

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

June 22, 2009

Those present at 7:30 pm:

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

Absent: District 2, Jerry Clifton

Staff Members: City Manager Kyle Sonnenberg
City Secretary Patricia M. Fogg
Finance Director Dennis McFarland
Planning & Development Director Roy H. Lopata

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

2. MOTION BY MR. ATHEY, SECONDED BY MR. MARKHAM: THAT THE AGENDA BE AMENDED BY MOVING ITEM 9-C-1, LEGISLATIVE REPORT – LOBBYIST BOB MAXWELL, TO ITEM #4, AND ADDING ITEM 10-C, REQUEST FOR EXECUTIVE SESSION RE POTENTIAL LITIGATION TO THE AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

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

A. Court of Assessment Appeals of June 8, 2009

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

4. **2-B. REGULAR COUNCIL MEETING OF JUNE 8, 2009**

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

5. **9-C-1. LEGISLATIVE REPORT – LOBBYIST BOB MAXWELL**

Mr. Maxwell provided an update on recent activity in the General Assembly in relation to its impact on the City.

According to Mr. Maxwell, the State of Delaware was in the same financial condition as almost every other state and showed a loss of \$600 million in the revenue stream in a one-year period. Delaware's loss of revenue was predominantly in personal income tax, franchise tax and gross receipts. The unemployment rate approached 9%. The gambling initiative proposed by the Governor was passed and signed and projected to produce revenue of \$35 to

\$55 million. The 8% pay cut for 33,000 state employees was lowered to 2.5% as recommended by the Joint Finance Committee. Budget cuts to date were a little over \$200 million through the Joint Finance Committee process, and more cuts were planned. There were 400 vacant positions taken out of the budget. Governor Markell proposed cuts of \$330 million total, although that had not yet occurred.

Mr. Maxwell noted there were only four legislative days left in the General Assembly and said approximately 20% of the total legislation passed from January to June would pass by the end of session. The so called "sin" tax (alcohol excise tax, cigarette taxes and increases in alcohol licensing fees) was projected to pass and raise \$21 million.

On the "still to do" list, he said the personal income tax increase of 1% (from 5.95% to 6.95%) for those earning over \$60,000 had not yet been introduced. The gross receipts tax was projected to bring in \$26 million over the next few years, and the public utility tax was \$15 million. The bond bill last year was \$535 million, and Mr. Maxwell would be surprised if it approached \$300 million this year. He noted that new construction and renovation were delayed despite the stimulus package.

Mr. Maxwell reported stimulus money of about \$155 million would find its way into Delaware's general fund budget, and \$86 million of that would go towards Medicaid, the second largest budget item.

As far as Newark was concerned, Senate Bill 42 which would impact the Alderman's Court, was still on the ready list. Mr. Maxwell thought Senator DeLuca, the bill's sponsor, might try to move it in the waning hours of the session.

Senate Bill 132 provided for review of land use ordinances by the Office of State Planning prior to approval or adoption by the respective county or municipal government. This bill resulted from a political firestorm in New Castle County with workforce housing. Mr. Maxwell said an attempt would be made to convey to the sponsor that this was not the right thing to do at this time.

Mr. Maxwell was surprised by criticism of the Newark Charter change for the gross rental tax in terms of it being too broad, but he thought the differences could be ironed out. He reported that Mr. Akin was working with House attorney Michael Migliore who was drafting the bill. The City communicated to the legislators why the change was needed and the fact that five other towns had the same prerogative.

Regarding Senate Bill 42, Mr. Pomeroy said he had spoken with Senator Peterson and provided her with a fiscal note that was on the previous proposed legislation three years ago. He reported that the Chief Judge of the Court of Common Pleas had not even suggested that the bill would have a fiscal impact on his court.

Mr. Pomeroy referred to Senate Bill 132 and asked what the prospects were of municipalities being exempted from the bill. He felt a requirement for the City's planning process to go through the state not only defeated home rule but would take away the City's competitive advantage from an economic development standpoint. Mr. Maxwell agreed this would totally fly in the face of economic development and granted too much power to the Office of State Planning.

