

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

December 14, 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 Charles Zusag
Finance Director Dennis McFarland
Planning & Development Director Roy Lopata
Public Works Director Rich Lapointe
Water & Wastewater Director Roy Simonson

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

1. MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT ITEM 8-A-1, RESOLUTION 09-: AMENDING THE NEWARK CITY CHARTER, BEING CHAPTER 152 OF VOLUME 48, LAWS OF DELAWARE, BY PROVIDING THE CITY OF NEWARK WITH THE LAWFUL AUTHORITY TO ADOPT AN ORDINANCE OR ORDINANCES IMPOSING A TAX UPON THE GROSS RENTAL RECEIPTS EARNED WITH RESPECT TO RESIDENTIAL DWELLING UNITS, SUCH TAX NOT TO EXCEED THREE PERCENT PER ANNUM OF SUCH GROSS RENTAL RECEIPTS BE REMOVED FROM THE AGENDA.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

2. 1. ITEMS NOT ON PUBLISHED AGENDA

00:53 A. Public

Amy Roe, Newark resident, asked whether the water rate study would be included in the 2010 budget. Mr. Sonnenberg confirmed that it was included in the budget.

3. 3-B. UNIVERSITY

01:39 1. Administration

Mr. Armitage extended best wishes for a happy holiday season and said he would present a briefing of the University's future building plans at an upcoming Council meeting.

4. 3-B-2. STUDENT BODY REPRESENTATIVE

There were no comments forthcoming.

5. **3-C. COUNCIL MEMBERS**

02:30

Mr. Athey – recognized the Thanksgiving breakfast and Winterfest; acknowledged Rachel Kipp of the News Journal; offered happy holiday wishes.

6. Mr. Tuttle – expressed holiday greetings; complimented the University of Delaware for a nice job in showing off their new acquisition (former Chrysler plant) and referenced a News Journal article outlining plans for the site in collaboration with Aberdeen Proving Ground.

7. Mr. Pomeroy – welcomed back Rachel Kipp; acknowledged State Representative Terry Schooley; wished happy holidays to all.

8. Mr. Temko – appreciated efforts of the Newark Police Department in the Fairfield News burglary arrest; referenced an article about UD student binge drinking and drunk driving and suggested further consideration of the issue by the Town & Gown Committee.

9. Mr. Markham – reported that the Woods at Louviers was finally accepted into the City; enjoyed Winterfest; acknowledged State Representative Schooley.

10. Mr. Clifton – thanked Mr. Armitage for the opportunity to hear building plans first hand; congratulated Police Department on closure of the home invasion at University Courtyard; received a compliment from a Stafford resident regarding the response time and professionalism of NPD officers to an automobile incident.

11. Mr. Funk – complimented the annual Thanksgiving breakfast.

12. 2. APPROVAL OF CONSENT AGENDA

11:22

- A.** Approval of Regular Council Meeting Minutes – November 23, 2009
- B. *First Reading* – Bill 09-32 – An Ordinance Amending Chapter 27, Subdivision and Development Regulations, Code of the City of Newark, Delaware, Regarding Wetlands Protection and Buffers
*(Second Reading/Public Hearing 1/11/10)***
- C. *First Reading* – Bill 09-33 – An Ordinance Amending Chapter 27, Subdivision and Development Regulations, Code of the City of Newark, Delaware, Regarding Riparian (Water Course) Protection and Buffers
*Second Reading/Public Hearing 1/11/10***
- D. *First Reading* – Bill 09-34 – An Ordinance Amending Chapter 27, Subdivision and Development Regulations, Code of the City of Newark, Delaware, Regarding Steep Slopes
*Second Reading/Public Hearing 1/11/10***
- E. *First Reading* – Bill 09-35 – An Ordinance Amending Chapter 27, Subdivision and Development Regulations and Chapter 32, Zoning, Code of the City of Newark, Delaware, Regarding Landscaping, Landscape Screening and Mature Tree Protection
*Second Reading/Public Hearing 1/11/10***
- F. *First Reading* – Bill 09-41 – An Ordinance Amending Chapter 16, Garbage, Refuse and Weeds, Article I. Solid Waste Collection and Disposal, Code of the City of Newark, Delaware, By Revising the Definition of Commercial Refuse So As To Extend the List of Generators of Such Commercial Refuse
*Second Reading/Public Hearing 1/11/10***
- G.** Reappointment of John Kalmer to Property Maintenance Appeals Board; Five-Year Term to Expire 12/2014
- H.** Acceptance of Alderman's Report – Dated December 1, 2009
- I.** Acceptance of Planning Commission Minutes – Dated November 1, 2009

Ms. Fogg read the Consent Agenda in its entirety. The First Readings were read by title only.

