burns of the Police Department, and Tim Herman of Herman's Meat Market.

24. Mr. Clifton displayed a 250th Anniversary plate presented by the Newark Historical Society in thanks for the support given to the society by the Mayor, Council and Staff.

25. **4. ITEMS NOT FINISHED AT PREVIOUS MEETING:** None

26. **5. RECOMMENDATIONS ON CONTRACTS & BIDS**

A. Contract 08-07, Installation of EPDM Single-Ply Membrane Roofing – Police Department Facility

Ms. Houck summarized her memo to Council dated October 6, 2008 wherein she recommended awarding the contract for the roof replacement at the Police Department facility to Wilkinson Roofing & Siding. Six sealed bids were received, and three references were contacted for the lowest bidder. All three provided comments of high levels of satisfaction for work performed. Funds were

available in capital projects and the future projects fund. It was therefore recommended to award the contract to Wilkinson Roofing & Siding for its bid of \$104,740. Mr. Markham was surprised at the difference between the lowest and highest bids, and Mr. Funk noted that Wilkinson was a good contractor.

MOTION BY MR. TUTTLE, SECONDED BY MR. TEMKO: THAT CONTACT NO. 08-07 FOR THE INSTALLATION OF EPDM SINGLE-PLY MEMBRANE ROOFING AT THE POLICE DEPARTMENT FACILITY BE AWARDED TO WILKINSON ROOFING & SIDING, INC. FOR A TOTAL COST OF \$104,740.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

27. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING

None

28. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS

- A. Request of Colby Brands, LLC for a Special Use Permit to Permit the Sale of Alcoholic Beverages in a Proposed Sit-down Restaurant on the First Floor of the Washington House Condominiums at 111 E. Main Street to be Known as Cosi

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT THE SPECIAL USE PERMIT BE GRANTED AS REQUESTED.

Mr. Craig Colby, 8 Okie Drive, Landenberg, PA, the Cosi franchisee, said he owned Cosi restaurants in Greenville and on the Wilmington Riverfront which had liquor licenses. Their alcohol sales amounted to about 1%. This restaurant would carry only bottled beer and small bottles of wine and mixtures for coffee drinks. There were 144 Cosi restaurants, and approximately 20 had liquor licenses.

Mr. Funk asked if Mr. Colby was willing to accept the proposed restrictions for the special use permit. Mr. Colby was unclear about the restrictions. Mr. Athey was confused that the memo from the Planning & Development Department referencing the deed restrictions for the Washington House outlined different hours of operation from those contained in Mr. Colby's letter.

Mr. Akin said the original restrictions were imposed when Washington House Partners, LLC contemplated only one alcohol use fronting on Main Street. That was for the wine bar using the pre-existing liquor license issued by the Alcohol Beverage Control Commission. When the restrictions were negotiated, Mr. Baeurle agreed and confirmed through his attorneys that the deed restrictions would apply to any alcohol-serving establishment fronting on Main Street in the condominium structure. Mr. Akin advised that Cosi's could, however, seek to have the deed restrictions amended by Council in the future.

Mr. Temko asked if Thursday's hours for providing alcohol service could be changed from 10pm to midnight since Cosi's would not be the type of establishment with undesirable behavior in regard to alcohol. Mr. Akin said such a change would be technically inconsistent with the restrictions imposed on the Washington House.

Mr. Colby asked about outside seating which Mr. Funk explained came under the original application.

The Chair opened the discussion to the public.

Jean White, 103 Radcliffe Drive, had no objection to the special use permit for the applicant. She was confused as to why different operating hours were requested from those in the Washington House deed restrictions and was glad to hear they would operate under the same rules. She did not think the deed restrictions should be changed in the future since Mr. Baeurle knew the restrictions when he leased the space and should have informed the applicant of the restrictions. Ms. White noted in the legal notice to the newspaper that Cosi's requested outside speakers on the patio which were not permitted under the Code. Mr. Colby indicated that he did not plan to have outside speakers.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

29. 8. ORDINANCES FOR FIRST READING

A. Bill 08-28 - An Ordinance Amending Ch. 11, Electricity, By Amending the Computation of Purchased Power Cost Adjustment Clause

Ms. Fogg read Bill 08-28 by title only.

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THIS BE THE FIRST READING OF BILL 08-28.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

Nay – 0.

(2ND READING 10/27/08)

30. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA

A. Council Members:

1. Setting the Compensation for the City Manager

Mr. Funk clarified an article he saw on the internet which was not correct. He stated that Kyle Sonnenberg's employment agreement was negotiated after going through eight drafts. The agreement was signed, and his salary was set at \$140,000. Mr. Funk said although Council was not happy with the salary, they were asking Mr. Sonnenberg to take a pay cut in the range of \$6,000-\$8,000 while moving into an area where it was more expensive to live. Further, the City's consultant, Slavin Management, and former City Manager Carl Luft advised Council they would not be able to hire a City Manager for less than \$140,000. Mr. Funk thought Council did the best they could on behalf of the City's taxpayers and were very happy Mr. Sonnenberg accepted the offer extended to him.

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 BY MR. TUTTLE, SECONDED BY MR. MARKHAM: TO SET THE COMPENSATION FOR THE CITY MANAGER AT AN ANNUAL SALARY OF \$140,000.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

31. 9-A-2. RESOLUTION 08-___: ESTABLISHMENT OF A 401A PENSION PLAN

Mr. Zusag explained that the employment agreement with Mr. Sonnenberg included a provision for a 401A retirement plan. The resolution established the 401A plan to be administered by the ICMA Retirement Corporation, the City's plan administrator for over 30 years, and ratified what Council had agreed to. Mr. Zusag said from an administrative standpoint, the adoption agreement could be amended if needed and did not have to come back to Council for approval. The documents were standard forms provided by the ICMA.

