

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

February 26, 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, Doug Tuttle
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
Public Works Director Richard M. Lapointe
Building Director Thomas J. Sciulli
Electric Director Rick Vitelli
Parks & Recreation Director Charlie Emerson
Water & Wastewater Director Roy Simonson
Acting Chief of Police John Potts
Acting Finance Director Wilma Garriz

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

2. MOTION BY MR. CLIFTON, SECONDED BY MR. POMEROY: THAT THE AGENDA BE AMENDED BY MOVING ITEM 6-D AND 7A TO BE HEARD AFTER ITEM 2-A.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

A. Regular Council Meeting of February 12, 2007

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

4. MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT THE AGENDA BE AMENDED BY ADDING 5-A, RECOMMENDATION TO WAIVE THE BID PROCESS FOR THE PURCHASE OF ELECTRIC TRANSFORMERS AND 5-B, RECOMMENDATION FOR CURB INSTALLATION ON S. COLLEGE AVENUE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

5. **6-D. BILL 07-04 - 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**

(NOTE: The following public hearing was held for Items 6-D and 7-A.)

Thomas Mammarella, Esquire, representing Home Depot, explained that this was an application to rezone 13 acres of land located on the northwest side of Suburban Plaza from MOR zoning to BC zoning to allow for the construction of a Home Depot home improvement store containing 115,000 sq. ft. He advised that Ted Williams from Landmark Engineering and Tom Gallagher, real estate manager for Home Depot would participate in the presentation and provide information to Council that supported the application and specifically responded to issues raised at the Planning Commission hearing on January 3, 2006. Specifically, their presentation would establish the following:

1) That the project should be approved based on traditional land use considerations because the use was consistent with the Comprehensive Plan of the City which classified the land as commercial/auto oriented. The property was located in an Investment Level I as determined by the State Planning Office. The use complimented and supported the existing Suburban Plaza Shopping Center. The existing MOR zoning has been in place since 1989 and in the last 17+ years there has not been any viable use for the property.

2) They believed the project should be approved based on traffic considerations and would present information that established that the project would generate less weekday peak hour traffic, both morning and evening, than the office use approved for this site. (The site was approved for 420,800 square feet of office building.) The project would generate less weekday peak hour traffic, both morning and evening, than a freestanding superstore would, such as a Target, Wal-Mart, or Kohl's.

The Home Depot planned to make improvements to the intersection of Elkton Road and Christina Parkway that would moderately improve the level of service at that intersection even with the additional traffic attributable to the Home Depot.

3) The City and the greater Newark area would realize economic benefits. They projected the building would generate \$17,000/year in annual property taxes to the City, \$59,000/year in school taxes, and approximately \$6,000/year for County taxes. In addition, Home Depot would be a fairly large user of electricity, and they estimated the net revenue to the City for the utility cost would be between \$50,000 and \$60,000/year.

Mr. Mammarella also noted that the Planning Department made a determination applying its fiscal impact model that the total impact would be \$43,000+/year. There would also be building permit fees in excess of \$44,000. Also, the store expected to create between 150 and 175 new jobs.

4) They believed the project should be approved because Home Depot contributes to the community. Home Depot and its associates were actively involved in a variety of community programs, including helping with the devastation of Hurricane Katrina. They also have a wood purchasing policy that encouraged proper forest management and discouraged timbering in endangered regions around the world.

Mr. Mammarella noted that at the Planning Commission hearing in January 2006, several statements were made as to why they recommended against approval. It was asserted that small businesses would go out of business, Newark's small town community would be lost, and a big box retailer would create a dangerous precedent for future land development along Elkton Road. He claimed those assertions were emotional and were not supported by the facts.

Mr. Mammarella said there was no reason why Home Depot should cause any operator of a small business to go out of business. He claimed the home improvement industry was huge—annual sales were well in excess of six hundred billion dollars nationwide, and Home Depot accounted for approximately 10% of that amount. That meant there was over five hundred billion dollars in consumer spending that would be spent on companies in the home improvement industry other than Home Depot. He further stated there was plenty of room in that industry for many different types of stores that provided different things to different people—different brands, a different product mix, different hours, a different store layout, and a different shopping experience.

Mr. Mammarella pointed out that the Sears Hardware Store in College Square has been able to operate successfully for five years along with a number of other smaller businesses in the same type of business. He also pointed out there were many other retailers in the home improvement industry that operated successfully that were in close proximity to Home Depot stores in New Castle County. He did not believe the Home Depot would affect Newark's community character. It would be located next to an existing shopping center in an area that was designed for automobile oriented retail business. He claimed it would not compete with Main Street businesses.

At the Planning Commission meeting, Dr. Soles gave as a reason for recommending against approval that the addition of a Home Depot store would cause Suburban Plaza to become a regional shopping center. Mr. Mammarella said information would be presented later as to the definition of shopping centers promulgated by the International Council of Shopping Centers, the recognized authority in that area. They defined Suburban Plaza with the Home Depot addition as a community shopping center, not a regional shopping center.

Lastly, Mr. Mammarella addressed the issue about a dangerous precedent. He claimed if Home Depot was approved at this location, that did not mean Elkton Road would be lined with big box retail stores. He showed where other undeveloped parcels along Elkton Road, between Casho Mill Road and the Delaware/Maryland line were located in the City, that were zoned BC and would allow a big box retail store. Those parcels included parcel A-1 of Suburban Plaza (5.7 acres), and tax parcels 18-054.00002, 3 and 4 located on the northwest side of Elkton Road (1.8 acres). Any other lands in that area that were not already zoned BC (and there were none), Council would have the ability through rezoning to determine whether any other big box retail use could operate in this part of the City.

At this time, a power point presentation followed that included an aerial photograph of the site and perspectives of what the store would look like from Elkton Road.

Ted Williams, Landmark Engineering, continued with the presentation and began with a historic perspective of the Suburban Plaza Shopping Center. The original record plan of the annexation, rezoning, and subdivision that was approved in 1989 was shown. In 1989, the property was zoned residential and when it was annexed into the City, the front portion of the property was rezoned BC for the development of the Suburban Plaza Shopping Center. In addition, a portion of the land was dedicated to the extension of the Christina Parkway, and at that time, Council approved MOR zoning for 420,800 sq. ft. of office space.