6. 3. ITEMS NOT ON PUBLISHED AGENDA

A. Public

Marion Shirkey, 1003 Lakeside Drive, Christine Manor, represented residents of 1002, 1003, 1004, 1005 Lakeside Drive and Georgian Circle. The

property owners were concerned about the annexation of 207 Mason Drive as it pertained to the subsequent connection to the water and sewer lines without proportionate participation in expenses incurred by the property owners who installed those lines. The properties at 1003, 1004 and 1005 Lakeside Drive were annexed into the City in December 2004 for the purpose of obtaining water and sewer services (1002 Lakeside Drive and Georgian Circle had already been annexed and had sewer services.) After annexation, the three Lakeside Drive residents contracted with a surveyor and an excavation contractor, and their work was completed in the summer of 2006. The total expenses, excluding personal lateral lines into the individual residences, were \$138,880 which was paid in total by the property owners. Through conversations with Mr. Simonson, the residents understood that connections to the sewer and water lines within 15 years would be reimbursed on a proportionate basis. Ms. Shirkey further explained that an agreement was to be drawn up between the City and the residents showing potential future connections and the reimbursable amounts for these connections. It was their further understanding that the City would collect the money and pay it to the original payors when a hook up occurred. She noted that there was precedence for this in the Christine Manor area.

According to Ms. Shirkey, at meetings in July and December 2008, Mr. Simonson edited the agreement to exclude reimbursement for any connection on Mason Drive. In a conversation in February 2009 Mr. Simonson re-affirmed his position. The agreement was not yet finalized or signed by the property owners, and they failed to understand the reason for excluding 207 Mason from the agreement. They believed it would be inequitable if 207 Mason was connected to the existing line without reimbursing a proportionate amount for the original hook up.

Mr. Pomeroy clarified that there was no objection to the annexation by the property owners. Ms. Shirkey reported that representatives of the property owners would be meeting with Mr. Simonson to discuss the agreement. Mr. Pomeroy anticipated feedback to Council prior to the second reading of the annexation ordinance on July 13th.

7. 3-B. UNIVERSITY

1. Administration

There were no comments forthcoming

8. 3-B-2. STUDENT BODY REPRESENTATIVE

There were no comments forthcoming.

9. 3-C. COUNCIL MEMBERS

Mr. Pomeroy thanked Mr. Maxwell for the legislative update.

10. Mr. Pomeroy commended the Newark Police Department, the neighbors and the victims who came forward regarding the indecent exposure incident, and he thanked the press for providing coverage.

11. Mr. Athey thanked the press for the publicity on the recycling program.

12. Mr. Athey thanked Mr. Funk for his efforts on the South College Avenue bridge following the graffiti vandalism.

13. Mr. Temko will attend Teach America training in Philadelphia from June 23rd through August 1st and will be available to respond to phone calls and e-mails on weekends. He will be present for Council meetings during that time.

14. Mr. Temko sent an item to the Town & Gown Chair regarding EXCO, an experimental college based within a college, where community members or

students can teach a class in a subject area that interests them. Classes would be offered to the community at no charge.

15. At the Young Elected Officials conference last weekend, Mr. Temko spoke with an individual from Summerville, Massachusetts who was instrumental in having the city require on-site plastic bag recycling at stores which met a certain size criteria. He planned to pass this on to the Conservation Advisory Commission Chair to see if it was an option for Newark.

16. Mr. Temko clarified misinformation about the Charter change and stated if passed, no new taxes would be enacted by the passage of the change. Any new taxes would be considered at a public hearing and approved by Council.

17. Mr. Markham issued a reminder about Newark's Liberty Day celebration being held on Saturday, July 4th.

18. Mr. Markham was pleased that DeIDOT agreed to uniform speed limits on Paper Mill Road.

19. Mr. Tuttle referenced newspaper articles about Dover's budget issues which he said would help provide some context for Newark's issues during the discussion of the Financial Statement.

20. **4. ITEMS NOT FINISHED AT PREVIOUS MEETING**
None

21. **4-B. FINANCIAL STATEMENT**

Mr. McFarland discussed the May Financial Report. He said the negative trends and financial results for the City continued through May, with year-to-date results of \$2 million under budget.

The electric utility remained largely on track of budgeted revenues. The water utility was about \$575,000 below budget, with about two-thirds of that attributable to changes in the rate plan for the year. Mr. McFarland said it was clear that consumer behavior was changing in response to the recession with significant consumption decreases in water. The sewer utility trailed budget by about \$860,000, about half attributable to timing differences. The other half was due to consumption changes, and he was optimistic about the shortfall improving when the new rates became effective in July.