MOTION BY MR. ATHEY SECONDED BY MR TUTTLE: THAT THE CONSENT AGENDA BE APPROVED AS PRESENTED

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

13. 3. ITEMS NOT FINISHED AT PREVIOUS MEETING

A. Consideration/Approval of the Proposed 2010 General Operating Budget

13:35

(Note: The presentation and the public hearing for the budget was held at the 11/23/09 meeting.)

Mr. Clifton believed the programs earmarked in the budget, including stormwater management, were programs that should have been implemented a long time ago. He thought services and issues such as the reserve and the pension fund needed to be addressed without delay, and he did not see how the budget could be offset without an adequate tax increase and without the stormwater management program. Mr. Clifton's biggest concern was the preservation of jobs for City personnel, and he felt staff reductions should be a last resort to balance the budget. He said the City was a service-driven industry and services were people driven. Regarding stormwater management, he strongly supported the fees and getting the program in place. However, he did not believe it was the best public policy to include the program in the budget without a clear map showing program details. Further, he did not endorse telling Mr. Sonnenberg to find \$350,000 in the budget which he equated to a placeholder with open-ended direction. Mr. Clifton compared the implementation of curbside recycling in relationship to the operating budget with how the stormwater management fee was being proposed. In regard to combining the City's police force with New Castle County (which he mentioned at the previous Council meeting), he explained he was not a proponent of this option. Mr. Clifton asked Mr. Sonnenberg to clarify the street funding issue. Mr. Sonnenberg explained at one of the early work sessions, the need to increase the amount appropriated for street maintenance was discussed. The City was counting on the municipal street aid in addition to the funds the City would devote to maintain the streets. He said the intent was to permanently increase the amount of funds devoted to street aid into future years, and the costs would only increase if the problems were not addressed sooner.

Mr. Markham commented that Council had been through a series of budget workshops, and there was not a lot left to discuss in the budget. He was not a fan of property tax increases and thought it was an unfair tax against those who have built since 1990 as well as an economic disincentive. Mr. Markham said he had a lot of ideas on his list for next year's budget such as: Outsourcing jobs; making sure there was a path forward on stormwater management; insuring the City Manager had clear direction on how to proceed in terms of finding additional funding; and renegotiation of pensions and benefits for new hires.

Mr. Temko agreed with Mr. Clifton that in last year's budget when it was recognized the economy was not good and people were struggling, Council did the minimum possible to cover expenses to lessen the impact on taxpayers. He believed it would not be responsible to do that again this year. He thought the proposed budget was a realistic step towards the City's financial health, taking into account the economy, opportunities to cut costs and equity in generating revenue. Mr. Temko said Newark had the reputation of being a good deal financially and thought the City would still be a good deal after this. Since the stormwater program was in flux, he felt that it was not a good principle to put it as

a placeholder in the budget. However, as compared to raising property taxes to make up the \$350,000, he thought the stormwater program was equitable in the way it collected monies, in diversifying the revenue stream and in the purpose it was meant to serve. Mr. Temko felt it was important to be clear on what the vote would be on the budget with the stormwater utility fee included. If Council committed to adopting a stormwater program, he outlined the basic principles involved: calculating costs based upon impervious surface levels with a revenue target of \$350,000; program incentives for areas having their own stormwater management systems; and a public process that brought stakeholders together to insure a successful program.

Regarding Ms. Roe's question asked earlier in the meeting on the rate study, Mr. Pomeroy said the line item in the budget where money was allocated for a rate study specifically implied it would cover both the electric and the water rate studies.

Although Mr. Pomeroy believed the stormwater utility program warranted additional consideration, his biggest issue with it was having a line item in the budget for a program that was not fully worked out. He was also concerned that the fee, although nominal, would hit individuals, non-profits and businesses at a difficult time financially. He requested that Mr. Sonnenberg find the \$350,000 in either added reductions or take it from the operating profit. His personal preference was that it not be taken from the Police Department because of Council's promise last year to increase their staff.