Mr. Williams reviewed the Home Depot plan. He pointed out that they would provide construction of the new access road to go back to parcel B-1A which would remain MOR zoning. In addition, there were another 1.2 acres of land that would be dedicated to the City as OFD.

Mr. Williams pointed out that the Planning Department said the plan was consistent with the Newark Comprehensive Plan that was adopted by Council in 2003. In addition, the Planning Department recommended, with conditions that were set forth from the Subdivision Advisory Committee, that this project would not have a negative impact on adjoining properties, and rezoning and major subdivision corresponded to the commercial development pattern in the immediate vicinity.

Mr. Williams further commented that the State of Delaware, through its Department of Planning and DeIDOT, have identified throughout the state Investment Levels where they target development. Those levels were based on Investment Levels 1, 2, 3 and 4. The Home Depot would be located within Investment Level 1, which were often within municipalities or urban/urbanizing in places where density was generally higher than in surrounding areas. Areas classified as Level 1 were population centers built around a traditional central business district, which offers a wide range of opportunities for employment, shopping, and recreation. Those areas were considered to drive Delaware's economy and therefore reinvestment and redevelopment were encouraged. Mr. Williams reiterated that the proposal met the Comprehensive Plan within the Planning Section D, which supported shopping and commercial uses of all types of retail and service stores and primarily relied on the automobile to patronize the businesses.

Mr. Williams raised the issue of traffic that was discussed at the Planning Commission meeting. He said they did not prepare a traffic impact study prior to the submission of the preliminary plan because the project would generate less traffic than what was previously approved for this site. After that hearing, they decided to prepare a traffic impact study (TIS) and immediately counted traffic at three intersections (Elkton Road/Christina Parkway; Elkton Road/Casho Mill Road; and Casho Mill Road/Barksdale Road) and submitted the study to DeIDOT and they concurred with the recommendations that were found in the TIS. Those recommendations included several road improvements, particularly along Christina Parkway (eastbound – next to the shopping center). He further noted that the trip generation was based upon the Trip Generations, Seventh Edition, published by the Institute of Transportation of Engineers (ITE). He claimed the study showed that the Home Depot Store would eliminate approximately 157,000 sq. ft. of general office space that was a part of the original approved subdivision plan approved in 1989. Using the ITE Land Use Code 710, during the morning peak hours (7 am to 9 am), an office complex would generate 316 trips and in the evening peak hours (4 pm to 6 pm) it would generate 296 trips. For the same timeframe, the Home Depot would generate 113 trips in the morning hours and 282 in the evening peak hours. A freestanding discount superstore (Trader's Joes, etc.) would generate 97 trips in the morning hours and 582 in the evening hours. He explained that the trips did not take into account that ITE also identified that on sites where there were mixed uses or retail uses that were slightly separated, such as Home Depot in the Suburban Plaza Shopping Center, there was what they called "internal capture." That meant someone visiting the Acme or another store in the shopping center would sometimes make the same trip to the Home Depot Store and vice versa. In this case, ITE stated that generally you would find anywhere from a 15-20% internal capture. That meant in some cases you could reduce the number of trips to Suburban Plaza between 15 to 20% because those people were also going to make a trip to Home Depot and vice versa.

Mr. Williams said that as part of the traffic study, they looked at the level of services at all three main intersections with and without Home Depot and with and without the office complex and found in the year 2008 there would be an

acceptable Level of Service. At the intersection of Christina Parkway/Elkton Road, under existing conditions, for the AM hours there was a Level of Service D and in the PM hours it was E. If the land was developed as an office park, as currently zoned, with no improvements, the Level of Service would be D in the morning and F in the afternoon. With improvements, the Level of Service would improve in the afternoon to E. The Home Depot, with improvements, would keep the Level of Service in its existing condition (D in the morning, E in the afternoon) with a slight improvement to the V/C ratio. The improvements planned included adding a left turn on the eastbound side of Christina Parkway extended and an additional thru-lane eastbound. That would give more green time to traffic coming off of Christina Parkway from Rt. 896 and more green time to traffic on Elkton Road. Those improvements changed the V/C ratio for the Level of Service in the morning from .83 to .81 and in the afternoon from .98 to .95.

Mr. Williams continued by saying that in addition to the second left turn lane, there would be signal adjustments, a pedestrian signal, crosswalks, and an interconnection of all the walkways in that area. In addition, they would be providing, along the Christina Parkway extended, from Elkton Road back to the property line, a five foot bicycle lane, signage to make sure right turns yielded to bicycles, and an eight foot wide sidewalk that would extend from Elkton Road back to the Home Depot property line. Mr. Williams also advised that upon approval from DeIDOT, and with concurrence from the City's Parks and Recreation Department, Home Depot would be placing landscaping in the median aisle of Elkton Road, from the Christina Parkway intersection to the Suburban Plaza property line, and providing funding for the maintenance of that landscaping which would provide a better visual impact coming into Newark. In addition, he claimed landscaping helped with traffic calming in that it got people to start slowing down on a stretch of land that had the transition from 50 mph down to 40 mph and 35 mph just beyond Casho Mill Road.

Mr. Mammarella added that the traffic studies at the intersections of Elkton Road/Casho Mill Road and at Casho Mill Road/Barksdale Road were currently operating at a Level of Service C, and the traffic study demonstrated even with the addition of the Home Depot store, both intersections would continue to operate at that level. Mr. Mammarella reviewed the economic impact of the Home Depot Store. He explained how the figures were generated. They looked at the Home Depot Store at Airport Shopping Center in the City of New Castle, which was about the same size of the proposed store and felt the assessed value and electric consumption would be about the same. It was anticipated that property taxes for the City would be \$17,000/year; New Castle County taxes would be about \$6,000/year, and school taxes would be about \$59,000 for a total of \$82,000. The annual electric cost for utilities consumed at the store would be approximately \$300,000 and the profit to the City after deducting the City's direct cost for purchasing those utilities would be in the \$50,000 to \$60,000 range. In addition, they would be paying a green energy charge of about \$400, state taxes of about \$13,000, and \$7,000 for water and sewer. Thereby, the total economic benefit to the greater Newark area was \$320,400.

