

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**August 10, 2009**

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: City Manager Kyle Sonnenberg  
City Secretary Patricia M. Fogg  
City Solicitor Roger Akin  
Assistant to the City Manager Charles Zusag  
Community Affairs Officer Dana Johnston  
Finance Director Dennis McFarland  
Planning & Development Director Roy H. Lopata

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

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

A. Regular Council Meeting of July 27, 2009

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

3. **3. ITEMS NOT ON PUBLISHED AGENDA**

A. Public

Chris Mitchell, 2903 Ogletown Road, Newark, criticized the towing practices at the Newark Shopping Center. He felt a two hour rather than one hour time period would be more reasonable before cars were towed. Mr. Funk said all the notification signs were replaced and appeared to be more visible.

4. **3-B. UNIVERSITY**

1. Administration

There were no comments forthcoming.

5. **3-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

6. **3-C. COUNCIL MEMBERS**

Mr. Tuttle acknowledged the hard work of staff following a recent violent storm which caused considerable damage in the third district. He received positive feedback from constituents about response times by the City.

7. Mr. Markham asked for confirmation of the date for Council's September workshop which was scheduled for Thursday, September 24<sup>th</sup>.

- 8.** Mr. Markham noticed in the 7/14/09 Conservation Advisory Commission minutes that the Commission will propose to Council call-in or on-line entry of meter readings, and he supported their efforts.
- 9.** Mr. Markham appreciated Ms. Houck's work in obtaining reimbursement funds from the asbestos abatement at Curtis Paper Mill.
- 10.** Mr. Markham believed the Newark Post Office was no longer on the list for closure. Mr. Sonnenberg received confirmation from the offices of Congressman Castle and Senator Carper that Newark was not on the list. Mr. Pomeroy said there were nine locations in New Castle County on the original closure list, including both Newark locations. However, the list was pared down, and there were no New Castle County locations scheduled for closure at this time. Mr. Funk reported a committee would meet this week to review the list of Post Offices proposed for closure. Mr. Pomeroy thought this chapter would be closed by the end of the fiscal year in September but added it was important for those who were interested in the issue to communicate their feelings to local legislators.
- 11.** Mr. Markham discussed the arrangement to allow Main Street Post Office customers to park in the Municipal Lot. Mr. Funk said two spaces would be set aside in the lot behind Happy Harry's, and fifteen minutes of free parking would be allocated. Council agreed this seemed like a reasonable approach.
- 12.** Mr. Funk commented about lights being left on in the Municipal Building on weekends when he stopped in the building. Mr. Sonnenberg will have this issue discussed with the janitorial service.
- 13.** Mr. Athey appreciated the efforts of staff in compiling the packet for the 8/18/09 budget workshop.
- 14.** Mr. Clifton recognized the passing of Elizabeth Loftus who was a hard working volunteer at the City's Thanksgiving breakfasts at the George Wilson Center.
- 15.** Mr. Pomeroy was contacted by a number of constituents about a development plan for a significant commercial/retail office park complex at the corner of Barksdale and Valley Roads on the Maryland side immediately adjacent to Newark. In Maryland's Comp Plan this was a growth zone largely for residential, and the proposed plan requested a significant rezoning of the property. Mr. Pomeroy hoped to get more information to determine the impact on Newark. The public hearing was scheduled for 8/17/09 in Cecil County. Mr. Athey asked if there was any type of cooperative arrangement across the state line. Mr. Lopata said the City's experience in these matters was that resident input was much more effective than official dialog. He suggested that Mr. Pomeroy's constituents contact the Cecil County Commissioners to voice their concerns. Mr. Lopata said this was a very rural area, and he was quite surprised to hear about the plan.
- 16.** In regard to the Purchased Power Cost Adjustment, Mr. Pomeroy felt the present system for adjusting the PPCA did not provide for public discussion of changes to the PPCA. He believed that issues related to dollars and cents in individual households warranted as much transparency and discussion as possible and that Council should claim more responsibility for making increases or decreases. However, he did not want to create a situation which would slow the implementation process of the PPCA. To accomplish this, his suggestion was to put the proposed change on Council's agenda in resolution form which would be publicly advertised, discussed and voted on.

Mr. Funk asked how Delmarva Power adjusted rates, and Mr. Clifton said they were just added to customer bills on a monthly basis.

Mr. McFarland explained that all utilities had an automatic rate adjustment to track the cost of their supply. If natural gas costs or wholesale power prices increased, there was a mechanism where companies could unilaterally change their rates and track their costs. They were subject to Public Service Commission review. The City used the PPCA in that manner as well but also used it to insure recovery of its budgeted operating margin which was considered to be an expense just as wholesale power costs were.