Another item Mr. Pomeroy felt worthy of reconsideration focused on the 2010 capital improvement program specific to streets. One thing being proposed differently this year was an additional \$500,000 investment in streets. Although he believed the investment was warranted as a proactive measure, he noted the timing could not be worse with the City at historic lows from a revenue generation standpoint. Based on this situation, he thought the focus this year should be on the essentials rather than on new programs. That would not mean stopping street maintenance but instead would bring street maintenance back to where it had been historically. The net effect of this change in the budget would drop the tax rate about 6.5 cents. Also in the capital improvement plan was \$500,000 in municipal street aid from the state, and if that funding was received, he said the City would be in great shape. Mr. Pomeroy felt the tax burden on residents was something to be cognizant of, and he strongly believed the City could not tax and fee its way out of budget challenges. He also thought it was essential to focus on an economic development strategy and to create a climate to build business in the City. He supported capping revenue expectations for transfer taxes and anything beyond that would be dedicated to building cash reserves. In addition to focusing only on essential expenditures, Mr. Pomeroy suggested looking very closely at pay, benefits, staffing and service efficiencies.

Although Mr. Tuttle believed the City should move towards adopting a stormwater utility in the future, he agreed it was not good policy to adopt a budget based on a program that had not existed in the past and whose final form was still undetermined. He felt a fully adopted stormwater utility provided equity because everyone contributed their fair share based on impervious surface and what they required the City to put up in infrastructure to manage runoff. He thought it would be better for staff to come back with a program showing phased-in operations of where the stormwater utility would be in years one, two and three and how to get there. Mr. Tuttle explained if the budget was adopted as presented, the typical average homeowner would pay about \$24 a year in stormwater utility fees. If the \$350,000 was raised through a 4.5 cent property tax increase, the cost to the homeowner would be about the same amount. Since the stormwater utility fee needed more work, he suggested adjusting the property tax rate to balance the budget and developing a fully embellished stormwater utility proposal to be implemented next year with a goal of avoiding the need for a subsequent property tax increase. He added that Moody's made it clear the City had a long way to go towards improving its fiscal health, and he

recognized the City faced a multi-year program to get its reserves back to a reasonable level.

Mr. Athey noted the two prime issues to be dealt with were the property tax increase and the stormwater utility. He thought most people recognized that Newark was a pretty good deal and had great services, but he was concerned that by continuing to come back with substantial property tax increases, the City would lose its competitive advantage. He supported the nine cent property tax increase which was consistent with policies adopted by Council including cash reserves, operating margins for utilities, etc. He believed the significant capital investment for roads, sewers and water mains was essential and said the City went too many years without putting the necessary dollars into its infrastructure. He did not think the cash position was nearly as good as it should be, and part of the tax increase would go towards restoring that cash position. He stated that staff recommended a somewhat significant tax increase last year that Council reduced from twenty cents to 2.25 cents which contributed to the current deficit. He was extremely supportive of the stormwater utility and thought it was an equitable and necessary revenue stream. However, he believed it should be deferred until next year and suggested convening a stormwater advisory committee with a broad spectrum of people to help work through some of the issues. Mr. Athey hoped to see a five-year plan to assess long-term implementation of the program, and he felt that budget workshop meetings should be continued through 2010. An issue he suggested for workshop consideration was the reliance on utility rates vs. reliance on the property tax rate. He thought people would continue to conserve and that the City could not keep raising utility rates to offset lower consumption. Other ideas he mentioned (but was not necessarily proposing) were the offer from Artesian Water Company several years ago to sell the City's water system and engaging some sort of a non-profit in a park development project. Further, he thought staff should bring back a list of 50 or so services provided by the City and that Council should rank them according to priority. The list would then be available for a synopsis as to which programs were truly valued and where there might be some flexibility.

Mr. Funk said he was totally committed to the stormwater utility but was not comfortable including it in the budget at this time. He thought the program should be developed for consideration as a budget item in 2011. He did not believe property taxes were handled appropriately last year, especially when it became clear by February that transfer taxes would come out at least \$1 million short. Mr. Funk questioned why Alderman's Court fines were estimated at \$100,000 less next year. He suggested full-time enforcement of parking meters as another source of revenue and said the City of Wilmington raised millions of dollars by enforcing their laws and appropriately collecting the money. He felt the City should pursue having meters operational on Sundays which would generate additional revenue of \$50,000. Mr. Funk also thought one thing that should be taken into consideration was the fact that the University added 17-19 officers to their roster which he believed helped the City a lot.

