

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

October 12, 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
Assistant to the City Manager Carol Houck
Finance Director Dennis McFarland
Planning & Development Director Roy Lopata

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

2. MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT ITEM 8-A BE REMOVED FROM THE AGENDA. **0:45**

Mr. Clifton asked why the item was removed from the agenda. Mr. Zusag explained the FOP requested a postponement of any action until their legal representative had time to review the language.

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**
2:00 A. Regular Council Meeting of September 28, 2009

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

4. **3. ITEMS NOT ON PUBLISHED AGENDA**
2:29 A. Public

Jean White, Newark resident, felt a \$50 fine for Jaywalking violations was exorbitant and thought \$25 was sufficient.

5. **3-B. UNIVERSITY**
1. Administration

There were no comments forthcoming.

6. 3-B-2. STUDENT BODY REPRESENTATIVE

There were no comments forthcoming.

7. 3-C. COUNCIL MEMBERS

4:51

Mr. Markham – reported that the town of Elsmere banned texting while driving and was another city trying to encourage road safety; noted final approval was given on the stimulus money for energy savings in the Municipal Building, and Ms. Houck reported no funding had been received; noticed on FIOS that New Castle was broadcasting on Channel 29 and questioned the possibility of sharing expenses – Ms. Houck reported this was included in the City’s contract with Verizon and Comcast.

8. Mr. Temko – issued a reminder of the West Newark Civic League meeting on 10/21 at 7:00pm, Fall Community Clean-Up on 11/14, discussion of a Life Partner Registry at the 10/26 Council meeting and a potential plan regarding a Citizen’s Academy.

9. Mr. Pomeroy – referenced an e-mail from a constituent regarding tree removal on private property which he will discuss with Council after talking with the resident; asked how the issue of parking waivers was left following a previous Council discussion – Mr. Lopata reported the Planning Commission would consider fee increases at their November meeting. Mr. Pomeroy said after that meeting, Council could determine if they wanted to pursue a more in-depth discussion of parking waivers.

10. Mr. Tuttle – acknowledged the participation of Charlie Emerson and Mike Fortner in a statewide forum exploring healthy communities and how a community’s design can contribute to its health by making it possible for people to be more active; requested Ms. Fogg to explore the possibility of phasing in a consent agenda for Council meetings where non-controversial items would be voted on in one motion at the beginning of the meeting.

11. Mr. Athey – reported that the City of New Castle sought to enact a tree ordinance and experienced difficult opposition. In conjunction with a discussion of a tree ordinance, Mr. Athey said Council might also want to consider a solar access ordinance.

12. 4-A. ITEMS NOT FINISHED AT PREVIOUS MEETING

None

13. 4-B. FINANCIAL STATEMENT

19:00

Mr. McFarland presented the August 2009 Financial Report which showed results at \$3.4 million below budget for the first eight months. Utility revenues were down over \$3 million across the board, attributable to the weather and recessionary effects. Electric consumption was 2.1% below budget, and water consumption was 8.1% below budget. Sewer volumes trailed the budget by 12.5% due to the loss of the Chrysler site. Further, there has been a significant increase in the toxicity of the sewage flow in the last few quarters, increasing County charges dramatically.

Non-utility revenues trailed the budget by almost \$1 million, attributable to lower transfer tax revenues. The only positive on the revenue side was property tax revenues which were over budget by about \$321,000 and were expected to approach \$450,000 by year end.

Operating expenses were \$704,000 under budget primarily due to lower personnel costs. Water and sewer expenditures were slightly ahead of budget due to unforeseen repairs.

The cash balance at month end was \$10.5 million, down slightly from the prior month. The City has begun receiving the annual property tax revenues, and the cash balance was anticipated to increase by year end.

Mr. McFarland said August changed the outlook by a negative \$600,000, and the previously forecasted shortfall of \$2 to \$2.4 million for the year was now estimated to be between \$2.6 and \$3 million.

Mr. Funk asked what September numbers were like, and Mr. McFarland said although they were not yet finalized, utility consumption would be down due to cooler than normal temperatures.

