

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

February 8, 2010

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 Fogg
City Solicitor Roger Akin
Chief Paul Tiernan, NPD
Finance Director Dennis McFarland
Planning & Development Director Roy Lopata

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

1. PRESENTATION OF JEFFERSON AWARDS CERTIFICATE OF EXCELLENCE

00:26

Mr. Funk recognized the following nominees for their volunteerism and presented a Jefferson Award Certificate of Excellence for their public service:

Valentino Nardo – has dedicated time over the past 40 years serving the needy, the homebound and the elderly through his Needy Family Fund.

Tony Imhof – has spent nearly 80 hours a week on the road delivering food, clothes and furniture to the needy, and acting as an interpreter, guide and advocate for families facing legal challenges related to their visa status and medical needs.

Chelsea Rozanski – as a Newark High School junior, she has dedicated her personal life to volunteer activities including dog walking for the Delaware Humane Association, collecting trash in parks and on roadsides, charity walks benefitting cancer and diabetes and performing public service in Africa and Tanzania.

Corporal Jeffrey Schwagel – with graffiti on the rise in Newark in 2009, Cpl Schwagel made it his mission to bring to justice the responsible vandals. His efforts led to the arrest of 18 people for 204 graffiti-related charges.

Nancy Lonie – created “Art Scope”, a Delaware Art Museum project experienced by thousands of school children including many inner city at-risk children. The project includes a social focus and positively impacts confidence and self-esteem.

2. MOTION BY MR. ATHEY, SECONDED BY MR. POMEROY: THAT ITEM 2-E, Appointment of Edward H. Wirth to Newark Election Board, be added to the Consent Agenda.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

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

04:06 A. Public

There were no comments forthcoming.

4. **1-B. UNIVERSITY**

1. Administration

There were no comments forthcoming.

5. **1-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

6. **1-C. COUNCIL MEMBERS**

10:50

Mr. Athey – commended Mr. Funk for his initiative on the Jefferson Awards; recognized Public Works and Parks Departments for their snow removal efforts; congratulated Newark Police Department for the warrant round-up that netted 78 arrests; noted the term of one of the Mayor’s appointees to the Newark Housing Authority expired and requested discussion of the reappointment at the 2/22 meeting; regarding Ordinance 10-05 (new fee imposed on commercial refuse collection), a constituent felt sufficient notification and opportunity for feedback was not given the public. Mr. Athey suggested bringing this back for discussion at the 2/22 meeting under Item 8-A if Council members had no objection (there was none).

7. **Mr. Tuttle** – felt the City was proactive in issuing reminders to clear sidewalks and noted there was a provision in the Code that prohibited throwing snow in the street; suggested hiring a contractor (and billing the property owner) for sidewalk snow removal at vacant properties which continually remained unshoveled.

8. **Mr. Pomeroy** – congratulated Jefferson Awards winners and Mr. Funk on being elected Vice Chair of the Delaware League of Local Governments; gave kudos to the Newark Police Department for an amazing job on the warrant round up and some of the higher profile cases recently solved; also praised Public Works and Parks Departments on a commendable job on snow removal.

9. **Mr. Temko** – congratulated Jefferson Awards winners and thanked them for their service; passed along thanks from a constituent to City staff for their hard work in responding to the winter storm; relayed positive comments from a North Gate Commons resident about the new system developed to remind residents about parking permit expirations.

10. **Mr. Markham** – commented on the good job on snow removal; offered congratulations to the Jefferson Award Winners.

11. **Mr. Funk** – complimented City staff for an incredible job with snow removal.

12. 2. APPROVAL OF CONSENT AGENDA

27:34

- A. Approval of Regular Council Meeting Minutes – January 25, 2010
- B. Receipt of Real Estate Tax Assessment Quarterly Supplemental Roll
- C. First Reading – Bill 10-04 – An Ordinance Amending Ch. 20, Motor Vehicles and Traffic, Code of the City of Newark, Delaware, Article XVII, Parking Meters and Schedule X, Parking Meter Zones, By Clarifying the Hours and Holidays During Which Parking Shall Be Free
- D. Receipt of Alderman’s Report dated February 3, 2010
- E. Appointment of Edward H. Wirth to Newark Election Board

Ms. Fogg read the Consent Agenda in its entirety.

