

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

January 22, 2007

Those present at 7:30 p.m.:

Presiding: Vance A. Funk III, Mayor
District 1, Paul J. Pomeroy
District 2, Jerry Clifton
District 3, James O'Neill
District 4, David J. Athey
District 5, Frank J. Osborne
District 6, A. Stuart Markham

Staff Members: City Manager Carl F. Luft
City Secretary Susan A. Lamblack
Assistant to the City Manager Carol S. Houck
City Solicitor Roger A. Akin
Planning Director Roy H. Lopata
Electric Director Rick Vitelli
Public Works Director Richard M. Lapointe
Water & Waste Water Director Roy A. Simonson
Acting Chief of Police John Potts
Acting Finance Director Wilma Garriz
Alderman Anthony J. Forcina

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1. The meeting began with the Newark police color guard presenting the flags, followed by silent meditation to remember Chief William Nefosky, who passed away on January 16th, and his great accomplishments, followed by a pledge to the flag.

At this time Ms. Lamblack read in its entirety a resolution In Memoriam to William F. Nefosky, Jr.

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THE RESOLUTION BE APPROVED AS SUBMITTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

State Representative John Kowalko offered his personal condolences to the Nefosky family and presented a Tribute to Chief Nefosky in his memory from the House of Representatives. Ms. Lamblack read a tribute to Chief Nefosky from the Office of the New Castle County Executive, Christopher Coons.

William F. Nefosky, Sr., on behalf of his family, received the resolution and tributes.

(RESOLUTION 07-C)

2. MOTION BY MR. CLIFTON, SECONDED BY MR. CLIFTON: THAT THE AGENDA BE AMENDED BY MOVING ITEMS 9-B-2 AND 9-B-3 TO BE HEARD AT THIS TIME.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

9-B-2. SETTING DEPUTY ALDERMAN'S COMPENSATION

MOTION BY MR. CLIFTON, SECONDED BY MR. OSBORNE: THAT THE DEPUTY ALDERMAN'S COMPENSATION BE SET AT \$80/HOUR.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

3. 9-B-3. SWEARING IN DEPUTY ALDERMAN

Mayor Funk swore in Malcolm S. Cobin as the Deputy Alderman. Mr. Cobin was appointed Deputy Alderman by Governor Minner on January 22, 2007.

4. 1-B. DEBUT OF CITY OF NEWARK'S NEW WEBSITE

Ms. Carol Houck, Ms. Marta Pacheco and Mr. John Herring provided a brief review and highlights of the City's new website that was launched early this month. The new website can be found at www.cityofnewark.de.us. It was noted that there was a link to Newark Channel 22, the City's government access channel, which provides Newark residents with up-to-date information. The new site was compatible with a wide number of browsers and was hosted by CivicPlus that does an extensive amount of security measures and numerous other important aspects. For the first time, the new site provided access to website statistics.

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

A. Regular Council Meeting of January 8, 2007

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

6. 3. ITEMS NOT ON PUBLISHED AGENDA:

A. Public

David Matushik, 127 Halloween Run, Newark, said he visited and liked the new website, but thought the search engine needed a little work because a lot of things did not come up, some things were misspelled, and he did not see any information regarding the next meeting for the Conservation Advisory Commission.

There were no further comments.

7. 3-B. UNIVERSITY

1. Administration

Mr. Rick Armitage said he would like to be on a future agenda to provide an update on the University's building plans on campus. He thought the update warranted a formal presentation rather than putting an update on the Town & Gown website liked they did last year. It was agreed that Mr. Armitage would make his presentation on February 12th.

Mr. Armitage said he was aware that several Councilmen received comments from residents who lived along Winslow Road about the University's plan to put a new building at the corner of Winslow Road and S. College Avenue. It will be a combined financial aid and admissions office located in the existing parking lot. He said he would make sure he had a footprint of that building for the February 12th presentation. He also advised he would be meeting with residents in

that area to give them the opportunity to see the proposal. He believed a rough gross square footage of the building was about 25,000 square feet and it would be a two-story building including a basement. Mr. Markham asked for the plans to be sent to him electronically when they become available.

8. 3-B-2. STUDENT BODY REPRESENTATIVE

There were no comments forthcoming.