Mr. Markham noted contractual services seemed to be the only expenses running over budget. Mr. McFarland explained this was based on the timing of contractual payments and unforeseen repairs in water & sewer.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE FINANCIAL REPORT DATED AUGUST 31, 2009 BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

14. 5. RECOMMENDATIONS ON CONTRACTS & BIDS

24:50 A. Contract 09-04, Purchase of Utility Poles

Ms. Houck summarized her memo of 9/28/09 wherein it was recommended to award Contract 09-04 to Brown Wood Preserving Company at a total cost of \$47,380. Funding was available from the Electric Fund and would be reimbursed in association with the Elkton Road Reconstruction Project. Mr. Pomeroy asked if it was standard practice for the City to purchase the poles and be reimbursed later. Ms. Houck said this was standard procedure for state projects.

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT CONTRACT NO. 09-04 FOR THE PURCHASE OF UTILITY POLES BE AWARDED TO BROWN WOOD PRESERVING COMPANY AT A TOTAL COST OF \$47,380.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

15. 5-B. CONTRACT 09-05, PURCHASE OF DISTRIBUTION HARDWARE AND STREETLIGHT FIXTURES

Ms. Houck summarized her memo of 9/30/09 which provided unit pricing for electrical distribution hardware and streetlight fixtures in association with the Elkton Road project. The purchases were reimbursable by the state. Funds were available from the Electric Fund, and it was recommended that the contract be awarded to seven companies as outlined in the recommendation at a total of \$99,450.53.

Mr. Markham asked if the experimental inductive and LED street lighting would be incorporated into this purchase. Ms. Houck said the experiments were ongoing and related to the Pomeroy Trail and therefore were not incorporated in the contract.

MOTION BY MR. POMEROY, SECONDED BY MR. ATHEY: THAT CONTRACT NO. 09-05 FOR THE PURCHASE OF DISTRIBUTION HARDWARE AND STREETLIGHT FIXTURES BE AWARDED AS DETAILED IN MS. HOUCK'S MEMO DATED 9/30/09 IN THE TOTAL AMOUNT OF \$99,450.53.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

16. 5-C. CONTRACT 09-07, FURNISHING LABOR AND EQUIPMENT FOR LINE CONSTRUCTION

Ms. Houck summarized her memo of 9/30/09 wherein it was recommended to award contract 09-07 for estimated manpower and equipment pricing for the Elkton Road Reconstruction Project to C. W. Wright Construction for the total estimated cost of \$436,673.60. Reimbursement will be on a monthly basis by the state once the project begins, and funds were available from the Electric Fund.

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT CONTRACT NO. 09-07 FURNISHING LABOR AND EQUIPMENT FOR LINE CONSTRUCTION BE AWARDED TO C.W. WRIGHT CONSTRUCTION FOR A TOTAL ESTIMATED COST OF \$436,673.60.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

17. 5-D. REQUEST FOR PROPOSAL 09-03, DESIGN BUILD SERVICES FOR THE SILVERBROOK PUMP STATION

Ms. Houck summarized her memo of 10/1/09 wherein it was recommended to hire a design build team to address the replacement of two sewage pumps and their controls and modify the dry well piping at the Silverbrook Pumping Station. Funds were available from the Sewer Fund Project, and Johnston Construction Company with Keystone Engineering was recommended based on the "best and final" proposals of the top four ranked firms at a total cost of \$178,890.

Mr. Athey noted the company was neither the most qualified nor were they the least expensive. Ms. Houck explained the process and said the City was on solid legal footing for awarding the contract to the firm.