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

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

13. 3. ITEMS NOT FINISHED AT PREVIOUS MEETING – None

14. 4. FINANCIAL STATEMENT

28:53

Mr. McFarland presented the final Financial Report for calendar year 2009 which represented financial results of about \$4.7 million below budget. This was based on internal financial reporting, and the actual results will differ based on a more extensive closing process at year end. From early indications he expected those results would be a little bit more positive by a few hundred thousand dollars.

He saw a continuation of the trends from the last three quarters of 2009 – declining utility revenues across all three utilities: the electric utility was down \$4 million; the water margin was down about \$900,000; and the sewer margin was down \$800,000. There was a slight return to normal in the water utility in December, and with new sewer rates in effect September 1, he hoped those two utilities would perform well during 2010. Mr. McFarland said the electric utility was being closely monitored, and issues may have to be addressed later in 2010.

Non-utility revenues were \$1 million under budget, attributable to a decline in transfer tax revenues. The year ended with about \$880,000 in property transfer tax revenues, about \$80,000 more than budgeted for 2010. As anticipated, property tax revenues came in about \$475,000 over budget. All other non-utility revenues were down about \$500,000, reflecting the loss of municipal street aid and the loss of revenues at the refuse transfer station. These declines were partially offset by increases in fines and parking revenues.

Operating expenses were \$1.9 million under budget largely due to lower personnel costs. The cash position declined about \$1.8 million to \$12.5 million at year end.

Mr. Markham asked when the stormwater utility proposal would be brought back. Mr. Sonnenberg said details were still being worked on, and it would be brought back this year, hopefully by spring.

MOTION BY MR. MARKHAM, SECONDED BY MR. POMEROY: THAT THE DECEMBER 2009 FINANCIAL REPORT BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

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

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

37:05 A. **Bill 10-03** – An Ordinance Amending the Zoning Map of the City of Newark, Delaware, By Rezoning from BC (General Commercial) to BB (Central Business District) a 1.165 Acre Parcel at 136 Elkton Road (**See Items 7-A & 7-B**)

Ms. Fogg read Bill 10-03 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. POMEROY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 10-03.

(Note: The Public Hearing was also held on Items 7A and 7B.)

Joe Charma, Landmark Engineering, said the Planning Commission complimented the design of 136 Elkton Road and recommended approval of the project with several conditions. The plan presented to Council addressed the concerns and conditions of the Planning Commission and the City operating departments.

He reported the proposed 10,600 square foot, 3-story building would replace two existing structures badly in need of repair and upgrading. The new building would host a variety of commercial businesses and 14 two-story townhouse style apartments. The type of apartment would easily accommodate conversion to owner-occupied housing in the future if the housing market dictates such a project. The building would be a unique style of brick and pre-cast concrete elements and would create another signature building on Elkton Road. The Downtown Newark Partnership Design Committee unanimously agreed the building was a good example of what the City hoped to have for the Elkton Road extension of Main Street.

The project conformed to the land-use recommendations of the Newark Comprehensive Development Plan IV and with other projects recently approved on Elkton Road. It would greatly enhance the streetscape and provide a highly desirable apartment and commercial space that would continue to support the vibrant downtown economy.

Mr. Pomeroy asked if a parking waiver was required for the project, and Mr. Charma replied it was not. Regarding the plan for the Eagle Diner, Mr. Charma said the owner hoped to retain all the current tenants.

Mr. Temko asked the time line on the project. Mr. Charma said it was uncertain when the project would start, and the leases would dictate when changes would be made. Angela Tsionas-Matulas, property owner, said she wanted to keep the existing tenants, although they would have to agree to be out of business for eight months. She explained most tenants had at least two year leases and thought the time line for construction would be about one year.

The Chair opened the discussion to the public.