9. 3-C. COUNCIL MEMBERS

Mayor Funk and each Council Member expressed their condolences to the Nefosky family and praised Chief Nefosky for his accomplishments in the Newark Police Department and in the Newark community. Mr. Funk thought the police did an incredible job with the funeral and thought the ceremony was perfect. He felt Chief Nefosky had the respect of everyone in the Police Department. He was honored that he got to spend some time with Bill a few days before he passed away. Mr. Clifton said he would truly miss Bill's sense of humor and felt it was a shame that he was not able to see the multitude of ideas he had for the Police Department come true. Mr. Tuttle said he knew Bill for a long time since he worked for the University's Police Department for 25 years before joining their faculty. Mr. Markham thanked all the police departments that supported the funeral and especially New Castle County who covered the City so the Newark police officers could attend the funeral. Mr. Athey thought the funeral was the most touching ceremony he ever attended. Mr. Osborne added that Chief Nefosky had a lot of good ideas and good leadership and would be missed. Mr. Pomeroy thanked all the police departments who assisted with the ceremony. He shared a story involving the Chief shortly after he got on Council when he met with Chief Nefosky to talk about graffiti. At that meeting the Chief provided a great deal of respect, support, advice, and guidance on the issue at hand. One of the issues related to the Casho Mill underpass, a multi-jurisdictional area, and through the Chief's support, the City was able to provide some of the upkeep of that area and monitor it for graffiti. In fact, they had been working on making a permanent mural at that location to keep it from becoming an area of graffiti blight. He thought a tribute to Chief Nefosky in that area might be appropriate. He said he would always remember the Chief as a phenomenal leader and believed the department would live up to the high ideals and standards set by Chief Nefosky.

10. Mr. Clifton congratulated the four police officers promoted on Friday—Jerry Simpson, Brian Henry, Bill Hargrove, and Scott Rieger, and wished them the best in their new positions. Mr. Tuttle added that those promotions were driven by Chief Nefosky, who proposed the reorganization of the Police Department which led to those promotions. He felt Chief Nefosky would have wanted that promotion ceremony to be held as planned.

11. Mr. Tuttle acknowledged the Boy Scouts in the audience who were pursuing their Citizenship in the Community badge, and thanked them for selecting the City of Newark to observe.

12. Mr. Markham thanked staff for moving forward as much as possible with the sidewalk project at the reservoir without the complete funding. He commented on the Curtis Paper Mill project that was also in the budget and questioned when public input would be provided. Mr. Luft said the objective was to have at least one public meeting to discuss possible uses for that site, and that would probably be done sometime in the next two months.

13. Mr. Markham said he noticed in his electric bill there was a credit/debit card option for payment. Mr. Luft said that option has been available to customers for some time.

14. Mr. Markham said he would like to see a monthly follow up on Commerce Bank and the progress they make in terms of widening the road and the right-of-

way situation. Mr. Luft said he would provide that information. Mr. Funk said he understood there were still problems with the landowner at the intersection of Main and Chapel Streets. Mr. Vitelli advised that he came up with a design to relocate the utility pole, but apparently there were still some right-of-way issues, i.e., whether the right-of-way was 50' or 45'. He noted that Burger King was okay with the easement at their end of the street. Mr. Clifton asked if the electric could be put underground to which Mr. Vitelli said because it was three circuits and one was 34,500 volts, it would be very expensive to do.

15. Mr. Athey said he was glad to hear that a group called the Water Resources Association of the Delaware River Basin awarded Newark its Government Project of the Year Award last year for the reservoir. Past winners of that award included the City of Newark receiving it in 1992 for ordinances revising water protection areas, the New York City Department of Environmental Protection, and the Philadelphia Water Department. Mr. Athey thought receiving that award spoke well for the reservoir project, and it was agreed that a press release was warranted to make the public aware of the award.

16. Mr. Funk reminded everyone that this was Restaurant Week downtown. One restaurant owner contacted him and said he had 56 more people for lunch just today. Mr. Funk thought this event would generate a lot of good publicity for the downtown area.

17. Mr. Funk noted that the Office of Probation and Parole contacted him because they did not know what to do with the kids who were on probation for graffiti. Mr. Funk said he convinced them, in addition to removing the graffiti, to clean up Main Street on Sunday mornings through June.

18. **4. ITEMS NOT FINISHED AT PREVIOUS MEETING:** None

19. **5. RECOMMENDATIONS ON CONTRACTS & BIDS:** None

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

A. Bill 07-1 - An Ordinance Amending Ch.11, Electricity, By Amending Electric Rates

Ms. Lamblack read Bill 07-1 by title only.

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-01

Mr. Luft explained that this proposal reflected Option 1 as prepared in former Finance Director George Sarris's report last October. The changes solidified the University rates, which the City has been charging since July of 2006 and standardized the Purchase Power Cost Adjustment (PPCA) clause into one section rather than listing it in each electric rate class. Mr. Luft advised that he reviewed the changes with our Washington, DC attorneys, and reviewed the definition of the PPCA with Bob Stozek at the University.

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 – Pomeroy, Osborne, Athey, Funk, Markham, Tuttle, Clifton.
Nay - 0.

(ORDINANCE NO. 07-2)

21. 6-B. BILL 07-2 - AN ORDINANCE AMENDING CH. 26, STREETS, BY INCORPORATING ADA (AMERICANS WITH DISABILITIES ACT) STANDARDS FOR SIDEWALKS IN THE CITY OF NEWARK

Ms. Lamblack read Bill 07-2 by title only.

MOTION BY MR. OSBORNE, SECONDED BY MR. TUTTLE: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-2.

Mr. Pomeroy asked what was the origin of this proposal. Mr. Lapointe advised that he attended seminars/workshops last year on ADA requirements for sidewalks and learned that the federal government required all municipalities to put together a plan to bring all sidewalks up to ADA requirements. He thought the first step for meeting that plan was addressing it through the Code.