MOTION BY MR. ATHEY, SECONDED BY MR. POMEROY: THAT THE CITY ENTER INTO AN AGREEMENT WITH THE DESIGN BUILD TEAM OF JOHNSTON CONSTRUCTION AND KEYSTONE ENGINEERING FOR THE SILVERBROOK PUMP STATION PROJECT IN ACCORDANCE WITH RFP NO. 09-03 AT A TOTAL COST OF \$178,890.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

18. 5-E. RECOMMENDATION ON REQUEST FOR PROPOSAL (RFP) NO. 09-01 MASTER PLAN FOR CURTIS MILL SITE AND OLD PAPER MILL ROAD PARK

Ms. Houck summarized her memo of 10/2/09 wherein it was recommended to enter into an agreement with Pennoni Associates for engineering services in association with the master plan for the Curtis Mill and Old Paper Mill Road park sites. The project was deferred in August due to reduced revenues. Funds were available from the 2009 Capital Program, and grant funding was applied for to assist with the cost. Ms. Houck believed the City wanted to move forward with the master planning of the site and maintain the momentum with the Brownfield program.

Mr. Temko asked about the necessity for temporary measures to beautify the site if the City did not proceed with the plan. Ms. Houck said the cost for the temporary measures was \$100,000-\$200,000 and without knowing what the master plan was, that cost might be wasted. Mr. Temko asked if the project was delayed a year whether the reimbursement funding would still be available. Ms. Houck said the Brownfield funding could be accessed as long as the fund did not run out but noted there was a lot of competition for the funding.

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: TO AWARD RFP NO. 09-01, MASTER PLAN FOR CURTIS MILL SITE AND OLD PAPER MILL ROAD PARK, TO PENNONI ASSOCIATES AT THE TOTAL AMOUNT OF \$39,432.

Mr. Temko thought this was a worthwhile project but did not feel the City should proceed in view of the hold placed by Council on the City's homebuyer assistance programs which he believed were urgently needed in the community.

Mr. Markham said staff had taken a deliberative approach in working with the state to determine the best way to proceed, and he took that as encouragement to keep moving forward.

Question on the Motion was called.

MOTION PASSED: VOTE: 5 to 1.

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

Nay – Temko.

Abstain – Athey.

19. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING

40:45 A. Bill 09-27 - An Ordinance Amending Ch. 2, Administration, Article IX, Personnel Rules, By Amending Management Employee Health and Dental Insurance Regarding Employee Contribution for Dependent Coverage, Effective January 1, 2010

Ms. Fogg read Bill 09-27 by title only.

MOTION BY MR. TEMKO, SECONDED BY MR. POMEROY: THAT THIS BE THE SECOND READING OF BILL 09-30.

Mr. Clifton confirmed with Mr. Zusag that the amendment brought management's contribution rate in line with the FOP contract. Mr. Zusag said the FOP's contribution for dependent coverage will increase from 12.5% to 15% on January 1.

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 09-28)

20. **7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS**
None

21. **8. ORDINANCES FOR FIRST READING**
None

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

23. **9-B. COMMITTEES, BOARDS & COMMISSIONS**
42:21 1. Planning Commission Minutes September 1, 2009

MOTION BY MR. POMEROY, SECONDED BY MR. ATHEY: THAT THE PLANNING COMMISSION MINUTES OF SEPTEMBER 1, 2009 BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

24. **9-B-2. RESIGNATION FROM PLANNING COMMISSION (DISTRICT 1)**
42:36

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT THE RESIGNATION OF ROB OSBORNE BE ACCEPTED FROM THE PLANNING COMMISSION.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

25. **9-C. OTHERS**
None

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

27. **10-B. ALDERMAN'S REPORT**
43:26

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT THE ALDERMAN'S REPORT DATED SEPTEMBER 30, 2009 BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

28. 10-C. REQUEST FOR EXECUTIVE SESSION RE PERSONNEL

43:36

MOTION BY MR. POMEROY, SECONDED BY MR. ATHEY: THAT COUNCIL ENTER INTO EXECUTIVE SESSION WITHOUT THE PRESS TO DISCUSS PERSONNEL.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

Nay – 0.

Council entered into Executive Session at 8:20 p.m. and returned to the table at 8:31 p.m. Mr. Funk reported that no further action was required.

29. Meeting adjourned at 8:32 p.m.

Patricia M. Fogg, CMC
City Secretary