

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**August 24, 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 Fogg  
City Solicitor Roger Akin  
Asst. to the City Manager Charles Zusag  
(arrived 8:20 pm)  
Community Affairs Officer Dana Johnston  
Electric Director Rick Vitelli  
Finance Director Dennis McFarland  
Parks & Recreation Director Charlie Emerson  
Planning & Development Director Roy Lopata  
Public Works Director Rich Lapointe  
Water & Wastewater Director Roy Simonson

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1. The meeting began with a moment of silent meditation and pledge to the flag.
  2. **1-B. PUBLIC HEARING FOR 2010-2014 CAPITAL IMPROVEMENT PROGRAM**
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MOTION BY MR. ATHEY, SECONDED BY MR. TUTTLE: THAT THE 2010-2014 CAPITAL IMPROVEMENT PROGRAM BE APPROVED AS PRESENTED AND INCLUDE THE TWO PROGRAM ADDITIONS LISTED BELOW.

The 2010-2014 Capital Improvement Program was presented and reviewed by Messrs. Sonnenberg and McFarland. The program consisted of the following expenditures:

Electric Fund	\$ 4,531,000
Water Fund	\$ 5,573,200
Sewer Fund	\$ 2,155,000
Public Works (General) Fund	\$14,195,600
Public Works (Maint.) Fund	\$ 98,000
Police Dept.	\$ 1,141,500
Parks & Recreation Dept.	\$ 2,991,700
Parking Fund	\$ 912,980
Other Departments	\$ 441,800
TOTAL	\$32,040,780

There was a budget revision which included the following two additions to the program:

1. Electric System Study and Upgrade (E1007)
2. Elkton Road Water Main Replacement (W1003)

Council members asked for clarification and discussed the following items in the Capital Improvement Program: Utility revenues, possible purchase of the Chrysler electric substation, Public Works expenditures, Community Development Block Grant funding, bond issues, municipal street aid and community transportation funds, energy efficiency upgrade to the Municipal Building, Parking Garage study and gymnasium addition to the George Wilson Center.

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.

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

A. Regular Council Meeting of August 10, 2009

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

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

A. Public

Frank Tolomeo, Newark resident, recommended investigating Smart Grid technology for future changes to the electric utility which he said was heavily subsidized by the federal government.

5. **3-B. UNIVERSITY**

1. Administration

Rick Armitage reported the University of Delaware move-in would begin 8/29.

6. **3-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

7. **3-C. COUNCIL MEMBERS**

**Mr. Tuttle** – attended a volunteer recognition celebration at the Newark Senior Center and noted it was their fifth year as the only accredited center in the state; expressed appreciation of completion of the bridge work and re-opening of the entire length of the Hall Trail.

8. **Mr. Temko** – discussed the feasibility of a cell phone ban in the City. Council members will consider City of Wilmington legislation to determine whether to pursue this at the 9/14 meeting. Mr. Clifton suggested strengthening the fine for inattentive driving rather than singling out cell phones.

9. **Messrs. Markham and Athey** – thanked staff for their efforts on the 8/18 budget workshop.

10. **Mr. Athey** – recognized Ms. Johnston for a great job on the newsletter; referenced a News Journal article regarding Mr. Temko's involvement in the Teach for America program; and discussed Ms. Fogg's memo of 8/10 regarding cost cutting proposals in the City Secretary's office. Changes in meeting schedules, the format of minutes, City Code distribution and the employee holiday luncheon were considered.

11. **Mr. Clifton** – asked Newark resident Frank Tolomeo to report on a generator problem in his neighborhood. The generator was left running constantly for five to six days at the 257 E. Main Street construction site, and Mr. Sonnenberg was asked to explore whether this involved any Code noise violations.

12. **Mr. Pomeroy** – thanked staff for efforts on the transfer of the Abbotsford stormwater pond to the City; and reported the proposed development at the Barksdale/Valley Road area was voted down by the Cecil County Planning Commission. The project will be heard at a rezoning hearing on 9/1 at 2:00 pm.

13. **4-A. ITEMS NOT FINISHED AT PREVIOUS MEETING**

1. Request of Chris Cochran and Lisa Bartolozzi, Principals in 162 S. Chapel Street, LLC. for a Revision to the Approved Subdivision Agreement for the Development Known as Holly Woods, Located at 162 S. Chapel Street, In Order to Modify the Deed Restrictions to Permit Five Unrelated Tenants (Currently Restricted to No More than Four Unrelated Tenants) (Tabled 7/27/09)

MOTION BY MR. CLIFTON, SECONDED BY MR. TEMKO: TO LIFT ITEM 4-A-1 FROM THE TABLE.

Mr. Sisk explained that following Council's previous discussion of this request, the applicant had secured additional tenant parking through the University of Delaware and from other area landlords.

Council members did not believe there was any guarantee the parking would continue to be available on a long-term basis and were concerned about setting a precedent if the request was granted.

Mr. Akin was concerned about the enforcement involvement that would be required by City staff if this was granted.

The Chair opened the discussion to the public.

Jean White, Newark resident opposed the request based on the parking situation and the fact that it would set a precedent in the City.

Priscilla Onizuk, 104 Tyre Avenue reported on methods she observed by University students at rental properties to get around parking restrictions.