Jean White, a Newark resident, did not think Council should have extended downtown Newark onto Elkton Road, because it put residents next to the railroad tracks. She said around the country railroads did not want residents next to them for safety reasons such as the possibility of toxic chemical spills. Instead of a six-foot stockade fence, she thought there should be a chain link fence. She said there was an open area with no fencing at the Kinko/Fed Ex office location and thought the whole stretch should be fenced. She noted an employee from the Eagle Diner was killed by a train while crossing the tracks last year.

Mrs. White preferred some breaks in the roof line and commented about how massive the three-story building would be in length (190 feet) along Elkton Road. Mrs. White asked Mr. Charma to verify the width of the sidewalk on the revised plan. She questioned handicapped accessibility into the storefront entrances along Elkton Road and asked if the exit from the Eagle Diner side could have a more gradual slope onto Elkton Road. She also questioned whether Eagle Diner and Christina School District Networks program would be able to afford the rent in the new building. She further discussed the adequacy of the turning radius for the school bus dropping students off at Networks. Although she understood the electric lines would be above ground at this time, she mentioned the possibility of burying plastic "tubes" in the ground for the future option of underground power lines. Mrs. White also asked if the developer would sign an agreement with CSX for keeping the easement open.

Mr. Charma responded to Mrs. White's comments. Regarding her objection to rezoning the property to allow residential units near the railroad tracks, he said the Planning Commission Chair pointed out a train accident would probably affect a one-mile radius of the location which would impact almost everybody in Newark. He noted that Council and the Planning Commission's preference had been for stockade fencing rather than chain link because it was visually more appealing. He reported on discussions about fencing at Kinko's and believed this was moving forward. In regard to the architecture, when the Design Committee reviewed the project, they liked the different colors of brick and the articulations in the façade with the cornices which tended to break up the linearity of the building along with the street level façade and the awnings. Mr. Charma explained the sidewalk from the back of curb to the back of sidewalk was 10 feet, and there was still sufficient space for a small sidewalk patio not to encroach on the 10-foot clear way. The project would be handicapped accessible and IBC and ADA compliant, with 60% of the access points required to be accessible. Mr. Charma said buses would be able to maneuver in and out of the property since allowances were made to accommodate delivery trucks.

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

Mr. Athey intended to support the project. He thought the design looked good and liked the pedestrian scale with the building brought up to the sidewalk with parking in the back. He related comments from constituents who were appreciative of the Elkton Road revitalization, and commended Mr. Charma and his client for continuing the improvement.

Mr. Tuttle supported the concept as well. He thought it was in keeping with the expansion of the downtown to include Elkton Road. He hoped the current tenants would remain and felt the project would be a real asset to the community.

Mr. Pomeroy thought it was a great project and it was a continuation of the renaissance happening on Elkton Road. He believed the density belonged in the downtown core area and said this project would bring more occupants to Elkton Road. He hoped to see the Eagle Diner come back.

Mr. Funk said this was another great project for the Tsionas family which had a really great track record in the City, and he would support it.

Mr. Temko believed the great downtowns in the country were those where you turned a corner and saw an additional extension of the downtown. He believed this project mirrored the City's vision for downtown, and he supported the project.

Mr. Markham supported the project also. It fit the plan for Elkton Road, and he liked the fact that there was no need for a parking waiver and that the parking was in the back. He was impressed at how fast progress was being made down Elkton Road since Council announced that initiative.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

(ORDINANCE 10-08)

17. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS

- A.** Request of Elkton Plaza Associates, LLC, for the Major Subdivision of 136 Elkton Road In Order to Demolish the Existing Buildings on the Site and to Construct a Three-Story Commercial/Residential Mixed-Use Building Consisting of 10,600 sq. ft. on the First Floor with 14 Apartments on the Upper Floors **(See Items 6-A and 7-B) (Agreement/Resolution)**

1:06

(Note: The public hearing was held under Item #16.)

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT THE RESOLUTION BE APPROVED AS PRESENTED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

(RESOLUTION 10-B)

18. 7-B. REQUEST OF ELKTON PLAZA ASSOCIATES, LLC, FOR A SPECIAL USE PERMIT TO ALLOW 14 APARTMENTS IN THE PROPOSED THREE-STORY COMMERCIAL/RESIDENTIAL MIXED-USE BUILDING TO BE CONSTRUCTED AT 136 ELKTON ROAD (SEE ITEMS 6-A AND 7-A)

1:07

(Note: The public hearing was held under Item #16.)