There were also one-time fees that included: \$1,066.88 for the application review fee for the rezoning, \$2,016.88 for the filing and review fee of the site/development plan, \$880.00 for the sediment and stormwater management fee, and \$40,000.00 for a building permit.

Mr. Mammarella reviewed the road, bicycle and pedestrian improvements that would cost about \$485,000. Also, Home Depot would be paying various consulting fees and other costs in order to move this project forward and those dollars go back indirectly into the economy.

Tom Gallagher, Real Estate Manager for Home Depot, reviewed the projected employment generated by the Home Depot. They will bring 150 to 175 new jobs with 90% of the new employment from the greater Newark area. There will be 65% full-time versus 35% part-time employees. He then discussed Home

Depot's contribution to the community. Giving back was a fundamental value of the company and a passion for associates. Their community efforts focused on four key areas: building and refurbishing playgrounds; ensuring the safety and accessibility of community gathering spaces building and refurbishing affordable and transitional housing; and preparing communities for emergencies. Home Depot also sponsored kid's workshops and how-to clinics. Mr. Gallagher reviewed the Home Depot's involvement with KaBOOM, a national non-profit organization to bring playgrounds to communities throughout the United States and Canada. Mr. Gallagher said that Home Depot also believed in its contribution to the environment. They were actively involved in pursuing environmental excellence through their stores and vendors.

At the January 2006 Planning Commission meeting, Mr. Gallagher said there was a lot of discussion about the home improvement industry. The 2002 census of Retail Trade and the pertinent sector of retail trade and its sub-categories that dealt with the home improvement industry (including floor covering stores, household appliance stores, home centers, paint and wallpaper stores hardware stores, other building material dealers, retail lumber yards, etc.) was discussed. In the United States, when you included all of those items, the industry in 2002 for retail trade was \$648 billion dollars. The Home Depot, in 2002, reported \$58.3 billion dollars in sales, a little less than 10% of the total sales for the industry. In New Castle County, Delaware, the sales in 2002 were estimated to be \$662.2 million dollars. In 2002, Home Depot was operating stores in Claymont, Christiana, New Castle and Glasgow, Delaware, and those stores combined generated revenues of \$150 million dollars in sales.

Mr. Gallagher showed the location of their Claymont, Delaware store, and within a 2.5-mile radius they listed 13 operators of facilities who were either in their same business or a portion of the business. Mr. Gallagher also showed the location of their Glasgow, Delaware store and within a 2.5-mile radius they listed six operators of facilities who were either in their same business or a portion of the business. Mr. Gallagher reiterated that the Planning Commission did not recommend this project to Council because they did not want to make Suburban Plaza Shopping Center a regional shopping center. The International Council of Shopping Centers (ICSC), a worldwide organization that specialized in the development, management, and leasing of shopping centers categorized shopping centers. There were the following categories defined by tenant mix, the size of the shopping center, and the acreage of the parcel it occupied.

Neighborhood Center – convenience shopping for day-to-day needs anchored usually by a drugstore, supermarket or other retail store. It would normally be configured as a straight-line strip center with no enclosed walkways and parking was generally in front of tenant spaces. It would generally consist of a 30,000 to 150,000 square feet building area and would occupy 3-15 acres – an example was Suburban Plaza and the Newark Shopping Center.

Community Center – similar to a neighborhood center with the addition of other soft good tenants. The anchors usually included a super drugstore, supermarket, and other small retailers. It sometimes contained value-oriented big-box category-dominant retailers selling such items as home improvements. It would generally consist of 100,000 to 350,000 square feet building area and would occupy 10-40 acres – an example was College Square Shopping Center.

Regional Shopping Center/Mall – a general merchandise facility. The anchors usually included a department store and a significant amount of fashion apparel. They were generally enclosed with inward orientation with outside perimeter parking as opposed to parking directly in front of the tenants' space. They generally consisted of 400,00 to 800,000 square feet building and would occupy 40-100 acres – an example was Concord Mall.

Super Regional Shopping Center/Mall – a general merchandise facility similar to a regional shopping center but with more anchors oriented towards

department stores and fashion apparel. They are enclosed with inward orientation of tenant spaces, multiple levels, and the outside perimeter parking or structured parking was used to support the retailers. They generally consisted of 800,000+ square feet building occupying 60-120 acres – an example was Christiana Mall.

In summary, Mr. Gallagher said Suburban Plaza was currently categorized as a neighborhood center and would become a community center with Home Depot since the addition was only 115,000 sq. ft. He hoped they responded to specific issues that were identified at the Planning Commission hearing. He felt this was an appropriate use for this parcel of land and it would make a very positive contribution to the City as well as the greater Newark area.

Mr. Pomeroy asked how they came to the conclusion that 90% of the new employment would come from the greater Newark area. Mr. Gallagher said they were referring to the trade area that the Home Depot would service. The Suburban Plaza services Pennsylvania, Maryland, and Delaware so he assumed Home Depot's area would be similar. Mr. Pomeroy asked if any research was done on where specifically the employment would come from. He wanted to understand how the statement could be made that 90% of the new jobs would come from the greater Newark area and where the greater Newark was. For example, did Mr. Gallagher think the jobs would be filled from people within the City of Newark. Mr. Gallagher's response was that 90% of the people serviced would be from the City of Newark. The management level (or 10%) would be folks perhaps from this area who were promoted from another facility and then would move to this area

Mr. Osborne asked what was the term of their lease. Mr. Mammarella said that was proprietary but it was fair to say it was a very long-term lease.

Mr. Tuttle commented on the trade area question. He said he saw testimony in the Planning Commission minutes where an amoeba like space was defined as being the geographic area people might come to shop at this site. He questioned if there was specific information about how far away the boundaries of that area might be, i.e., how far into Cecil County and how far into Pennsylvania. Mr. Gallagher said the reason they decided to do a store in Newark was because their other stores were not penetrating sales wise in this particular area of New Castle County. Until the store opened, it was difficult to know what the trade area would be.