Mr. Clifton did not object to the PPCA being an agenda item based on the public ownership of the City's electric utility but stressed the importance of receiving immediate remuneration for real costs incurred. He cited Hurricane Katrina where oil wells were damaged and the price at the gas pumps increased the next day. He thought the City's administrative process was spelled out very clearly and customers were duly noticed of adjustments on their prior month's bill.

Mr. Athey thought this got into a broader subject of establishing guidelines for what should come before Council vs. what issues should remain staff decisions.

Mr. Markham said the PPCA had been an evolving process – Council used to approve every electric rate and was slow in doing that which cost the City millions. His recollection was that the purpose of the PPCA was to move quickly when markets changed. He did not have any issues with that. However, he felt it had been taken a step further now saying the City had to make sure to get its margins. While he found that acceptable, he felt Council should discuss budgetary revenue issues at the table.

While Mr. Temko thought the framework of what should be discussed by Council was important, he felt the PPCA issue was slightly separate because Council approved and set up this mechanism. This was established after the UD rate increase was higher than the contract permitted. He believed it was also designed to track projected revenues that needed to be met. He added that one of the reasons for the system was to put the public utility out of the business of trying to have increased demand and supply in order to increase their revenue. He thought it was appropriate for the Finance Department to handle the PPCA.

Mr. Tuttle thought this was a classic example of the policy role of Council and that the policy was established to achieve a "mark up" to recover a certain amount of overhead. It provided prior notice which he felt was positive. While the policy decision could be revisited, he said the procedure took Council out of being involved every time there was a change, and he felt it was a good system.

Mr. Pomeroy disagreed in general but was willing to accept there was not an overwhelming consensus on it.

Mr. Athey said anytime there was a service reduction or a cost or a fee increase, he relied on Mr. Sonnenberg to keep Council informed via the weekly report. He thought there should be some visibility over the issue but did not want to hamper efforts.

**17. 4-A. ITEMS NOT FINISHED AT PREVIOUS MEETING**

None

**18. 4-B. FINANCIAL STATEMENT**

None

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

None

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

- A. Bill 09-23 – An Ordinance Amending Ch. 22, Police Offenses, By Increasing the Monetary Threshold for Property Crime Misdemeanors to Conform to State Code

Ms. Fogg read Bill 09-23 by title only.

MOTION BY MR. CLIFTON SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 09-23.

Mr. Funk explained the ordinance was for housekeeping purposes to bring the City in line with state code.

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: 7 to 0.

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

**(ORDINANCE NO. 09-25)**

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

- A. Request of John and Elizabeth Mayer for a Minor Subdivision of a 1.76 Acre Property Located at the Northwest Corner of the Intersection of Woodlawn and Elm Avenues in Order to Develop Five Single-Family Parcels **(Resolution and Agreement Presented)**

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT THE RESOLUTION AND AGREEMENT BE ACCEPTED AS PRESENTED.

Mike Paraskewich of The PELSA Company was the project consultant for the five lot minor subdivision at the intersection of Elm and Woodlawn Avenues approved in April by the Planning Commission. The project was approved with conditions that were already met. The most significant were the revision of the stormwater management area (which was reduced in size) and an additional easement to allow guaranteed access to areas required for stormwater management.

Mr. Temko asked Mr. Paraskewich to comment on the developer's commitment to implement effective tree preservation measures. Mr. Paraskewich noted the site was wooded, and most of the trees had to come down. However, the landscape plan would add trees along the street and would preserve trees wherever possible.

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: 7 to 0.

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

**(RESOLUTION NO. 09-O)**

**22. 8. ORDINANCES FOR FIRST READING**

- A. Bill 09-24 – An Ordinance Amending Ch. 2, Administration, and Ch. 20, Motor Vehicles & Traffic, By Increasing Court Costs Payable By Defendants Who Elect to Enter the First Offender DUI Program and By Increasing the Fine for First and Second Offense DUI Convictions to Conform to State Code

Ms. Fogg read Bill 09-24 by title only.