In non-utilities, transfer tax revenues continued falling well below budgeted amounts with \$200,000 collected year to date of the \$1.8 million budgeted for the year. There was also some shortfall in permit fee revenues. Property tax revenues should be over budget for the year and other revenue streams were holding up reasonably well.

Operating expenses were under budget by about \$243,000 with the Finance, Electric and Parking Departments over budget due to annual contracts being front loaded earlier in the year. There had been some budget tightening in Water/Sewer based on contractual services although the department was close to being over budget for the year. Mr. McFarland anticipated remaining under budget on the expense side due to the current hiring freeze and wage increases being less than budgeted.

The cash position continued to trend downward and was \$12 million at the end of May, a decrease of \$1.2 million from the prior month.

For year-end projections, Mr. McFarland thought utility revenues would be back on track. With respect to operating expenses, he felt they would come in under budget for the year based on savings, primarily in wages. The big question mark was the non-utility revenues. He said transfer tax revenues could

be down as much as \$1.5 million. His best prediction was a range of \$1 to \$2 million under budget.

Mr. Athey thought a game plan should be put together to address the shortfall in the operating budget. He also suggested taking a harder look at the resident survey in regard to the provision of City services.

Mr. Sonnenberg said staff could revisit cutting City services if Council wished to do so. However, he believed the direction staff was given at the budget workshops was to look at a number of different revenue options.

Mr. Pomeroy agreed that more drastic measures needed to be taken and suggested re-evaluating all possible options.

Mr. Markham felt the ranking of services in the resident survey would provide an important feedback tool.

Mr. Tuttle felt the water revenue shortfall needed to be resolved fairly quickly.

MOTION BY MR. ATHEY, SECONDED BY MR. TUTTLE: THAT THE MAY, 2009 FINANCIAL REPORT BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

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

None

23. **6. ORDINANCES FOR SECOND READING & PUBLIC HEARING**

None

24. **7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS**

A. Request of CSS Newark, Inc. (The Claymont Steak Shop) for a Special Use Permit for the Sale of Alcoholic Beverages in a Proposed 66-Seat Restaurant in Amstel Square, Located at the Intersection of Elkton Road and Amstel Avenue, Newark, Delaware

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT THE SPECIAL USE PERMIT BE GRANTED FOR THE SALE OF ALCOHOLIC BEVERAGES IN A PROPOSED 66-SEAT RESTAURANT IN AMSTEL SQUARE.

Basil Kollias, of Cooch and Taylor represented Demi Kollias, owner of CSS Newark, Inc. The Claymont Steak Shop had been in operation since 1966, and the Newark restaurant would be its second facility in Delaware. The establishment won many awards including *Best of Delaware* and had an excellent reputation based on quality and service. The 66-seat restaurant would have a patio with additional seating for 16 and would offer dine in, take out, delivery and catering. In addition, a high-end catering company known as Demi's Flavors would operate out of the Newark kitchen.

Hours of operation were slated to be Monday-Thursday 11 a.m. to 11 p.m., Friday and Saturday, 11 a.m. to midnight and Sunday 11 to 9 p.m. Mr. Kollias said although the initial plan was to close at midnight, the 1 a.m. closing time was taken into consideration when they decided to locate in the City. Based on market conditions, they might decide to extend business hours to 1:00 a.m. and liked having that option. Mr. Lopata confirmed that the zoning on Elkton Road permitted the sale of alcohol until 1:00 a.m.

Although there would not be a bar on the premises, Mr. Kollias said they planned to apply with the ABCC for a full spirits restaurant license to serve beer and wine at both locations.

Mr. Funk stated that new restaurant liquor licenses were normally capped at midnight, and he preferred that restriction until the business became more established.

Mr. Athey also had concerns that the applicant had no experience with serving alcohol in a college town. Mr. Kollias said the restaurant would not have a bar or promote a bar scene atmosphere and would be managed by owner Demi Kollias.

Given the current economy, Mr. Temko was pleased that new businesses were still coming to Newark. He thought it would be advantageous to allow the restaurant to be open until 1 a.m. to compete equally and felt more consistency was needed overall in the alcohol policy.