Mr. Athey quoted from the Planning Commission minutes where Mr. Gallagher said, "The existing Home Depot stores in New Castle County do not believe, based on market analysis that they will lose any customers from their current store." He asked Mr. Gallagher if he could explain their market analysis; specifically, why build a store in Newark. Mr. Gallagher asked if he was being asked to describe how much the other stores may be impacted by the Newark store. Mr. Athey said for the record it was already said zero at the Planning Commission. Mr. Gallagher thought they indicated that the Glasgow and Christiana stores would be affected to some extent. However, the Newark store would serve a different area than what those stores served.

The chair opened the discussion to the public.

Mr. Funk advised that a five-minute limitation would be imposed on each speaker, and asked people to try not to repeat what other people have already said.

John Mayer, 7 Ash Avenue, Newark, said he was a member of the Mayer family who have lived in Newark for almost 110 years and who have been harbingers for Elkton Road for all that time. He said he could answer the question what percentage of people would come from Pennsylvania and Maryland to the Home Depot. As a current tenant in Suburban Plaza, about 40%

of his customers come from Maryland and Pennsylvania and most of those customers come from within 6.2 miles of his store. He was able to determine that from the bills he sent out each month.

Mr. Mayer explained that his family was dairy farmers at one time and once Elkton Road was widened to four lanes and the Christina Parkway built, they were put out of business. Since that time, they have tried to do different things and finally built Suburban Plaza. When he went before City Council 18 years ago seeking approval for the shopping center, he promised the people of Newark it would be the nicest shopping in Newark and he thought they fulfilled that promise. He tried hard to keep it well landscaped, the stores filled, the potholes filled and happy tenants. He said that Bellevue Holding has been excellent to work with and credited them in doing a great job.

Mr. Mayer went on by saying that during the past 18 years they have not had much interest in this property. He believed his family cared more about Elkton Road (since many family members still lived in that area) than most of the people in the room would ever care about it. He did not want to turn Elkton Road into another Kirkwood Highway. When Home Depot came to him and said they would build a store behind the shopping center where you could not see it, he thought it would be a good fit with the shopping center. It would bring economic benefits not only to his family but also to the City of Newark.

Mr. Mayer noted that he has worked in Newark for 41 years, ran a small business, and was aware of the problems that attack small businesses. When he began at Kirk's Flowers, the third oldest business in Newark, he had one employee and now he had 25 full-time employees. He worked very hard to get to this point and was well aware of what could happen to small businesses. He learned that you must be flexible, you must diversify, and you must be ready to change at any time. He believed any small successful businesses could do that. He concluded by thanking Council for their time and said the Mayer family would still be harbingers of Elkton Road and would continue to make it nice and presentable. He further noted that his family gave the property at the corner of Christina Parkway and Elkton Road to the City, which provided a nice entrance into the City. Also, behind the shopping center, they donated another five acres that could be used as parkland. The family has donated over 10 acres of land.

Mark Michael, 1012 Ridgewood Court, a representative of Dell Nursery (located about 20 minutes past Baltimore) said Dell Nursery has been a supplier to Home Depot since 1994. One of his responsibilities was to hire and staff the Home Depot garden center. Not only do they supply plants from the indoor tropicals to the annuals/perennials, trees, etc., they provided the workforce in the Home Depot garden center. In Delaware, alone, they would be providing close to 60 employees in the workforce with 15 of those being full-time employees. The majority of those employees would come from the greater Newark area, Cecil County, and Wilmington area. Many students from the local colleges were a part of the workforce. He also noted that his company was involved with the KaBOOM program.

Larry Gehrke, partner in Bellevue Company and one of the owners of Suburban Plaza Shopping Center with the Mayer family, said he had an excellent relationship for many years with the Mayer family. He was representing the tenants of the shopping center, specifically Tom Boyer from Acme Markets and Matt Harris from Happy Harry's (Walgreen). He believed the Home Depot would draw people to the shopping center and represented long-term stability for the other tenants and was a positive addition for the existing businesses.

Cathy Spence, 165 W. Park Place, asked Council to vote no to changing the rezoning to allow the Home Depot at this site. She did not feel Newark needed another big home improvement center because a few miles down the road there was a Lowes and two Home Depots were nearby. She was worried that the Comprehensive Plan was being decomposed. She thought the Plan

should represent a vision of Newark and Council should not change it on a whim. Ms. Spence believed the Home Depot would affect small businesses and anybody that said it would not was talking off the top of their head. She visited Suburban Plaza everyday so she was confident Home Depot would affect traffic. She claimed traffic sometimes backed up to the intersection of the Christina Parkway. The addition of trucks going in and out of Home Depot not only would create a traffic problem but they would create a safety problem. Ms. Spence pointed out that the new Twin Lakes development being built down the road would generate more traffic on Elkton Road. She claimed there was a problem with the intersection of Elkton Road and Otts Chapel Road with accidents occurring frequently. She reiterated that Council should vote no on this project. She referred to the traffic study and the fact that one of the intersections evaluated did not operate at an acceptable level of service. She questioned whether there was any discussion about how to resolve that problem before Council would vote on the rezoning.

Ken Longmoore, 408 Kinross Drive, Abbotsford, said his house was probably the closest one to the proposed development, and he was very happy to see a Home Depot at that location. He said Home Depot was the third largest retailer in the world and the second largest in the United States. He thought that meant they knew what they were doing, they have a good business model, they know where their customer was coming from, they know how to handle personnel, they know how to give people jobs, and they know how to bring in tax money. He believed when a zoning system did not allow flexibility or people to change things to address the changes in the community, then a city would eventually die and end up with empty stores like those on Main Street.

Anne Hatfield, 405 Kinross Drive, thought the whole problem was defined as what was good for the community, traffic and all the arguments that have nothing to do with the real issue which was jobs. She asked Council what they would say when a Chrysler worker asked them what had they done for him/her so they could continue to work in Newark. When Council had to tell them they rejected the rezoning that would have allowed 175 jobs to be in Newark for them, Ms. Hatfield said she would not want to be a Council Member when asked that question.