Mr. Athey asked if there would there be any major issues from Mr. Pomeroy's suggestion to reduce the cash position by \$350,000 with the expectation that Mr. Sonnenberg would come back at some point with other options. Mr. Sonnenberg said he did not see one. Mr. McFarland said it could work fairly easily in the short run to lower the projected cash annual surplus for the year, leaving the \$350,000 to be found through cost savings that could be identified. He felt it was preferable from a credit perspective if Council were to make a strong affirmation that they were supportive of a stormwater utility fee commencing as soon as reasonable, even as soon as July 2010. The rating just received was premised in large part on the proposed budget, and Moody's was very cognizant of the fact that the stormwater utility fee was not a volatile revenue stream.

AMENDMENT BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THE STORMWATER UTILITY COMPONENT BE STRICKEN FROM THE

2010 GENERAL OPERATING BUDGET WITH THE SHORTFALL TO BE TAKEN FROM CASH RESERVES. THE CITY MANAGER IS TO RETURN WITH HIS RECOMMENDATIONS FOR A BUDGET AMENDMENT BY FEBRUARY 22, 2010.

Mr. Markham asked if this amendment met the commitment to the stormwater utility fund expected by Moody's. Mr. McFarland believed a statement by Council in the minutes would be adequate that they were supportive of establishing and charging for a stormwater utility fee in a reasonable time period.

Mr. Tuttle pointed out (as Council acknowledged) that the tax increase passed last year was well below what it needed to be. He did not think history should be repeated and noted that Council was diminishing a projected \$1.5 million surplus. In looking at the budget, an \$800,000 surplus was budgeted for this year and instead the year ended with a \$2 million deficit. He did not know if Moody's statement that the City had a modest cushion to offset its reliance on an economically sensitive revenue was true if they whittled down next year's projected surplus which was smaller than this year's deficit.

Question on the Amendment was called.

AMENDMENT PASSED: VOTE: 5 to 2.

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

Regarding the investment in the street program, Mr. Pomeroy did not agree that taxpayers should be asked to foot the bill for an additional 6.5 cent increase during one of the City's worst budget years. In his mind, that amounted to \$500,000 of non-essential expenditures in 2010, and he could not support the nine cent tax increase knowing such things were on the table. He reiterated Mr. Athey's point that fees be compared for every service offered while keeping the tax rate in mind. He stated that in calendar year 2010 for the 2011 budget, harder choices would have to be made to reduce the budget to a point where the City was under the line of the County and other municipalities. In his opinion that meant not approving the nine cent tax increase which he wanted to reiterate before the vote. He said somewhere down the line when the economy stabilized and the City's revenue streams were strengthened, he was convinced Newark would be one of the first places in Delaware to rebound and would be able to take on new initiatives in subsequent years.

AMENDMENT BY MR. POMEROY: THAT THE ADDITIONAL INVESTMENT IN STREET FUNDS OF \$500,000 BE REMOVED FROM THE CAPITAL IMPROVEMENT PROGRAM AND DEFERRED TO A FUTURE YEAR.

AMENDMENT FAILED FOR LACK OF A SECOND.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THE 2010 GENERAL OPERATING BUDGET BE ADOPTED AS AMENDED.

MOTION PASSED. VOTE: 5 to 2.

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

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THE PROPERTY TAX RATE BE INCREASED NINE CENTS, SETTING THE TAX RATE AT 64.58 CENTS PER \$100 OF THE ASSESSED VALUE.

MOTION PASSED. VOTE: 5 to 2.

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

(Secretary’s note: Mr. Temko left the meeting at 9:15 pm.)

14. **4. FINANCIAL STATEMENT** – Next Meeting

15. **5. RECOMMENDATIONS ON CONTRACTS & BIDS**
None

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

1:44

A. Bill 09-30 An Ordinance to Adopt Technical Corrections to the Amended Pension Plan for Certain Employees of the City of Newark, Delaware, to Comply with Internal Revenue Code Requirements for Qualified Plans

Ms. Fogg read Bill 09-30 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 09-30.

Mr. Zusag explained that Principal Financial Group, the City’s pension plan administrator, reported the plan had to be updated as required by the IRS. The City retained an attorney to assist with the review and to insure the plan complied with IRS regulations. The plan was also reviewed by the City’s actuary. The technical amendments were to comply with IRS regulations and had no impact on benefits provided by the plan. Mr. Zusag noted the three employee bargaining groups had no objection to the amendments.

The Chair opened the discussion to the public. There being no comments forthcoming, the discussion was returned to the table

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

(ORDINANCE 09-30)

17. **6-B. BILL 09-39 – AN ORDINANCE AMENDING CHAPTER 32, ZONING, CODE OF THE CITY OF NEWARK, DELAWARE, BY INCREASING PARKING WAIVER FEES FOR RESIDENTIAL USES**

1:46

Ms. Fogg read Bill 09-39 by title only.