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: TO ADOPT THE RESOLUTION TO ESTABLISH A 401A PENSION PLAN TO BE ADMINISTERED BY THE INTERNATIONAL CITY MANAGEMENT ASSOCIATION RETIREMENT CORPORATION FOR KYLE SONNENBERG.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

(RESOLUTION 08-W)

32. 9-A-3. DISCUSSION RE ELKTON ROAD/WEST MAIN STREET/NEW LONDON ROAD INTERSECTION

Mr. Armitage explained the University wanted Council to endorse changing Elkton Road to a two-lane road at the West Main Street/New London Road intersection due to safety concerns in the core areas of the campus. He reported there were 82 pedestrian accidents and 61 bicycle accidents in the past four years in the core area and noted there was a significant increase in traffic counts since DelDOT's study in 1997. The University hoped Council would ask DelDOT to consider this change during the Elkton Road project. Mr. Armitage said Aetna Fire Company representatives supported the idea because it allowed them an easier route to the western side of Newark. As part of the evaluation process, Mr. Armitage suggested that Council consider historic preservation issues in the area.

Mr. Funk asked if Council agreed a workshop should be scheduled with DelDOT.

Mr. Markham wanted to see recent traffic data, as the DelDOT study was 11 years old.

Mr. Athey agreed updated information was needed and felt all the options should be put back on the table for consideration. He said one option was to keep Delaware Avenue a one-way street eastbound, and change Cleveland Avenue to a one-way street westbound to try to divert traffic from the Elkton Road/Deer Park intersection.

Mr. Clifton thought one of the key issues was to take the traffic off the intersection of Delaware and South College Avenues. He was enthusiastic about moving ahead with a workshop to eliminate the safety issues but did not favor a design change that would allow speeding through the City.

Mr. Tuttle thought it would be good to reconsider the design changes at a workshop. He added that a significant amount of traffic was coming from Elkton Road through South College Avenue, turning left onto Main Street and driving through the pedestrian crossing in front of the Trabant Center which added considerable traffic to the volume on Main Street.

Mr. Pomeroy asked Mr. Armitage about the timing of DeIDOT's plans for Elkton Road. Mr. Armitage would pose that question to Ralph Reeb of DeIDOT and ask him to relay the information to Council.

The Chair opened the discussion to the public.

Theresa Mancari, 45 New London Road, a 16+ year resident of Newark, said she saw a marked decrease in the flow of truck and other commercial traffic in the last few years. The majority of increased traffic she saw on New London Road was tied to the University's Laird Campus. She noted that, according to Mr. Armitage, the University built 600 new dorms with no increase of parking spaces on Laird campus. She said if the intent was to alleviate some of the heavy traffic through this area, the University should consider restricting parking permits to students and reinstating the no car policy for freshmen. Making Elkton Road a two-way road would necessitate the addition of traffic signals on Elkton Road, Main and West Main Streets. Ms. Mancari felt the burden on the existing flow of traffic due to the railroad tracks would be even more hampered by the addition of signals. She claimed she would never be able to get off her block with the restrictions on the traffic flow with trains, the lights on New London and Hillside Roads and W. Main Street and Hillside Roads, added to the proposed Country Club Estates development. Ms. Mancari noted that the maps and the traffic studies being used by the University were out of date. She encouraged the University to take the lead in environmental responsibility by launching into the future with a green campus. She suggested parking student cars at a satellite location thereby eliminating the need for their cars in town. If safety was a concern, she stressed that the University shift its focus to educating students in the meaning of traffic signals and signs, the hazards of talking on cell phones and listening to IPODS when walking in traffic, the danger of riding bicycles and skateboards against traffic and weaving through congested areas, walking around late at night while intoxicated, following posted speed limits, and that walking along railroad tracks was inadvisable. She said the residents on New London Road felt more difficulties would result by adding more disruptions to an already dreadful traffic situation.

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

Mr. Funk said the City was interested in having a workshop to explore this item and requested Ms. Fogg to contact DeIDOT for available dates.

33. 9-B. COMMITTEES, BOARDS & COMMISSIONS

1. Resignation from Conservation Advisory Commission

MOTION BY MR. MARKHAM, SECONDED BY MR CLIFTON: THAT COUNCIL ACCEPT THE RESIGNATION OF WAYNE CASSANOVA FROM THE CONSERVATION ADVISORY COMMISSION.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

34. 9-C. OTHERS

None

35. **10. SPECIAL DEPARTMENTAL REPORTS**
A. Special Reports from Manager & Staff: None

36. **10-B. ALDERMAN'S REPORT**

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT THE ALDERMAN'S REPORT DATED OCTOBER 1, 2008 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

37. **10-C. FINANCIAL STATEMENT**

Mr. Markham noted that parking fines appeared to be down. Cpt. Potts said they experienced a shortage in manpower due to injuries and were in the process of converting the written tickets which were obsolete. Mr. Funk asked if additional manpower was needed. Cpt. Potts said he had not supervised parking for quite some time, so he was not in a position to comment.

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: TO ACCEPT THE FINANCIAL REPORT DATED AUGUST 31, 2008.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

38. **Meeting adjourned at 8:45 pm.**

Patricia M. Fogg, CMC
City Secretary

/av
Attachment