William King, 1097 Horseshoe Road, urged Council to vote yes because the economic benefits to the City would be dramatic over the long haul, and the Home Depot would provide a lot of jobs.

Frank Mayer, Jr., 15 Evans Drive, said he thought it was up to Council to do the right thing. He felt this was a good project and Newark needed it.

Thomas A. J. Mayer, 11 Towson Lane, Glenmoore, PA, said he no longer lived in Newark but visited family often and had an interest in the property. He said the land would be developed at some point in time and the City now had the opportunity to bring a wonderful company to Newark. As for the small business concern, Mr. Mayer said the neighborhood he lived in, in northern Chester County, had, within a 10-mile radius, three Home Depots, one Lowes, a Sears Hardware Store, a True Value, and an Ace Hardware Store. All of those businesses thrive so the small business concern was unfounded. He concluded by saying he would appreciate Council's positive vote.

Amy Keach, 105 Barksdale Professional Center, said her employer was not able to be present but her comments reflected her employer's opinion. They were against the rezoning for the Home Depot and any other retailer at that site. They believed it was not the right place for any business primarily because of traffic. Nearby new developments would soon add to the traffic, as well as new developments in Oxford, PA and Aston Pointe that would be built on Rt. 273. The roads were already clogged, especially Casho Mill Road, Apple Road, and Rt. 273. Recent closure on Hillside Road caused even more traffic problems. All of those roads would be used by people going to the Home Depot. She

understood the City was short on money due to the reservoir lawsuit, and understood the concern with Chrysler and Avon closing. However, she felt Council should take a long, hard look at this before granting the rezoning. She reminded Council that the Planning Commission voted against it, and if Council approved it they were sending the message that the Planning Commission and zoning was not needed.

Rocco Curro, 247 Elkton Road, owner of Scott True Value Hardware, said over the past three weeks he collected over 2200 signatures saying “no to Home Depot.” He distributed copies of the signatures to Council. He also asked for more than five minutes since the Home Depot representatives spoke at least 55 minutes. He referred to a pamphlet by the State of Delaware, Department of Labor, that provided job projections. The projections showed that retail was 16th out of 19th for wages in Delaware and 13th out of 16th in overall production when it came to growth. He referred to Home Depot bringing in 150 jobs and that 65% would be full-time employees. Mr. Curro said there were five job codes given for retail sector jobs (cashiers, file clerks, managers, retail stock persons or sale persons) and only one of those five codes were average or above average wages. The other four were low to below average wages. He said no offense to anyone who may lose a job at Chrysler, but he did not think that they would be pleased to get a job at Home Depot for \$12 to \$15/hour. They most likely would have a second job at the Lowes on Rt. 273 at night to help accommodate their lost salary at Chrysler, Avon or possibly Stine-Haskell.

Mr. Curro said the 65% full-time jobs represented about 98 jobs and only seven jobs would be an average wage. He claimed there were three R’s in retail—recycle, reflect, and reshuffle. He claimed retail had a job growth of about 1% and led the state in job openings every year according to the State of Delaware, and that was because of job turnover, which was not job growth. He agreed that not every small business might go out of business, but they would have to cut someone and that person would go to Home Depot. He thought Mr. Gallagher was comparing apples and oranges when he compared a home improvement center and a hardware store. Mr. Curro did not think that Home Depot listened to what the Planning Commission recommended. The Commission rejected the Home Depot and suggested many revisions, and Mr. Curro claimed that Home Depot had no revisions. He also claimed the Level of Service (LOS) study that was performed by McCormick Taylor showed the level of service at the Christina Parkway/Elkton Road intersection had no improvement with the improvement Option #3 that they chose for both the office and the Home Depot. He also pointed out that the LOS only examined the peak hour during weekdays. The LOS for weekdays in the morning was rated a D for both the Home Depot and the office at .81 each, and both rated an E in the peak hour in the evening with .95 for the Home Depot and .97 for the office.

Mr. Curro claimed eight of the top 40 jobs in the state of Delaware were MOR rated, none of which were retail. He thought that meant retail took away from other retail that recycled and reshuffled jobs. Mr. Curro commented further on the LOS study. He also pointed out that three sites were used for their trip generation on Saturdays for home improvement centers. He claimed there were hundreds of studies on office complexes. DelDOT gave the trip generation for the Home Depot, which was then presented to the Planning Department in detail. He said it showed that the annual average daily traffic totals for weekdays for a home improvement store of 115,000 ft., according to the only accepted formula that was used by DelDOT, was 3500 trips a day and Saturday was 5252 trips a day. Office complexes for 420,000 sq. ft. (four times the size of Home Depot) would create more jobs at far higher wages and would only generate 4034 daily trips on weekdays and 998 daily trips on Saturdays.

Mr. Curro then commented on the fiscal impact and the fact that the actual net gain annually, as provided by the Planning Department, was \$43,264 for electrical services and other services rendered. He pointed out that the property tax would be generated by anything that was built at this site so he did not think

you property taxes could be used in the equation versus the office complex. He implored Council to realize that the Planning Commission voted this project down 6 to 0 and Council should take their comments to heart. Mr. Curro further stated that there were University of Illinois and Wharton School studies and others that detailed that more money spent with the local firms stayed here as opposed to spending that money with a franchise chain. He said he would be happy to provide additional information to Council that he obtained from the Department of Labor from the State of Delaware.

Chris Canning, 911 W. Church Road, said he was speaking to support True Value. He thought Council should look at some other issues besides traffic, specifically, how do you quantify what was a community and what made Newark special. In his opinion, the places that made Newark special were places like the hardware store, Herman's, and so forth. They were small, privately owned businesses that added diversity to the community. He also thought Council needed to look ahead fifty years from now and look at some of the vacant spaces that were in the City. He believed there were viable alternatives including community supported agriculture schools similar to the Summer Tank Farm in Philadelphia, which in 2006 grossed \$62,000 on a half-acre lot. He saw no green alternatives to the Home Depot plan.