Mr. Pomeroy pointed out that just past the Newark Country Club, on Nottingham Road, there was no continuous sidewalk and asked if there was anything in the ordinance that guided how the City handled those situations. Mr. Lapointe answered by saying the existing Code gave Council the authority to tell adjacent property owners to put in sidewalks.

Mr. Pomeroy asked how this change would affect existing homeowners. In other words, would they be required to do upgrades to their properties. Mr. Lapointe said the existing regulations required the City, at a minimum, if they did work on an adjacent right-of-way such as street reconstruction, at that time to update the existing sidewalks to be ADA accessible. He explained that anytime the City did work along adjacent sidewalks at an intersection of two roads where the handicap ramp was due to the street being there, then the City would be responsible for the installation of that handicap ramp. If it was part of a private entrance for a private driveway where work was needed to make it accessible, that would be the responsibility of the adjacent homeowner. Mr. Lapointe also noted that his department did an annual sidewalk inspection, and if they came across something that was severely not up to ADA Code, he would send a notice to the abutting homeowner advising them they were responsible for making the repair.

Mr. Markham asked if a homeowner was doing repair work to their sidewalk, would they have to implement a ramp since they were doing a repair. Mr. Lapointe said they would.

Mr. Clifton asked if during the City's inspection of sidewalks, they found a corner property that did not have the ramp, would the property owner be required to put it in at that point. Mr. Lapointe said at the intersection of two rights-of-way the City would take the responsibility for putting in the curb for the ramp and the homeowner would be responsible for putting in the ramp.

The chair opened the discussion to the public.

Bruce Diehl, 205 Meriden Drive, advised that if the Newark Country Club was developed sometime in the future, sidewalks would be required on Nottingham Road in the area referred to by Mr. Pomeroy.

Anita Puglisi, 700 Dallam Road, asked if the Fairfield Shopping Center exit onto New London Road would be affected. Mr. Lapointe said that was a situation where they don't have a handicap ramp so the adjacent landowner would be responsible for putting in accessible ramps.

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

Mr. Athey asked what the cost would be to the homeowner who lived on a corner and had to put a ramp in. Mr. Lapointe said a ramp, curbing and patching of the street would cost about \$1250 versus a block of sidewalk, which was about

\$300. The City would pick up the cost of the curb and the patchwork. Mr. Athey asked if other cities were requiring this to be done. Mr. Lapointe said he did not check with other cities but he was very familiar with DeIDOT's policy because of the Main Street enhancement project. DeIDOT was doing the adjacent street but they weren't addressing any of the handicap issues. DeIDOT's policy was they would not be responsible if it was a private entrance or driveway. Mr. Athey said sooner or later somebody was going to get upset when the cost doubled because of this, and asked if they could appeal it to the Board of Sidewalk Appeals. Mr. Lapointe stated that the requirement for a handicap ramp was not appealable because it was a federal requirement.

Mr. Markham was concerned with the number of people this would impact and the cost associated with the changes. Mr. Lapointe advised that the majority of corners now had handicap accessibility, but they did not meet the current requirements. They would be required to remove the existing ramp and replace it with concrete and the only additional cost would be the installation of the trunk gated dome.

It was suggested that this item be tabled until Mr. Lapointe could find out what the cost associated with the upgrades would be and what other communities were doing with this federal requirement. Mr. Lapointe noted that the requirements were changed in 1990 so the City was behind the ball right now, but it would not make a difference tabling the changes at this time. Mr. Athey said although it was a federal requirement to bring the sidewalks up to standards, they did not determine who should pay for it and maybe the City should split the cost with the homeowner. That was why it was important to know what kind of cost they were talking about. Mr. Tuttle felt the City needed to move forward with compliance but it might help to understand how other cities in the state have dealt with the cost issue.

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT BILL 07-2 BE TABLED.

MOTION PASSED. VOTE: 6 to 1.

Aye –Osborne, Athey, Funk, Markham, Tuttle, Clifton.
Nay - Pomeroy.

22. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS:

A. Reconsideration of Request for Extension of Grandfathering Regarding Alcohol Sales at Former Stone Balloon Site

James Baeurle, 4343 Highway One, owner of the liquor license at 115 E. Main Street, expressed his sympathy to the Nefosky family as well as to everyone in the room who had the pleasure of working with Bill Nefosky. He, too, had the pleasure of working with him during his 13 years in Newark.

Mr. Baeurle said he was seeking Council's approval to allow his license to be dormant. The state has allowed him a two-year window, and he would like Council to add a year to his ability to sell alcohol at this site during construction. Since the last meeting he was before Council, Mr. Baeurle provided a floor plan of his proposed wine tasting business. He agreed to not allow any live amplified music, including DJ's on the site, and to only allow beer and wine sales after 9 pm. He said he was open to other ideas, but ultimately he hoped everyone could come to an understanding that was written into the use.