Mr. Pomeroy agreed and felt imposing a midnight stipulation was an arbitrary decision of Council. He was not opposed to the business being open until 1 a.m. which was consistent with the zoning and the other businesses in the area. He said the Claymont restaurant had a loyal following, great food and a reputation as being a player in the community. He thought the City was fortunate to have the business invest in Newark, particularly in the Elkton Road area where the City was directing rehabilitation efforts.

The Chair opened the discussion to the public.

Jean White, 103 Radcliffe Drive, was disappointed the Crab Trap would not re-open at this location but was glad to see a long-time, family-owned Delaware business in its place. Mrs. White noted the *News Journal* article reported a midnight closing time and was disturbed that a 1 a.m. closing was being considered by Council.

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

If a midnight closing was agreed upon by Council, Mr. Markham noted that the applicant had the opportunity to come back to Council and revisit the hours in the future after establishing a track record.

Mr. Pomeroy was concerned that the City's inconsistency in alcohol policies was a detriment to economic development.

Mr. Athey also found the lack of consistency as troublesome.

Mr. Tuttle thought it would be confusing to businesses who wanted to locate in the City to find different restrictions from the 1 a.m. closing time permitted by zoning.

Mr. Lopata reminded Council that the revocation clause under the special use permit provided the City with more control than restricting hours of operation. He said it was important for the City to work toward more consistency in the alcohol regulations which would help the businesses and would help with enforcement.

MOTION BY MR. MARKHAM: TO RESTRICT THE CLOSING TIME AND SALE OF ALCOHOLIC BEVERAGES AT THE CLAYMONT STEAK SHOP TO MIDNIGHT.

Motion failed for lack of a second.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

25. 8. ORDINANCES FOR FIRST READING

A. Bill 09-09 – An Ordinance Amending Ch. 20, Motor Vehicles & Traffic, By Revising Schedule II, Speed Limits

Ms. Fogg read Bill 09-09 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. ATHEY: THAT THIS BE THE FIRST READING OF BILL 09-09.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

(2ND READING 7/13/09)

26. 8-B. BILL 09-20 –AN ORDINANCE ANNEXING & ZONING TO RH (SINGLE-FAMILY, DETACHED) A .86 ACRE PARCEL OF LAND LOCATED AT 207 MASON DRIVE & THE ADJOINING .25 ACRE MASON DRIVE RIGHT-OF-WAY

Ms. Fogg read Bill 09-20 by title only.

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT THIS BE THE FIRST READING OF BILL 09-20.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

(2ND READING 7/13/09)

27. 8-C. BILL 09-21 –AN ORDINANCE ANNEXING & ZONING TO MI (GENERAL INDUSTRIAL) A 20.5809 ACRE PARCEL OF LAND AT 1001 OGLETOWN ROAD & THE ADJOINING 2.151 ACRE OGLETOWN ROAD RIGHT-OF-WAY

Ms. Fogg read Bill 09-21 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. TEMKO: THAT THIS BE THE FIRST READING OF BILL 09-21.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

(2ND READING 7/13/09)

28. **9. ITEMS SUBMITTED FOR PUBLISHED AGENDA**
A. Council Members: None

29. **9-B. COMMITTEES, BOARDS & COMMISSIONS**
1. Planning Commission Minutes of May 5, 2009

MOTION BY MR. POMEROY, SECONDED BY MR. ATHEY: THAT THE PLANNING COMMISSION MINUTES OF MAY 5, 2009 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

30. **9-C. OTHERS**
1. Legislative Report – Lobbyist Bob Maxwell

(See item #4)

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

32. **10-B. ALDERMAN'S REPORT**

MOTION BY MR ATHEY, SECONDED BY MR. TEMKO: THAT THE ALDERMAN'S REPORT DATED JUNE 16, 2009 BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

33. **10-C. REQUEST FOR EXECUTIVE SESSION RE POTENTIAL LITIGATION**

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT COUNCIL ENTER INTO EXECUTIVE SESSION WITHOUT THE PRESS TO DISCUSS POTENTIAL LITIGATION.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Council entered into Executive Session at 9:05 p.m. and returned to the table at 9:38 p.m. Mr. Funk said no further action was required.

34. **Meeting adjourned at 9:39 p.m.**

Patricia M. Fogg, CMC
City Secretary

/av
Attachment