Carol Gray, 112 Tanglewood Lane, referred to the intersection of Christina Parkway/Elkton Road, which she compared to a similar intersection near the Home Depot in Glasgow (Rt. 896/40). She did not believe the statistics given that 30% of the people visiting the Acme would visit Home Depot because when she goes to Home Depot that was the only store she visited. She pointed out that the Glasgow/Bear area had a huge population and was growing. In Newark, there already was a Lowes and a Sears and no more home improvements were needed. She thought a community-oriented shopping center was needed and a department store or even a nice hotel was needed. She also opposed the Home Depot from the standpoint of aesthetics. She did not think Chrysler should have been located in the center of a small hometown.

Jean White, 103 Radcliffe Drive, urged Council to turn down the request for the rezoning and turn down the major subdivision proposal because of traffic and to preserve MOR zoning. She felt if there were no home improvement type retail within a 25-mile radius, it could be argued that the Newark area really needed that type of operation. However, there were home improvement stores, construction firms, hardware, and garden centers that served this area. Home Depot, itself, had two stores nearby so there was no need for this store. She felt Home Depot would significantly increase the Elkton Road traffic. Also, traffic would increase if the property were developed under MOR. However, she submitted that the patterns of traffic would be quite different if the site was developed under MOR. Customers would not be going in and out all day long seven days a week. The MOR traffic generated would be people going to work in the morning and leaving at night and there was the possibility of staggered shifts with MOR zoning. Therefore, she thought the traffic patterns from MOR would be much more acceptable.

Ms. White thought a Home Depot would create a big draw not only from Newark but from across the state line because Delaware did not have a sales tax. She also believed that real estate agents think no land was good unless it was developed immediately and owners of land were always trying to get their land developed and produce higher income and investments immediately. Ms. White thought they needed to preserve lands that would provide for MOR zoning in the distant future. MOR was flexible zoning and she thought it should remain MOR. She concluded with reminding Council that the Planning Commission turned down the proposal unanimously and asked Council to honor their vote. Also, she said Council had the right to turn this down without any legal repercussions.

Neal Gielotti, 101 Elbow Lane, Elkton, MD, said he grew up in Newark and worked for Scott True Value in Elkton. He traveled Elkton Road everyday and thought Home Depot would cause a lot of traffic problems. He did not see how reconstructing the intersection would improve anything. He believed the petitions submitted by Mr. Curro spoke for everyone.

Ron Walker, 45 Kells Avenue, said he respected all the comments made this evening and had given a lot of thought to this proposal. The property has been there for a long time, owned by the same family for a long time. It had opportunities to be developed into what directly complied with the current zoning. But in his opinion the important thing was jobs. He has a 49-year friend working at Chrysler Corp. who was very nervous about losing his job. Mr. Walker agreed that the jobs being created by Home Depot would not be the level of job that his friend has, but his friend just wanted a job. He thought this was an opportunity to create jobs instead of watching them go away. The Home Depot would be located behind the shopping center and if he had to put one somewhere in town, that was the ideal place to put it. Because it would be located on the Elkton side of town, it would draw traffic from Maryland and Pennsylvania and should be successful. In the long run, he believed it would be advantageous to the City and urged Council to vote in favor of it.

Bruce Diehl, 205 Meriden Drive, said he was against the Home Depot for several reasons. Newark already had Sears, Lowes, and 84 Lumber. He thought that people who go to Home Depot, go there and buy their supplies and leave and don't go shopping at other stores in the shopping center. He claimed most of the people who go to Home Depot were in the construction business. He thought the Home Depot presentation was an attempt to stonewall everyone by saying they were going to improve Elkton Road. He felt Elkton Road should be improved without a Home Depot. He thought the Christina Parkway intersection was always dangerous and the fact that Home Depot wanted to change that intersection should not make Council support it. He did not think Home Depot's willingness to put landscaping on Elkton Road would slow down traffic. He also did not think people laid off from Chrysler would be working at Home Depot and claimed that most of their workers when they left Chrysler head for I-95. He concluded with a comment about KaBOOM which Home Depot was involved with and said Newark did not need more playgrounds. He suggested if the Home Depot was approved, that a three-way stop sign would be needed where the shopping center exited onto the Christina Parkway extension.

Jim Darden, 1 Nethy Drive, Abbotsford, said he strongly supported the Home Depot for many reasons. It would create a lot of jobs and a lot of money for the City. He said the landowner had to do something with the land and it has been proven that the alternative was a worse option for the City. He strongly urged Council to vote for the project.

Cooper Fenimore, 302 Bent Lane, said he opposed the Home Depot and agreed with the comments that people have already made.

Kass Sheedy, 356 S. College Avenue, said that a number of people supported Home Depot because of jobs and she urged Council to vote against it because of jobs. She was not against development in Newark or at that location. She thought Newark was at a transition point in the local economy with the closing of Chrysler, Avon, and other employers. She felt everyone had to come together as a City and look at real economic development. She thought Newark had a wonderful location—between Philadelphia and Baltimore, right off I-95, and easy access to the southern part of the state. She felt Newark was in a very intellectually rich part of the mid-Atlantic region because of the University and other major companies. She claimed there was a movement in the state to give support to developing businesses that resulted from the large employers like duPont and Gore and the University. She felt the City needed to keep the MOR zoning and encourage development of a flexible economy based on where money would be tomorrow, not where money was today. She did not want

Newark to become a retail hub because it had too much to offer to allow it to become that hub. She sympathized with the workers at Chrysler and felt we needed to look at getting them good jobs, not minimal wage or \$12.00/hour jobs.

Caroline Ailanthus, 356 S. College Avenue, said she wanted to talk about jobs and her mother who spoke before her did that very well; she wanted to support Mr. Curro, and she thought he did a good job of that himself and was obviously supported in the room. Therefore, that left her to talk about creativity. She said after speaking at the Planning Commission she realized zoning was a tool by which you create a community. She thought you had to think about what kind of community everyone wanted to create. The Home Depot representatives gave their reasons why the project was not the “disaster” that some people thought it might be. She thought the City could do better than a Home Depot by keeping the MOR zoning for reasons already stated. She has personally worked minimum wage jobs and has never made \$12.00/hour. She did not think she had anything better to look forward to economically by having Home Depot in Newark.