Mr. Clifton referred back to the last meeting when this was discussed, in particular, the fear of the license hanging over Council's heads and ultimately over the heads of the future residents who paid good money to live in that location. Mr. Baeurle said he had no plans to resurrect the Stone Balloon. If Council did not allow that portion of the license to continue, he claimed it would be a financial loss. Mr. Clifton questioned if that was true, how would there be a financial loss.

Mr. Baeurle said he thought everyone wanted to create language that would prohibit anybody from resurrecting that kind of use. He claimed when he spoke about financial loss, he meant if the license was chopped up to the point that it was not a viable entity to move forward. He reiterated that he would agree to no amplified music but would like to have the ability to have a piano player. He reminded Council that he had a taproom on/off license which meant you had to be 21 to enter the building .

Mr. Tuttle said he expected Mr. Baeurle to come back to them with more details in terms of what he thought might be a livable policy agenda rather than giving one or two suggestions and asking Council to fill in the blanks.

Mr. Baeurle said in the perfect world he would have no limitations. What he suggested were limitations that got him to where he wanted to be. He thought he was getting to the core issue and that was how to move forward collectively with a neat concept. He could agree to no on-premise service on Sunday, but he did not "want to give the store away" and asked at what point would everyone on Council be comfortable with moving forward.

Mr. Tuttle asked if the no sale of beer and wine until after 9 pm meant on premise sales to which Mr. Baeurle said that was correct. He explained that off premise would be the package store.

The chair opened the discussion to the public.

Bruce Diehl, 205 Meriden Drive, understood Council's concern about not wanting another place that created a lot of noise, but he did not think that would happen here because the people who planned to live there would not allow that to happen. He did not think they would live there if there was a nightclub on the first floor that would make a lot of noise. He pointed out that the Big Kahuna in Wilmington closed their doors because the new condominiums built on the riverfront complained about the noise from that nightclub. He felt Council should grant the extension for now because Mr. Baeurle would have to come back for Council's approval when he knew exactly what he wanted to do.

Mr. Funk advised that people who were planning to move into the condos were told there would be a fine wine store on the first floor, and they would like reasonable assurance that it would be what they were promised. He thought if Council gave an extension on the existing license, that assurance was not there.

Francis Hart, 257 W. Main Street, believed restrictions had to be put on the license if it was to remain the same for a taproom. She was most concerned about the future use of the space, including the taproom license when Mr. Baeurle would sell it. She thought his interests lied more in Dewey Beach than in Newark, and she did not think he could guarantee the next owner would have a wine tasting place if he continued to have a taproom license. She believed the license should lapse, and Mr. Baeurle should reapply for a wine license when the time approached for his store to open.

Albert Porach, 220 E. Park Place, thought it was an interesting problem because Mr. Baeurle was asking Council to allow him to hold his liquor license in limbo for a period of time. When reviewing the liquor laws in Delaware, Mr. Porach found that the legislative intent for developing the liquor laws was to provide an opportunity for the citizens of Delaware to obtain alcoholic beverages relatively conveniently at a fairly reasonable price. A few years after that legislation was passed, more wording was added that said "...providing that we were going to do this in moderation." The problem with this project, in Mr. Porach's opinion, was by putting the license in limbo, it denied anyone else in the vicinity to apply for and obtain a similar license and that nullified the legislative intent in the very law they were talking about. In other words, while this license was in limbo, somebody else could not come in and apply for a license to satisfy the legislative intent of the law. Therefore, he did not think Council should allow the license to be held in limbo.

Mr. Porach said he would have liked to have seen something from the Alcohol Commissioner's office in regard to their granting the extension for Mr. Baeurle.

Patrick Hart, 257 W. Main Street, said he spoke with Jimmy Flynn, who was looking forward to moving into the Washington House, about the issue of the taproom license. Mr. Flynn told him there wasn't going to be a bar, rather an upscale wine tasting business with a boutique store and gourmet restaurant. Last time Mr. Hart spoke about this issue he was not sure what a wine bar was because it was such a generic term. He has since had the opportunity to visit some wine bars out-of-state and found them to be like a cocktail lounge that sold basically wine and gourmet type food. He said they were geared around conversation and wine, and there were no televisions, cell phones or loud music. He thought the concept was new but there were different scales because some could have a pub like atmosphere that specialized in wine. The boutique wine store he was familiar with was located in New York and they had a sophisticated audience. Mr. Hart claimed that Mr. Flynn and others who were moving into these condominiums were expecting that upscale type of business. He thought the problem was the fact that these projects tended to morph into something else. If the license was unrestricted, he could envision it becoming a discount liquor store similar to Liquor World, State Line Liquor Store, or just another bar on Main Street with \$2 beer and nachos. The tenants would be upset if that happened and they could change their attitude and sublet their apartments thereby changing the whole demographics of the building. He concluded by asking Council to restrict the license and give Mr. Baeurle permission to have an upscale wine tasting area with a boutique wine store.

Sheila Anderson, 206 Sypherd Drive, said she sent a letter to Council that spoke to restrictions and the reason why. She agreed with Mr. Hart and encouraged Council to give Mr. Baeurle parameters and restrictions.