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THIS BE THE FIRST READING OF BILL 09-24.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(2<sup>ND</sup> READING 8/24/09)**

**23. 8-B. BILL 09-25 AN ORDINANCE AMENDING CH. 30, WATER, BY ESTABLISHING A WATER RATE SCHEDULE EFFECTIVE OCTOBER 1, 2009**

Ms. Fogg read Bill 09-24 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THIS BE THE FIRST READING OF BILL 09-25.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(2<sup>ND</sup> READING 8/24/09)**

**24. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA**

- A. Council Members  
1. Discussion re Domestic Partners

Mr. Temko said in regard to the broader discussion about domestic partner benefits, there was the potential that Blue Cross/Blue Shield was willing to add domestic partner benefits at no cost to the City. Mr. Zusag confirmed they had agreed to provide benefits at no increase in premium. He noted the only opposition from employee groups was the cost increase. The Labor Management Committee would meet on September 1 when Blue Cross/Blue Shield renewal numbers for 2010 would be available. At that time, he assumed the Committee would consider adding the domestic partner benefit as well as other design changes needed to lessen the impact of any premium increase. Plan changes would be effective on January 1.

Mr. Athey asked how the City could insure there was no hidden cost increase in the premium. Mr. Zusag said it was the consultant's job to make sure that did not happen, and the consultant already provided a forecast in June on the City's expected premium increase based on the claims data at that time. Mr. Zusag explained the consultant knew the underwriting process and the formula

used, so if the numbers did not make sense, it would be apparent. Further, whenever there was a premium increase, he examined it line by line for any discrepancies.

Mr. Zusag detailed the City's funeral and emergency leave and who was currently covered. For funeral leave, Mr. Zusag said each of the employee groups defined immediately family and the paid time off depending on the relationship of the family member. Emergency leave was similar, and if a member of an employee's immediate family suffered serious or catastrophic illness or hospitalization, they were entitled to paid time off to attend to that emergency. Mr. Zusag said if Council directed the City Manager to broadly interpret husband/wife/spouse to include domestic partner, he did not think the unions would object to it. None had expressed objection to these two leaves. Mr. Temko added that the state provided this leave for their employees. Mr. Tuttle reported the University had domestic partner benefits but had not updated the language in their policy.

MOTION BY MR. TEMKO, SECONDED BY MR. ATHEY: TO EXTEND EMERGENCY AND FUNERAL LEAVE TO INCLUDE DOMESTIC PARTNERS.

The Chair opened the discussion to the public.

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

Mr. Markham was not clear about the definition of domestic partner and felt there should be a solid definition. Mr. Akin said the definition was provided to Council several months ago at their request and suggested a friendly amendment if Council was inclined to adopt the resolution. He said to make it clear what was being decided, he suggested Council adopt the definition that started at the bottom of page 3 of Mr. Zusag's March 4<sup>th</sup> memo as the controlling criteria for a domestic partner.

Mr. Temko thought this was something the City Manager's office could handle. Mr. Zusag added it was up to Council if they wanted to authorize the City Manager to determine domestic partnership. Mr. Akin agreed in that case, there was no need for an amendment.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**25. 9-B-2. RESOLUTION NO. 09- : RETIREMENT OF "ROB" BERNDT**

Ms. Fogg read the resolution in its entirety. Council unanimously endorsed the resolution recognizing the retirement of Rob Berndt after 42 years of service to the citizens of Newark.

**(RESOLUTION NO. 09-P)**

**26. 9-B. COMMITTEES, BOARDS & COMMISSIONS**

1. Planning Commission Minutes of July 7, 2009

MOTION BY MR. ATHEY, SECONDED BY MR. MARKHAM: THAT THE PLANNING COMMISSION MINUTES OF JULY 7, 2009, BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

**27. 9-C. OTHERS**

None

**28. 10. SPECIAL DEPARTMENTAL REPORTS**

A. Special Reports from Manager & Staff:

1. Real Estate Tax Assessment Actual Annual Billing Roll  
Annual Billings for the Period of July 1, 2009 – June 30, 2010

MOTION BY MR. MARKHAM, SECONDED BY MR. POMEROY: THAT  
THE REAL ESTATE TAX ASSESSMENT ACTUAL ANNUAL BILLING  
ROLL ANNUAL BILLINGS FOR THE PERIOD OF JULY 1, 2009 – JUNE  
30, 2010 BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

**29. 10-A-2. SETTING DATE FOR PUBLIC HEARING OF THE 2010-2014  
CAPITAL IMPROVEMENT PROGRAM (AUGUST 24, 2009)**

MOTION BY MR. POMEROY, SECONDED BY MR. ATHEY: SETTING  
AUGUST 24, 2009 AS THE DATE FOR THE PUBLIC HEARING OF THE  
2010-2014 CAPITAL IMPROVEMENT PROGRAM.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

**30. 10-B. ALDERMAN'S REPORT**

MOTION BY MR ATHEY, SECONDED BY MR. CLIFTON: THAT THE  
ALDERMAN'S REPORT DATED AUGUST 3, 2009 BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

**31. Meeting adjourned at 8:16 pm.**

Patricia M. Fogg, CMC  
City Secretary

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