Roland Roth, 274 Beverly Road, said he lived in Newark for 35 years. It occurred to him if all the companies mentioned go out of business, who would shop at Home Depot. He thought with the current concern in planning about having villages where people could walk from where they lived to some place it would have been nice to have senior housing at this location and then people could have easily gotten to a shopping center. He commented that in ecological economics and conservation, which he was involved in for a number of years, one of the things they have begun to talk about was internal and external costs which was not to businesses. Internal costs were what Home Depot would incur and the external costs were what everybody in the community would incur while Home Depot made their profits. Mr. Roth said he always tried to shop, whenever possible, and even if he had to pay more for something, on Main Street or anywhere else where it was local and small because he felt you could not maintain the community of small businesses if you did not patronize them.

Elana Jackson, 150 Redden Lane, said she worked for Kirk's Flowers and has worked in Suburban Plaza for about 13 years. As for the traffic in Suburban Plaza, she could remember two days when there was a problem getting in and out of the shopping center and that was Christmas Eve of 2003 and 2004. She has been at the shopping center all hours of the day. She claimed there was nobody there at 7 am in the morning and traffic flowed smoothly throughout the day. She claimed traffic never backed up past the exit of the shopping center where you exited at Wilmington Trust. As for competition, she pointed out that everybody had competition in the United States of America. Ms. Jackson said she just went through a similar situation in Middletown with zoning. She was leaving Kirk's after 22 years, opening her own business in Middletown, and thankfully the Mayor and Council in Middletown did not say there was already a flower shop down the street and tell her another one wasn't needed. If they had denied her request, her dream would have been gone. In Middletown, they have a Lowes with a Home Depot being built across the street and they have Burger King on one side of the street with McDonald's on the other. She thought if Home Depot was not built at this site, it would go somewhere else and the City wouldn't get the revenue or the jobs. Ms. Jackson said several people have asked her what she thought about Home Depot coming to the shopping center. One man told her it would save him from going to People's Plaza but he was concerned about Home Depot hurting Rocco's business. She thought if people wanted to keep Rocco in business, then they should shop at his store. She suggested that Rocco ask his customers to continue to support him and do whatever he had to do to keep his customers. She added that Kirk's competed with the grocery store, Happy Harry's and Fulton Paper as well as 1-800-Flowers. Competition was everywhere and you can't get away from it.

Ed Miller, 203 Hullihen Drive, said that 18 years ago he was the Councilman for District 3 when Council approved Suburban Plaza. He heard a

lot of the same arguments he was hearing tonight. He said he was a customer of the hardware store two and three times a week and would continue going there, but he was also in favor of the Home Depot. When he had to purchase kitchen cabinets or something large, he can't get it locally so he had to go to a Home Depot. He would rather go down the road and keep it in Newark rather than making a 15-mile roundtrip. He thought it was important to bring jobs and income into the City, and it was important for the Home Depot to be controlled by the City. He said the Mayer family has done an excellent job with Suburban Plaza and kept their promise to make it the best shopping center in the City. Most of the people who complained about the shopping center getting approved shop there and compliment how well it was done. He asked Council to look at the project as growth for the City. If there was a need for office space, he thought the Mayers would have tried to put that in there, but people would probably complain about traffic with that use. He felt there was no better place to put the Home Depot and agreed it would bring people from Maryland and Pennsylvania, but it would not bring traffic through downtown.

Steve Purvis, 9 E. Mill Station Drive, said as a stockholder of Home Depot, he thought they were making a bad mistake and over saturating an area. He claimed they were getting hammered by loss of same-store sales. It was admitted they would lose customers from existing stores. He thought it was a waste of time adding Home Depot because there were enough home improvement stores in the area.

Nancy Willing, 5 Francis Circle, did not think having a Home Depot along the creek was a good idea because their garden center would be leeching fertilizer, salt, etc. into the creek. She assumed Home Depot was targeting the growth in Maryland. She lives in Barksdale Estates and said it was almost impossible to get out of her neighborhood. She assumed the people who would be living in Aston Point in Maryland would be driving down Casho Mill Road to go to the Home Depot and that would cause a complete gridlock especially with the one lane underpass and right-turn only onto Casho Mill Road. She did not think Council should be changing the zoning and was convinced the value of her home would decrease as a result of additional traffic.

Charmine Curro, 25 Brentwood Lane, Newark, said her father started Scott Hardware, and they compete very well and serve their customers well. She saw no reason to change the zoning. She loved Newark for its small town atmosphere and hoped Council would not approve the change.

Rick Thomas, 17A Arizona Drive, Newark, said after listening to all the comments that everyone was pretty well informed. He brought up the Charter School which has a bad access and egress and questioned whether it was wise to have more tractor trailers just a couple hundred yards away from their entrance.

Patty Delisi, 8 E. Shetland Court, Newark, thought when Home Depot reps made their presentation they were reaching for things to sell on the whole project. Also, when they were asked questions they weren't sure what some of the question were or they weren't familiar with what was being asked. On the other side, she thought the owner of the hardware store was prepared with a lot of information and figures to back up his comments. With regard to traffic, she claimed there were problems on Casho Mill Road and the Christina Parkway at different times of the day. She asked Council to vote no.

John Mayer, 1024 Elkton Road, Newark, said his father, Arthur Mayer, once told him if your are in one place long enough, people would follow because they want to be in that place. He said he has been in and out of the construction business ever since he started working for his cousin John at Kirk's Flowers. He said If he needed a hardware he would go to Rocco's store because he could get in and out quickly. There were a lot of talented people working there who have been there for a long time. On the other hand, Home Depot would be a benefit to

him. He drove hundreds of miles every week between construction sites and everywhere he goes there was traffic. He was confident the Mayer family would do whatever was necessary to have this project approved.

Jeff Smith, 9 West Ridge Court, Newark, thought the City could do better than a Home Depot. He pointed out that there were no other department stores besides K-Mart in the City and suggested holding out for something better such as a Target.