Jean White, 103 Radcliffe Drive, thought there were some things about the intent of the applicant that had to be set straight before she could continue with her remarks. She asked Mr. Baeurle if he was planning to sell glasses of wine for patrons to drink on the premises or provide samples of wine to taste. Mr. Baeurle said he planned to do both. She asked if he was planning to sell glasses of other alcoholic beverages for patrons to drink on the premises and/or provide samples to taste. Mr. Baeurle answered yes to both. She also pointed out that he wanted to sell beer, wine and spirits in the package store area.

Ms. White commented first on the wine tasting aspect. She claimed Mr. Baeurle's November letter to the Planning Director spoke of retail wine sales and tasting, a wine tasting retail sale facility, retaining the taproom on/off license in order to have wine sales and a tasting business, and wine sales and tasting concept. She claimed according to the laws of the Delaware Alcohol Beverage Control (DABC) office, tasting was a very defined thing that was now allowed only in liquor stores and tasting was defined as "a maximum of one ounce of beer or wine and a maximum of a half-ounce of spirits or hard liquor. It must be free and the owner of the license of the package/liquor store needed an additional license to do the wine tasting which was \$100/year. She claimed the DABC did not like the term wine tasting to be used when somebody bought a glass of wine. She also claimed that a beer tasting event could only be for a new product on the market. Ms. White thought they had to differentiate the tasting versus the selling to someone consuming on premises. She thought it was also not clear that the license Mr. Baeurle held allowed him to obtain a tasting license.

Ms. White continued by saying that because of concerns with alcohol problems in Newark, the previous mayor authorized the Mayor's Alcohol Commission that came up with recommendations that were eventually approved by Council in September of 2002. One of those recommendations made taprooms no longer an allowed use in Newark. At that time the Stone Balloon was the only taproom in Newark and therefore became grandfathered. She pointed out that the Code stated that a nonconforming use that was discontinued for more than a year lost the right to that use. Therefore, the question now was should it be allowed to

be continued. She further pointed out that Council had the absolute right to deny the applicant's request for continuation of their taproom license. Also, she reminded Council that the City was allowed to pass more stringent rules than the state.

Ms. White thought Mr. Baeurle, at the November Council meeting, appeared reluctant to accept a couple of the restrictions that were discussed by saying the license would lose value. If Council refused to further grandfather his license, Mr. Baeurle's liquor license would have zero value. She was concerned that however one might trust that the concept might be followed through, if this license was transferred, there was no certainty that even the promises that might be acceptable to some would be carried through. She stressed putting all restrictions in writing.

In conclusion, Ms. White thought anything Council would allow Mr. Baeurle to do, no matter how many restrictions might be put on it, would give his license more value than the zero value it would have if Council did not allow any grandfathering. She suggested that Council either deny the request for continued grandfathering of the license altogether or put serious restrictions on it such as: specify what could be sold to patrons at the bar (only wine for example); what could be sold for the carryout part; and restrict the hours of operations (she suggested setting earlier closing hours).

Mr. Baeurle interjected that he thought everyone was saying the same thing. He explained that his license for a taproom was no longer given by the state and that was why he was trying to get a continuance of the license. He also claimed in order to meet the state's level of convenience he had to offer a certain product line. He did not believe he could just offer wine in terms of the off-premise part of the license. In terms of restricting it just to wine for on premise, he agreed that was within Council's right to do that, but because everyone would like to see this succeed, the models that have succeeded with this concept across the country offered a full variety of things because not everybody drank wine.

Ezra Temko, 58 Woodhill Court, did not have a problem with granting a one-year extension because Mr. Baeurle would have to come back to Council again and it would be in his best interest to follow through with his proposal or Council could deny the grandfathering at that time

David Matushek, 127 Halloween Run, thought it would be great to have a grocery store at this location along with the wine tasting and off-premises sales.

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

Mr. Clifton said he did not have any real problems with the wine tasting concept and with restricted hours that would stop it from becoming what it was before. His fear was if it was not successful and another game plan needed to take place, or Mr. Baeurle decided to sell it, there were 54 units that could be affected. He also thought Billy Joel and Elton John did not need an amplified piano and it would be very noisy when the place filled up. He has been to jazz clubs with non-amplified music and was well aware of how loud it was. Therefore, to agree not to have amplified music would not preclude the noise level for people living above it. If reasonable restrictions could not be agreed upon, he would not vote to extend it because they would always have the possibility of a taproom hanging over their head.

Mr. Osborne supported the wine tasting concept but he had a lot of concern about the taproom aspect of it and putting a package store on Main Street. He thought there were already enough package stores downtown, and everybody was concerned about the consumption of alcohol, particularly in areas that were heavily populated by students and young people. He was not in favor of supporting a plan that provided for a package store at that location.

Mr. Athey quoted from the November meeting when Mr. Baeurle said “he might run into a state issue if the products were restricted with respect to the off-premise of the license” and asked him to explain.