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

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

19. 7-C. REQUEST OF EDDAN, LLC, FOR A REVISION TO THE APPROVED SUBDIVISION AGREEMENT FOR THE DEVELOPMENT KNOWN AS SUTTON PLACE, LOCATED AT 711 BARKSDALE ROAD, IN ORDER TO MODIFY THE DEED RESTRICTION THAT PROVIDED FOR A MAXIMUM OCCUPANCY IN EACH UNIT OF ONE FAMILY OR A MAXIMUM OCCUPANCY OF TWO UNRELATED OCCUPANTS. THE REQUEST IS TO ALLOW A MAXIMUM OCCUPANCY OF FOUR UNRELATED TENANTS (Amended Agreement)

1:07

MOTION BY MR. TUTTLE, SECONDED BY MR. TEMKO: THAT THE SUBDIVISION AGREEMENT BE AMENDED TO ALLOW A MAXIMUM OCCUPANCY OF FOUR UNRELATED TENANTS IN EACH UNIT.

Richard Longo, Hillcrest Associates, said the request was to allow a maximum occupancy of four unrelated tenants per unit on a temporary basis limited to a five-year period. The goal was to complete the Sutton Place project where none of the three completed units were sold. While he and developer Dan Kandra knew this was an extremely unusual request, they believed it made sense and would help pay the debt, thereby moving the project to completion.

Mr. Markham asked what the previous use of the property was which Mr. Longo said was a business use and discussed the impact to the surrounding neighborhood which was largely residential.

Mr. Akin asked for clarification on the proposal. Mr. Longo said at the end of the five-year period, any unit being rented would revert back to the original occupancy restrictions and would revert to sales from rentals. Mr. Funk viewed this as a permission that would automatically expire at the end of five years. Mr. Pomeroy asked how that would work for any existing leases that may be in place. Mr. Longo said student leases were year to year, so termination notices would be given. Mr. Athey questioned the five year time frame. Mr. Longo explained this time frame would allow the developer to build the remaining units and pay down most of the debt. Mr. Pomeroy noted the folks coming in to Aberdeen would be looking for a new housing stock within the next two years. While Mr. Longo felt the market would be coming back in two years, he said this would provide a three-year buffer. Mr. Athey struggled with how this would work. Mr. Pomeroy thought the broader issue was how the project would transition back to owner occupants. Mr. Funk suggested another option of modifying the agreement for the existing three units only with the remainder of the site left undeveloped. Mr. Longo said the debt would be paid down substantially in five years, and the project could be completed and built as it was originally planned. Otherwise, he felt it might sit, making the units harder to sell.

Mr. Pomeroy remarked that a lot of neighbors in the area had concerns about the initial project. He supported the project when it first came to Council because it was dedicated for owner occupancy and would bring a different type of housing stock which he thought would benefit the area. Looking further down Barksdale Road at communities such as Cherry Hill Manor, Williamsburg Village and Abbotsford, he believed the City had set a precedent for the way in which communities with a diversity of housing stock were managed to keep them from becoming predominantly rental. In his mind, this project as first proposed would fit along that continuum of Barksdale Road, and he felt it was important to take steps to keep it that way. He was concerned with creating a precedent by offering multi-year grandfathering for the project and did not think a transition from student rentals back to owner occupancy was a wise step for Council to take.

Mr. Athey thought the Village of Twin Lakes would be going before the Planning Commission for a similar modification. Mr. Tuttle believed they wanted to get out of the over-55 zoning restriction based on the lack of sales.

Mr. Athey thought there was a precedent issue and felt other owners would come seeking a similar type of change. Mr. Longo thought it would be hard for another developer to come back with the exact same case.

The Chair opened the discussion to the public.