MOTION BY MR. ATHEY, SECONDED BY MR CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 09-39.

Mr. Lopata reported the recommendation to increase parking waiver fees for residential use was made by the Planning Commission based on the report from the Planning & Development Department. The parking waiver fee would be split into two categories, with the commercial fee unchanged. He said the Planning Commission’s reasoning for separating the fees was they did not want to create a disincentive to further economic development downtown for commercial uses but were concerned with additional residential uses. The current fee for a 12-space residential parking waiver (a relatively small waiver), was \$21,900, and the new fee would be \$38,000. For a 30-space parking waiver, the current fee was \$74,000; the new fee would be \$116,660. The fee

was substantial because the money was put in the parking fund to make improvements to downtown parking as required by Code.

Mr. Athey asked if there were any projects in the queue that would be impacted by the increase, and Mr. Lopata said there were none at this time. Mr. Athey asked the reason for a tiered rate. Mr. Lopata explained that when the fee was established, Council did not want owners of small projects impacted to the extent of the owners of larger projects. Mr. Athey thought the fees were low in relation to funding the construction of a parking garage. Mr. Lopata said the fee was intended to replace surface level spaces not being provided by the property owners and the fee would be astronomical if it was designed to fund a garage.

Mr. Clifton referenced the issue of Chipotle Grill who he thought did not move to Newark because of the parking waiver fees. He asked if the Planning & Development report addressed how to handle a situation where a different type of use was planned for an existing building rather than a redevelopment. Mr. Lopata said the fee was not new to Chipotle Grill, and typically an arrangement was worked out between the parties involved.

Mr. Pomeroy did not want to see a disincentive to encouraging owner occupants in the downtown area. Mr. Lopata said in the new Center Village plan report that Council would review in the near future, parking would be looked at in that area for that very reason. Mr. Akin advised that the Superior Court and the Delaware Supreme Court affirmed the City's right to use a great deal of discretion in implementing the parking waiver system. Mr. Markham hoped this would be communicated to the builders in light of the redevelopment of Elkton Road.

The Chair opened the discussion to the public. There being no comments forthcoming, the discussion was returned to the table.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

(ORDINANCE 09-31)

18. 6-C. BILL 09-37 – AN ORDINANCE AMENDING CHAPTER 32, ZONING, ARTICLE XXI, AMENDMENT, CODE OF THE CITY OF NEWARK, DELAWARE, BY AMENDING AMENDMENT PROCEDURE TO REQUIRE SITE POSTINGS

2:00

Ms. Fogg read Bill 09-37 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 09-39.

Mr. Lopata explained this ordinance added to the rezoning and annexation site posting requirement a provision to include major subdivisions.

The Chair opened the discussion to the public.

Jean White, a Newark resident, recommended including some notification that the project would ultimately be considered by City Council. Mr. Athey suggested adding "COUNCIL ACTION TO FOLLOW" under Item f.

AMENDMENT BY MR. ATHEY, SECONDED BY MR. CLIFTON: AMEND ITEM F TO READ, "DATE, TIME AND LOCATION OF PLANNING COMMISSION PUBLIC HEARING. **COUNCIL ACTION TO FOLLOW.**"

AMENDMENT PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Bill Stritzinger, Newark resident, felt if the public was interested in a project, they would contact the City for further information.

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

Question on the Motion as Amended was called.

MOTION AS AMENDED PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

(ORDINANCE 09-32)

19. 6-D. BILL 09-40 – AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE, BY REZONING FROM BN (NEIGHBORHOOD SHOPPING) TO BB (CENTRAL BUSINESS DISTRICT) A .277 ACRE PARCEL AT 109-111 ELKTON ROAD

2:10

Ms. Fogg read Bill 09-40 by title only.

MOTION BY MR. POMEROY, SECONDED BY MR CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 09-40.

(Note: The public hearing for Bill 09-40, the minor subdivision and the Special Use Permit for this property were held under Item 19.)

Lisa Goodman, Esquire, represented Kevin Heitzenroder whose projects she said contributed significantly to the redevelopment of Elkton Road with this site a further continuation of the redevelopment. The project was a rezoning from BN to BB and was a mixed-use project with retail and office on the lower floor and residential units above. The Downtown Newark Partnership Design Review Committee was pleased with the design, and the Planning Commission recommended unanimously in favor of it. The site was designed with upscale student housing, with a mix of 4, 5 and 6 bedroom units, was consistent with Council's desire to get student housing out of residential neighborhoods, and was adjacent to University property. She added that typically the students did not need cars in this area because they were within walking distance of the University and Main Street. She noted that parking was the lifeblood of retail, and Mr. Heitzenroder was very careful to manage parking at his properties.