Mr. Baeurle said that meant meeting the needs and convenience of the community. He explained that given with that license was a mile exclusivity to have any other package stores. In order to meet the need and convenience of the community, if he was told he could only sell wine, he did not know whether that met the state threshold of whether a full package store met the need and convenience of the community. It was also about having it be a viable economic event. Someone living in the condo may want to purchase a six-pack of beer and two bottles of wine and go back upstairs. If Mr. Baeurle was only permitted to sell a certain product, someone wanting liquor and wine would have to go find a package store outside of that mile radius, perhaps buy the wine at his place and then go back to the condo upstairs.

Mr. Athey thought Mr. Baeurle’s example was a bit of a stretch. If there was no store there, that would mean they weren’t meeting that obligation anyway. Mr. Baeurle said if the license was extinguished someone would be applying for a license.

Mr. Athey agreed with everything Mr. Clifton said. He thought the idea of a wine bar sounded like a great idea. He did not think they were talking about wine now, rather they were talking about protecting the value of Mr. Bauerle’s license. He thought Mr. Baeurle was going to come back at this meeting with concrete plans including restricting it to wine or restricting hours, etc. The only thing he heard was Mr. Baeurle would agree to selling only beer and wine after 9 pm on premises. Mr. Baeurle interjected that he also agreed to restrict amplified music. Mr. Athey did not think that was a real issue, but Mr. Baeurle disagreed. Mr. Athey thought the whole issue was protecting the value of the taproom license. He would support anything they could do to approve the wine bar.

Mr. Baeurle claimed he could not have one without the other because the taproom license provided for the ability to serve wine, buy a bottle of wine and walk out with it. Mr. Athey said that was fine. He would agree to extending the taproom license with restrictions.

Mr. Clifton suggested the restriction of closing at 10 pm Sunday thru Thursday and 12 pm on Friday and Saturday. He thought that would stop a Stone Balloon type of environment.

Mr. Markham did not have a problem with beer and wine, but did with liquor and packaged sales of liquor and the sell of kegs. Mr. Baeurle said he would agree not to sell kegs.

Mr. Funk suggested that Mr. Bauerle’s lawyer get together with Mr. Akin and Mr. Lopata and draft an agreement for another meeting. Mr. Akin pointed out that it was the state of the law and the court decisions that even though there might be a perception that there was presently more than enough alcohol in Newark, the theory behind the state liquor laws was to provide that all the citizens would have a reasonable access to all sorts of alcohol. The Commissioner was suppose to give some geographic attention to where licenses were issued. With respect to the license that currently existed for this facility, he pointed out it was a state license and the applicant was permitted to sell whatever his state license allowed. If he was currently allowed to sell beer, wine and spirits, Council could not by resolution or ordinance come back and tell him he could only sell wine because that was directly contrary to a state issued liquor license. On the other hand, if Mr. Baeurle was in the mood to make the concessions that Council would like to see him make in terms of hours of service, types of service, products to be served, then he could be requested to return to the ABCC to see if his license could be so reduced in scope, or ask that the party that currently owned what would be the public or commercially leased premises in this building to agree to deed restrict those

premises where this particular operation would occur to only allow certain types of activity. That would bind successors and Mr. Akin thought that would have solved the problem of not only today but also five years down the road.

Mr. Funk said it had been two years since he talked to Commissioner Cordrey about this kind of thing and it was his impression Cordrey would honor restrictions that Council adopted. He reiterated that all the lawyers and the Planning Director needed to get together to come up with restrictions that met Council's objectives.

Mr. Baeurle said he was fine with that and asked if Council would adopt a further extension until they met again in 60 days.

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THIS ITEM BE TABLED AND THE PRESENT ALCOHOL LICENSE FOR THE FORMER STONE BALLOON SITE BE EXTENDED FOR 60 DAYS.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

23. 7-B. REQUEST OF COURTYARD BY MARRIOTT AT NEWARK UNIVERSITY OF DELAWARE FOR A REVISION TO THE APPROVED AGREEMENT FOR THE HOTEL KNOWN AS COURTYARD BY MARRIOTT, 400 PENCADER WAY, TO EXTEND THE HOURS OF ALCOHOLIC BEVERAGE SERVICE TO HOTEL GUESTS & TO ALLOW PROMOTIONAL MATERIALS FOR BEVERAGE SERVICE IN GUEST ROOMS (ADDENDUM TO AGREEMENT PRESENTED)

Rick Armitage, University of Delaware, explained that on behalf of the University he wrote to Council in December about the Courtyard by Marriott located on campus. In October 2003 when the subdivision was approved, Council placed restrictions on the alcohol license. In the two years the hotel has been open, it has been very successful and was an asset to the community. They were now requesting two changes to the restrictions imposed by Council to the liquor license granted by the state.

1. Hours of alcoholic beverage service – currently they may serve from noon to 10 pm as long as food was served. They would like to extend that time to midnight as a service to their guests.

2. Promotion materials – currently they can have no promotion of the sale or consumption of alcoholic beverages by internal signage or written materials. They would like to be able to advertise their beverage service by placing materials in the guest rooms.