Question on the Motion was called. **(Secretary's Note: This was the Motion tabled at the 7/27/09 meeting.)**

MOTION BY MR. CLIFTON SECONDED BY MR. FUNK: THAT THE REQUEST TO MODIFY THE DEED RESTRICTIONS TO PERMIT FIVE UNRELATED TENANTS BE APPROVED.

MOTION FAILED: 0-7

Aye – 0.

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

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

Mr. McFarland presented the July 2009 Financial Report which showed results for the seven months at \$2.7 million below budget primarily due to weakness in the utility revenues and transfer tax revenues.

MOTION BY MR. TEMKO, SECONDED BY MR. TUTTLE: THAT THE JULY 2009 FINANCIAL REPORT BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

None

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

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. TEMKO, SECONDED BY MR. POMEROY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 09-24.

Mr. Funk explained the ordinance would 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. 09-26)**

**21. 6-B. BILL 09-25 AN ORDINANCE AMENDING CH. 30, WATER, BY ESTABLISHING A WATER RATE SCHEDULE EFFECTIVE OCTOBER 1, 2009**

Ms. Fogg read Bill 09-25 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 09-25.

Mr. McFarland presented the adjustment to water rates for City residents and non-City customers. This was an across-the-board increase of 35% effective October 1, 2009.

The Chair opened the discussion to the public.

Amy Roe, Newark resident, raised several questions including a rate study, earmarking funds for water quality enhancement, watershed protection and water distribution infrastructure, resident subsidy of out-of-City customers, overhead vs. acceptable operating margin and paying for overhead and operating margins as part of property taxes for income tax deduction.

Frank Tolomeo, Newark resident, suggested looking at purchasing water from United and recommended calibration of industrial meters.

Jean White, Newark resident, felt the City should budget for cool years and for less usage and was confused by the difference between overhead and operating budget.

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

Mr. Simonson reported there was a meter testing program and the City was working on replacing the large meters.

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. 09-27)**

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

- A. Request of Michele Richmond of Creative Beginnings Learning Center for a Special Use Permit to Operate a Day Care Facility For No More than 22 Children in an Existing Building Located Immediately to the Rear of the St. Thomas Episcopal Church, Located at 276 S. College Avenue

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

Ms. Richmond presented her request to re-open the day care facility.

The Chair opened the discussion to the public.

Susan Hechter, Newark resident, expressed concern that ingress and egress to the facility be restricted to South College Avenue.

Frank Tolomeo, Newark resident, raised the issue of inspection for fire safety which Ms. Richmond confirmed had been completed.

Wayne Griffiths, Newark resident, endorsed the applicant's request.

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

AMENDMENT BY MR. ATHEY, SECONDED BY TUTTLE: AS LONG AS THIS FACILITY EXISTS, THERE WILL BE NO INGRESS OR EGRESS THROUGH INDIAN ROAD.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Question on the Motion as Amended was called.

MOTION AS AMENDED PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

23. **8. ORDINANCES FOR FIRST READING**

None

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

A. Council Members: None

25. **9-B. COMMITTEES, BOARDS & COMMISSIONS**

None

26. **9-C. OTHERS**

None

27. **10. SPECIAL DEPARTMENTAL REPORTS**

A. Special Reports from Manager & Staff:

1. Proposed Updated Newark Transportation Plan

Mr. Lopata presented the draft Request for Proposal Scope of Work for the proposed updated Newark Transportation Plan.

MOTION BY MR. POMEROY, SECONDED BY MR. ATHEY: THAT THE DRAFT REQUEST FOR PROPOSAL FOR THE CITY OF NEWARK TRANSPORTATION PLAN BE APPROVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

Nay – 0.

28. **10-A-2. RESOLUTION 09-\_\_: ADOPTION OF THE VANTAGECARE RETIREMENT HEALTH SAVINGS (RHS) PLAN**

Mr. Zusag provided details of the proposal to establish a retirement health insurance savings plan for management employees. This plan was offered to employees at no cost to the City. Under IRS regulations, participation by 100% of the designated employee groups was mandatory to take advantage of the benefit. Although the three unions were approached about participation, they did not show interest based on the 100% participation requirement. However, this option would be available to them in the future.

MOTION BY MR. ATHEY, SECONDED BY MR. POMEROY: THAT RESOLUTION NO. 09-\_\_, ADOPTION OF THE VANTAGECARE RETIREMENT HEALTH SAVINGS (RHS) PLAN, THE ADOPTION AGREEMENT AND THE DECLARATION OF TRUST BE APPROVED AS PRESENTED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

Nay – 0.

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

29. **10-A-3. RECOMMENDATION FOR EMPLOYEE BENEFITS CONSULTING SERVICES**

Mr. Zusag explained the recommendation would extend the agreement with Mercer Health and Benefits for an additional three years to provide consulting services for health, dental, life and long-term disability.

MOTION BY MR. POMEROY, SECONDED BY MR. TEMKO: THAT THE CITY EXTEND THE CONSULTING AGREEMENT WITH MERCER HEALTH AND BENEFITS FOR THREE YEARS AT A FEE OF \$58,000 IN 2010, \$59,160 IN 2011 AND \$60,340 IN 2012.

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. TUTTLE, SECONDED BY MR. CLIFTON: THAT THE ALDERMAN'S REPORT DATED AUGUST 17, 2009 BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

**31. Meeting adjourned at 9:58 pm.**

Patricia M. Fogg, CMC  
City Secretary

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