Ms. Goodman addressed the deed restriction (which was originally recommended by the Planning Department) to prohibit the rental of any space, specifically for University of Delaware classrooms. She said this arose from concerns about occupancy by the University's English Language Institute in the adjacent building owned by Mr. Heitzenroder. Ms. Goodman said they came back with a deed restriction that limited both buildings to a total between the two of 1,500 square feet. The Planning & Development Department had some concerns about enforceability based on the two separate tax parcels. After working with Messrs. Akin and Lopata to craft language in the proposed development agreement that addressed the issue, Ms. Goodman said they since came to the conclusion that if Council chose to deed restrict the project, their

preference was to place the restriction on the new building only. Mr. Clifton asked what the reasoning was to deed restrict the property for a specific use. Ms. Goodman believed the reasoning was that the preferred use of the property was for retail.

Mr. Akin pointed out a correction in page 2 of the agreement, paragraph 9, second paragraph, second line, the word “old” should be “sold”.

Mr. Lopata explained non-commercial classroom space with student housing above it was not encouraged in the downtown area, and Council’s approval of the rezoning was for commercial use. He was concerned with the long-term significance of properties such as this functioning with classroom use and student housing and the possibility of the University purchasing the property and removing more land from the tax rolls.

Mr. Tuttle suggested it would be a radical departure from the University’s approach as they have been very conscious about the security of the residence halls and closely restrict other types of access in their buildings. He noted it was a mistake to eliminate this possible option as the University hoped to partner with Aberdeen Proving Grounds at the Chrysler facility, and he could foresee the University wanting to rent space based on timing. He did not think it would be in the landlord’s interest to say he can’t compete for that business; it would be the only parcel in the City taken out of play. Mr. Athey said if Mr. Heitzenroder offered the deed restriction voluntarily, he thought the City should take him up on it and suggested a lease not to exceed 2 years (or something similar) so it could not go on indefinitely.

Mr. Heitzenroder understood the Planning Department’s concern but noted things were getting tight in the private sector. He said if he could have the restriction lifted, he would be at the same level playing field as every other project on Elkton Road and on Main Street. He said this particular situation with the University was peculiar and was due to an over-enrollment in one program and with him being able to provide a quick delivery of available space.

The Chair opened the discussion to the public.

Jean White, a Newark resident, thought Council should approve the project as she thought the time had come to put something in the place of Daffy Deli. Furthermore, it would eliminate ingress and egress from Elkton Road. She reported there was a tree that was not on the property to be developed but was on University property right behind Daffy Deli, and requested that the roots not be damaged in developing the property. Mr. Heitzenroder agreed care would be taken with the oak tree’s roots. She commented on the signage between the proposed building and existing building at Amstel Square which she said a number of people complained was oversized. Regarding parking she calculated that 26 spaces were needed but only 19 would be provided. Mr. Lopata advised that the property was grandfathered since it was less than one year since it was vacated. Ms. Goodman said the properties would share parking easements with 119 Elkton Road to provide adequate parking for the residential and retail components.

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

AMENDMENT BY MR. TUTTLE, SECONDED BY MR. POMEROY: TO DELETE THE DEED RESTRICTION.

AMENDMENT PASSED: VOTE: 5 to 1.

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

Nay – Athey.

Absent – Temko.

Mr. Athey said even though he disagreed on the University leasing issue, he otherwise felt the project was good and fit in aesthetically. It would provide revenue for the City and was in line with revitalization plans for Elkton Road. In addition, he said Mr. Heitzenroder had a great track record, and he intended to support the rezoning aspect.

Mr. Tuttle supported the rezoning as it was consistent with its surroundings and with Council's vision for that part of the City.

Mr. Pomeroy said this was exactly what was needed in the City.

Mr. Funk supported the project since it was consistent with the Elkton Road plan.

Mr. Markham said the project fit the zoning and the revitalization plan of Elkton Road.

Mr. Clifton supported the project.

Question on the Motion as Amended was called.

MOTION AS AMENDED PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Temko.