Mr. Armitage advised that he wrote to a number of neighbors who lived close by the hotel. He got the names and addresses from the Planning Department. He received no comments from any of the people he wrote to. Mr. Markham asked if the residents on Ray Street who backed up to the property were notified, and Mr. Armitage answered yes.

Bill Sullivan, Managing Director of the hotel, said their request was based on their customer service needs. They were a teaching facility and a business and have noticed over the last two years more and more guests wanted to come back after dinner to relax and enjoy their lovely lobby with a cocktail before going to bed. Rather than having them go off premises to other locations, they would like to provide the service they believe was appropriate for the guests they served. He said his request had nothing to do with money and in fact, they would just about break even or even lose money when considering the labor involved

Mr. Clifton asked if the signage was in-room signage only. Mr. Sullivan said the signage would be within the property and not seen externally.

Mr. Tuttle questioned in the addendum to the agreement, the third “whereas” indicated the University was making the request for the changes. He asked if that should be the Blue Hen Hotel LLC rather than the University. Mr. Sullivan advised that the University was 100% owner of the LLC. Ms. Lamblack added that it was the University who requested the change.

The chair opened the discussion to the public.

Bruce Diehl, 205 Meriden Drive, said he and his wife were regulars at the hotel and they thought it had the best crab cakes. When this was originally approved, Mr. Diehl said Council was very concerned about kids going into the hotel and drinking. He claimed no kids go there. The people who go there, go to meet others. The only complaint he ever heard was the hotel did not give a discount to companies.

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

Mr. Armitage added that he met with Commissioner Cordrey last week to let him know they were making this request to the City. Mr. Cordrey said he would honor any amendments.

Mr. Clifton said he was on Council when this was approved and agreed with Mr. Diehl about the clientele at the hotel. He believed if some of the restrictions Council opposed two years ago weren’t there, that dynamic could have changed. The saw this as a very cooperative effort and how the process should work. They have a good track record, and he thought it was now reasonable to tweak the restrictions.

Mr. Osborne agreed that based on the track record of the hotel and their projection of the situation, he had no objection.

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: TO APPROVE THE ADDENDUM TO THE SUBDIVISION AGREEMENT.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

24. 8. ORDINANCES FOR FIRST READING

A. Bill 07-3 - An Ordinance Amending Ch. 22, Police Offenses, By Providing Penalties for the Harassment & Assault Against Law Enforcement Animals

Ms. Lamblack read Bill 07-3 by title only.

MOTION BY MR. OSBORNE, SECONDED BY MR. MARKHAM: THAT THIS BE THE FIRST READING OF BILL 07-3.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 2/12/07)

25. 8-B. BILL 07-4 - AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, BY REZONING FROM MOR (MANUFACTURING OFFICE RESEARCH) TO BC (GENERAL COMMERCIAL 13.0722 ACRES LOCATED WEST OF THE SUBURBAN PLAZA SHOPPING CENTER & NORTH OF THE CHRISTINA PARKWAY EXTENDED

Ms. Lamblack read Bill 07-4 by title only.

MOTION BY MR. TUTTLE, SECONDED BY MR. OSBORNE: THAT THIS BE THE FIRST READING OF BILL 07-4.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 2/26/07)

26. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:

A. COUNCIL MEMBERS:

1. Discussion re Status of Cleveland Heights (Clifton)

Mr. Clifton advised that he attended the NHA meeting earlier in the month and there was a discussion about the disposition of Cleveland Heights. The Authority sent a letter to HUD in Chicago, their governing body, to request a disposition of Cleveland Heights. He interpreted that to mean the Authority wanted HUD to make a decision on what to do with Cleveland Heights. He advised that Council went on record opposing the demolition of Cleveland Heights. For that reason, he thought it be should discussed again since half of Council was new since that occurred. Also, the Authority needed a letter from the City of Newark advising HUD that the City was aware of the fact that they have applied for a disposition. He was fearful if a letter was sent from the City Manager or City Solicitor stating that fact without Council seeing the letter itself. The last thing he would want to see happen was a letter go out that paralleled with something that was in the Authority's letter that the City may not agree with. Mr. Clifton invited Ms. Jordan from the Authority to attend this meeting to get Council's opinion on sending that letter to HUD.

Mr. Clifton advised that there were 42 units in Cleveland Heights and three years ago there were 22 units occupied. Today there were only 13 occupied units. He thought it almost seemed like this was the governmental manifestation of a Supreme Court decision that affected New Haven, Ct. where a place was allowed to go in disrepair to require it to be torn down. Before this would move forward, Mr. Clifton would like to know there were other options to house the tenants and reduce the backlog. He thought the Authority had some "pie in the sky ideas" with nothing solidified on paper.

Mr. Funk asked Mr. Akin if the letter that was previously sent to HUD acknowledged what the Authority planned to do. Mr. Akin said his letter of December 28, 2005, as directed by Council, to HUD in Chicago advised that the Mayor and Council did not approve of any such plan to demolish the facility. It also said the City received a copy of a report titled "Newark Housing Authority Application for Demolition of Cleveland Heights, Newark, DE."