Linda Banco, a Barksdale Road resident, was concerned about the impact of the change on the neighborhood. She said when the developer asked for a zoning change two years ago, she was concerned about the possibility of rental properties and was assured the project would be owner-occupied units. She could not imagine someone wanting to buy into the property when it was filled with students, and was disturbed that the courtyard would be a great place for student parties. Another concern Ms. Bankoski had was adequate parking. Mr. Lopata reported there were four spaces per unit which was more than most apartments had in the City.

Mr. Longo clarified their plan to Ms. Bankoski which was to have only student rental housing for five years, and none of the units would be sold during that time.

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

Mr. Markham understood the economic conditions but struggled with the fact that Council originally approved the project as an owner-occupied property. He saw too many areas become student rentals that never go back and offered the idea of separating the front of the project from the back.

Mr. Pomeroy said while no one wanted to see the project fail, the use issue was a problem. He believed the City needed to be consistent with public policy and felt the issue was about trying to stick to the original intent of the approved plan and the impact a revision might have to subsequent plans from other developers.

Mr. Athey asked if other options were explored other than going to student rentals. Mr. Longo suggested building the other three units so it was sistered which he felt would make the project look complete, thereby renting six units rather than the 12 units that were approved.

Mr. Temko was not sure it would be a good policy direction to allow student rentals for a specified period of time. He questioned whether a three-year period would provide the financing required to build out the project. Mr. Kandra explained the five-year period came about for reducing the debt service and the hope of an improved market. If the market did not come back and he got the debt service down, he would then be in a position to rent to families. He would have to go back and crunch the numbers to determine whether he would be able to do that in less time with fewer units.

Mr. Temko did not see this as setting a major precedent if Council was to go forward with this change. He thought there was a big difference between a project that was already approved and a new project. He felt this was an opportunity for the City to spur economic development, and it might be a way to make this particular project work.

At the suggestion of Mayor Funk, the following amendment was proposed.

AMENDMENT BY MR. TUTTLE, SECONDED BY MR. TEMKO: TO AMEND THE DEED RESTRICTION, (ITEM 1 OF THE ADDENDUM TO SUBDIVISION AGREEMENT) BY ADDING THE FOLLOWING LANGUAGE, "THIS PERMISSION SHALL AUTOMATICALLY EXPIRE ON JUNE 1, 2015."

AMENDMENT PASSED UNANIMOUSLY. VOTE: 6 TO 0.

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

Mr. Akin suggested the following change that would tighten the language. Insert a new sentence after line 3 in the new Paragraph 8 to read, “The lease of any dwelling unit which is rented to more than two persons shall provide that it shall terminate on or before 6/1/2015 beyond which time no dwelling unit may be leased thereafter to more than one family or two unrelated tenants.”

AMENDMENT BY MR. TEMKO, SECONDED BY MR. MARKHAM: TO ADOPT THE LANGUAGE PROPOSED BY THE SOLICITOR IN SUBSTITUTION OF THE PREVIOUS AMENDMENT.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Mr. Pomeroy asked for clarification that this would not set a legal precedent. Mr. Akin did not believe it set a binding precedent but noted Council members may find it difficult to deny the next applicant if the same business reasons were presented to them.

Question on the Motion as Amended was called.

MOTION FAILED: 2 TO 4.

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

20. 7-D. REQUEST OF ROHIT J. PATEL FOR A SPECIAL USE PERMIT FOR A PROPOSED RETAIL FOOD STORE AT 267 ELKTON ROAD (PARK AND SHOP SHOPPING CENTER), PREVIOUSLY OCCUPIED BY THE FINNAREN & HALEY PAINT STORE.

2:11

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

Mr. Rohit Patel requested that Council grant a Special Use Permit for a proposed retail grocery store at the Park and Shop Shopping 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: 6 to 0.

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

21. 8. ITEMS SUBMITTED FOR PUBLISHED AGENDA
A. Council Members: None

- 22. **8-B. OTHERS:** None
- 23. **9. SPECIAL DEPARTMENTAL REPORTS**
 - A. Special Reports from Manager & Staff: None
- 24. **Meeting adjourned at 9:45 p.m.**

Patricia M. Fogg, CMC
City Secretary

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