(ORDINANCE 09-33)

20. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS

- A. Request of Elkton Road, LLC, for the Major Subdivision of 109-111 Elkton Road In Order to Construct a Mixed use Retail and Residential Building That Will contain Approximately 2,456 Square Feet of First Floor Commercial use and Six Apartments on the Second and Third Floors (Resolution/Agreement Presented – See Item 6-D and 7-B)**

(Note: The public hearing was held under Item #19.)

MOTION BY MR. TUTTLE, SECONDED BY MR. POMEROY: THAT THE AGREEMENT AND RESOLUTION BE APPROVED AS AMENDED.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Temko.

(RESOLUTION 09-V)

21. 7-B. REQUEST OF ELKTON ROAD, LLC, FOR A SPECIAL USE PERMIT TO ALLOW SIX SECOND AND THIRD FLOOR APARTMENTS AT 109-111 ELKTON ROAD (FORMERLY DAFFY DELI TAKEOUT RESTAURANT) NEWARK, DELAWARE (See Item 6-D and 7-A)

(Note: The public hearing was held under Item #19.)

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT THE SPECIAL USE PERMIT BE APPROVED AS PRESENTED.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

22. 7-C. REQUEST OF MICHELLE AND GREGORY PEASE OF BLACKSTONE'S RESTAURANT AND PUB, LOCATED IN THE SHOPPES AT LOUVIERS ON PAPER MILL ROAD, TO MODIFY RESTRICTIONS ON ORIGINAL SPECIAL USE PERMIT GRANTED ON 9/25/06 AND SUBSEQUENTLY MODIFIED ON 1/28/08 REGARDING ADVERTISING OF ALCOHOL SPECIALS AND AMENDING THE 12 MIDNIGHT ALCOHOLIC BEVERAGE SALES CLOSING TIME.

2:40

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THE SPECIAL USE PERMIT BE GRANTED AS REQUESTED, THAT WOULD PERMIT THE ADVERTISEMENT OF ALCOHOL SPECIALS AND TO AMEND THE ALCOHOLIC BEVERAGE SALES CLOSING TIME TO 1:00 A.M.

Mr. Pease said Blackstone's Restaurant had been in business since March 2007 and employed 19 people. Based on restrictions in the Special Use Permit of 9/25/06, he said there was no sufficient mechanism to advertise alcohol-related features and specials at the restaurant. He believed the restriction had a negative impact on his ability to grow the business. Further, in order to accommodate the customer base, he requested an extension of alcohol beverage sales until 1 a.m.

Mr. Markham requested examples of the type of advertising he wanted to use. Mr. Pease said his intention was for newspaper advertising. Mr. Tuttle did not think the original restriction was not to prohibit advertising but was meant to prohibit signs posted all over the building.

Mr. Markham said Council was concerned that a 1 a.m. closing was when a restaurant morphed into a bar and asked Mr. Pease to reassure Council and the neighbors that Blackstone's would not become a bar. Mr. Pease said he had a three-year track record and believed he has demonstrated that was not his intent. Mr. Markham questioned the food to alcohol sales ratio which Mr. Pease reported was 78% food and 22% alcohol.

Mr. Clifton noted that the restrictions were designed not only so the business could establish a track record but also to provide an opportunity for the establishment to become known as a family-friendly restaurant that served alcohol. Mr. Clifton had no problem with the 1 a.m. closing or with allowing advertising in the newspaper, but wanted the restriction continued that no alcohol advertisements be seen from outside the building. He said he trusted management would have controls to assure Blackstone's would not turn into a bar. Further, the business came under the Special Use Permit, and Council had control over the permit. Mr. Pease assured Mr. Clifton that he would do all he could to assure compatibility with the surrounding residential community.

The Chair opened the discussion to the public.

Cherie McCoy, a Newark resident, said although she felt Blackstone's was a good establishment, she had a larger issue with the shopping center that backed up to her property and with noise from delivery and trash trucks starting at 5 a.m. In addition to the disruption, she was concerned these issues could cause a decrease in property values.

Mr. Markham said this situation had been discussed previously, and Mr. Lopata thought the problem had been taken care of some time ago. However, Mr. Lopata will look into it further.

Jean White, a Newark resident, opposed the request to modify the closing time to 1 a.m. based on the restaurant's residential location and the inference that the money made from midnight to 1 a.m. would more likely be from alcohol sales which she thought was problematic. She noted that the Police Department opposed the request. She also pointed out that the other two restaurants with Special Use Permits at the shopping center could request a 1 a.m. closing, and the whole tenor of the shopping center could change. Another concern was that the business could be sold and the new owners could automatically serve alcohol to 1 a.m.