Marene Jordan, Executive Director of NHA, advised that shortly before Mr. Jackson resigned from his position, he rescinded the application for demolition and in turn submitted another application for disposition. Therefore the City needed to send a letter stating it was aware of their application being submitted for disposition. Mr. Akin asked Ms. Jordan to define disposition.

Jackie Baldwin, 7 Falling Tree Court, chairman of NHA explained the difference between demolition and disposition. Demolition was the tearing down of the property. Disposition meant selling the property to a buyer who planned to do something with the property. The NHA would be disposing of the property to a new owner.

Mr. Funk understood the NHA was asking the City to acknowledge that the NHA changed its application to HUD in Chicago. Ms. Baldwin said that was correct and Mr. Funk asked if the City had a copy of the change. Ms. Baldwin continued by saying HUD did not like the language since Mr. Jackson rescinded the first application for demolition. Mr. Jackson, after attending a workshop, learned that the NHA needed disposition and not demolition. Mr. Funk asked that a copy of the new application be given to the City and then they could acknowledge receiving it.

Ms. Baldwin further added that in the original application the term was "demolition/disposition" and she guessed when Mr. Jackson rescinded the application, HUD required an acknowledgement that the NHA had notified the City since everyone was working together for the common goal of its residents.

Mr. Markham said his concern was whether the NHA would provide similar housing in size throughout the City. Ms. Baldwin assured Council they would take care of their residents and there was a plan that she could not talk about at this time. They plan to purchase a piece of property but she was not able to identify that property. They would be able to get 42 to 50 units for low-income housing and the rest would be for income revenue. She assured Council the property was in the City.

Mr. Pomeroy asked how a piece of property in the City could be sold for this kind of housing without the City knowing about it.

Mr. Lopata suggested that the NHA provide a letter to the City, along with a plan, so the City could look into it to determine numerous things, particularly whether it met the Zoning Code. Otherwise, the City would be sending the same kind of letter that said the City was aware of the plan, but did not agree with it. Ms. Baldwin will forward a copy of their recent application to the City.

There was no further discussion.

27. 9-B. COMMITTEES, BOARDS & COMMISSIONS:

1. Planning Commission Meeting of January 2, 2007

MOTION BY MR. OSBORNE, SECONDED BY MR. ATHEY: THAT THE PLANNING COMMISSION MINUTES OF JANUARY 2, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

28. 9-B-2. SETTING DEPUTY ALDERMAN'S COMPENSATION

See Item #2.

29. 9-B-3. SWEARING IN DEPUTY ALDERMAN

See Item #3.

30. 9-B-4. APPOINTMENT TO NEWARK HOUSING AUTHORITY

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT AMY ROE, 19 SUNSET ROAD, BE APPOINTED TO THE NEWARK HOUSING AUTHORITY; SAID TERM TO EXPIRE JANUARY 13, 2013.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

31. **9-C. OTHERS:** None

32. **10. SPECIAL DEPARTMENTAL REPORTS:**

A. Special Reports from Manager & Staff:

1. Recommendation – Resolution No. 05-H: Increasing the City’s Purchase of Renewable Energy

Mr. Luft explained that the adoption of Resolution 05-H authorized the purchase of electricity that was generated by Renewable Energy Technology. It also required that the Conservation Advisory Commission and the Finance Director evaluate the renewable energy purchase amount annually and issue a recommendation to City Council. At the CAC’s January meeting, they approved the recommendation of \$58,000 made by Ms. Garriz.

Mr. Funk asked if the purchase was consistent with what the State was mandating. Ms. Garriz said that was in addition to what Council approved in 2005. Mr. Tuttle asked if this actually increased the amount of green energy that was available for residents to voluntarily purchase. Ms. Garriz said it authorized what the City purchased; it was not the voluntary program.

Mr. Markham asked how we compared to other municipalities, and Mr. Funk said the City was ahead right now.

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT COUNCIL APPROVE INCREASING THE CITY’S 2007 RENEWABLE ENERGY PURCHASE TO \$58,000.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

33. **10-B. ALDERMAN’S REPORT**

MOTION BY MR. MARKHAM, SECONDED BY MR. POMEROY: THAT THE ALDERMAN’S REPORTS DATED JANUARY 17, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

34. **10-D. REQUEST FOR EXECUTIVE SESSION RE PENDING LITIGATION (Durkin v. Newark)**

MOTION BY MR. CLIFTON, SECONDED BY MR. OSBORNE: THAT COUNCIL ENTER INTO EXECUTIVE SESSION WITHOUT THE PRESS TO DISCUSS PENDING LITIGATION RE DURKIN V. CITY OF NEWARK.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Council (excluding Mr. Athey who left the meeting) entered into Executive Session at 9:51 pm and returned to the table at 10:16 pm. Mr. Funk announced there was no action necessary.

35. Meeting adjourned at 10:17 pm.

Susan A. Lamblack, MMC
City Secretary

/pmf