Mr. Pease explained that when he first came to Council, he did not intend to have Council include the restrictions in his Special Use Permit. Rather, he came and said they were restrictions the landlord put in the lease.

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

Mr. Funk preferred a 12:00 midnight restriction for the shopping center because of the number of licenses there.

As a compromise Mr. Athey suggested lifting the restrictions on Friday and Saturday nights only, although he agreed that would not keep things simple. Regarding the advertising, he was not opposed to print or radio advertising but felt there should be no exterior signage advertising alcohol.

Mr. Clifton said if Council was not going to be flexible on this petitioner's ability to come back with a request to extend his closing time, then he felt there should be a policy that any new establishments should close at midnight and that the policy be adhered to. He added that Council controlled the Special Use Permit and if something went wrong, it could be eliminated or changed. He felt the applicant should have the ability to prove themselves at the next level in accordance with the Code.

Mr. Pomeroy believed Council had to create a consistent practice regarding closing times for bars and restaurants. He said the overriding issue was that Council had the sword to revoke the Special Use Permit, and there was no greater motivation for a business to operate as a good business.

AMENDMENT BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THERE BE NO EXTERNALLY VISIBLE ALCOHOL ADVERTISING ON THE SITE.

AMENDMENT PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Question on the Motion as Amended was called.

MOTION AS AMENDED PASSED: VOTE: 5 to 1.

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

Mr. Markham said the reason he voted no was based on the issues with the shopping center.

23. 8. ITEMS SUBMITTED FOR PUBLISHED AGENDA

A. Council Members:

1. Resolution 09-__: Amending the Newark City Charter, Being Chapter 152 of Volume 48, Laws of Delaware, By Providing the City of Newark with the Lawful Authority to Adopt an Ordinance or Ordinances Imposing a Tax Upon the Gross Rental Receipts Earned with Respect to Residential Dwelling Units, Such Tax Not To Exceed Three Percent (3%) Per Annum of Such Gross Rental Receipts

(Deleted from Agenda)

24. 8-B. OTHERS: None

25. 9. SPECIAL DEPARTMENTAL REPORTS

3:22

- A. Special Reports from Manager & Staff:
1. Authorization to Execute Lease Agreement(s) With Clear Wireless for the Placement of Communications Equipment on the Windy Hills Water Tower (Mulberry Road) and the West Main Street Water Tower (Nottingham Green)

Mr. Simonson said the lease agreements with Clear Wireless for the placement of communications equipment on the two water towers came with a \$30,000 annual lease payment to the City. Mr. Funk said this was a lucrative arrangement and believed the average going rate was about \$12,000 a year per tower. Mr. Pomeroy did not want to approve the agreements before seeing a photo depiction of the equipment. Mr. Simonson offered to request photos (although it was noted this would delay Council's vote) and said the equipment on the West Main Street tank would be about 10 feet above the top, would be extended about 3 feet above at Windy Hills and would be painted the same color as the tank.

Mr. Clifton asked if the contracts were consistent with the other service providers and Mr. Akin advised that most telecommunication providers generally echoed each other's agreements. Mr. Markham asked if this qualified for a franchise tax, and Mr. Akin clarified that telecommunications providers were not franchised.

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THE LEASE AGREEMENTS WITH CLEAR WIRELESS FOR THE PLACEMENT OF COMMUNICATIONS EQUIPMENT ON WATER TOWERS LOCATED ON MULBERRY ROAD AND WEST MAIN STREET BE APPROVED.

MOTION PASSED: VOTE: 5 to 1.

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

Nay – Pomeroy.

Absent – Temko.

26. 9-A-2. AUTHORIZATION TO ENGAGE IN PROFESSIONAL LIABILITY CLAIM RESULTING FROM DURKIN LITIGATION AND AUTHORIZATION TO PERMIT CITY SOLICITOR TO RETAIN SPECIAL COUNCIL TO ASSIST IN DEFENSE OF NEW LANDLORD'S SUIT.

3:29

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THE CITY SOLICITOR BE AUTHORIZED TO ENGAGE IN THE PROFESSIONAL LIABILITY CLAIM RESULTING FROM DURKIN LITIGATION AND TO RETAIN CONNOLLY BOVE AND LODGE TO ASSIST IN THE DEFENSE OF THE NEW LANDLORD SUIT.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

27. Meeting adjourned at 10:59 p.m.

Patricia M. Fogg, CMC
City Secretary

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