Frank Mayer, 1005 Elkton Road, Newark, reminded Council this area was zoned MOR for nearly 20 years and nothing better has come along. This was the first project that would supply real jobs to the community and wanted to be a part of the existing shopping center. He pointed out there were technology parks in the City with vacancies. This project represented real money for the City and real jobs and there was no reason to turn it down.

Leslie Hague, 14 Winsome Lane, Newark, said she was against Home Depot at this site. Her husband and son work for Chrysler and she said it appalled her that people were saying the Chrysler workers would be out of a job if the Home Depot didn't get built. She did not think Home Depot with their 150 jobs would supply jobs to the 2100 workers that would be losing their jobs at Chrysler, or those who lost jobs at Gore and Avon. Home Depot would never be able to employ 4000 people at the level they were used to living and certainly not at minimum wage. She thought the condition of Elkton Road was terrible and nobody could upkeep that road with the traffic on it now. She would like to see Newark remain a small town community.

Mr. Williams commented on Ms. Spence's comment on whether this was in compliance with the City's Comprehensive Plan. He noted that according to the Planning Department this was in compliance with that Plan. Regarding her comment about traffic generated from Twin Lakes, he said that an age-restricted community as a whole did not generate very much traffic. He agreed with Rocco Curro that they did not look at Saturday peak hours or any other times during the day. The normal procedure for analyzing traffic was to look at the peak hours as required by DeIDOT. DeIDOT reviewed the study and approved it.

Mr. Williams referred to Ms. Gray's comment that Home Depot reps made a statement about 30% internal capture. He said the internal capture was 15 to 20% and he did not indicate that would happen here. They did not use that number in their calculations for their TIS. They used the actual number generated by another Home Depot store. They said there would be an internal capture.

Mr. Williams commented on Rick Thomas' concern about additional trucks on Elkton Road. Home Depot projected 10-15 trucks per day on a daily basis. He understood the concerns as it related to the Charter School, but right now Elkton Road was also serving the Interchange Industrial Park and provided traffic for local trucks that used Christina Parkway for general deliveries. Regarding Elkton Road upgrades, Mr. Williams noted that the Secretary of Transportation presented to Council in January DeIDOT's first study phase for updating Elkton Road. No money was committed for that even though it was in DeIDOT and WILMAPCO's long-range plans to upgrade Elkton Road.

Mr. Williams commented that the stormwater facilities were for both quantity and quality and would meet or exceed state requirements. They were using B&P practices for doing stormwater quality control, a combination of bio-swales structure practices that remove 90% of the pollutants, which exceeded state requirements at 80% removal rate. They were also providing a stormwater facility in the back of the property to control the quantity control. In addition, they would use the parking lot to attempt to recharge a little bit of water. Mr. Williams said they would discuss with DeIDOT the issue about stop signs at the exit from Suburban Plaza to the Christina Parkway. He thought it would be at least a two-

way stop. He said they would continue working with DeIDOT about landscaping, which studies have shown helped calm traffic.

Mr. Mammarella referred to comments about office jobs generating higher wages, and offices on the site would generate the same tax revenues, and perhaps the City should hold out for something better. His response to all those comments was the fact that the property has been zoned for commercial use since 1989 and this was the first real project to come before Council. He said it was not a matter of comparing this with something else because something else was speculative and not before Council, and given the history of non-use of the property should not be assumed that was readily available. Mr. Mammarella continued by saying an indirect effect of the Home Depot coming into Newark was the substantial improvements to be made to the intersection and to the Christina Parkway extended. Those improvements may spark additional development within the remaining MOR zoned land on the Mayer property.

With respect to some of the comments regarding competition, Mr. Mammarella provided the following. The True Value website indicated there were over 6000 True Value stores nationwide, with more than two billion dollars in annual sales. In an article on January 16, 2007, the Associated Press talked about the Ace Hardware chain and quoted Ray Griffith, Chief Executive Officer of the store who stated that the 4600 store chain was able to stake out a “modest but healthy share of the huge hardware market.” Their sales totaled 3.4 billion dollars annually. He thought the analysis in that article was interesting in that it emphasized how those type of stores could compete favorably with other players in the market. He quoted analyst Howard Davidowitz who said, “It is nonetheless doing tremendous business by emphasizing convenience and by continuing to upgrade the aesthetics of the stores.” Ray Griffith also said, “We think we have a great upside in simply filling in the marketplace around the big boxes and offering the consumer a different kind of value and a different kind of helpfulness that the big boxes simply can’t or don’t want to do.” That was Ace Hardware talking about the points that Home Depot reps made earlier that they did not find Home Depot would drive other businesses out of businesses. Rather they would compliment the businesses in the City of Newark.

Mr. Gallagher commented on the comments made about the type of jobs at the Home Depot store. The average wage in the store would be about \$12/hour and that did not include the health benefit package (health, dental and optical) that would accompany those wages which was a far cry from a minimum wage job. He also pointed out that there were a lot of people who started with Home Depot literally picking up carts who have gone on to become department heads, assistant managers, store managers, and executives of the company. He thought it was important to say that retail could be a long-term job opportunity and not something on a short-term basis. He reiterated the fact that the property was rezoned in 1989 and in 18 years there have been no uses that deemed the site acceptable to build whatever was permitted in the present zoning. Mr. Gallagher said they did not directly talk about competition. They don’t look at paint stores as somebody who was in a direct competitive environment with a Home Depot store. The point he was trying to make was it was a niche type of business and the right product mix, the right type of help, and when you were competitively priced, it allowed you to stay in business. For example, Home Depot had certain paint products they sold that were exclusive in Home Depot. Other stores did the same thing—they have exclusive lines of merchandise they sold to their customers. If you have a loyalty for a particular brand or store you shop in or for the person who always helped you, that loyalty would continue. He did not think it mattered what he charged for a piece of merchandise in his store if that loyalty and price competitiveness was in another type of retail store selling similar merchandise. He also claimed Home Depot would not have any impact on the diversity of business in the Newark area. They planned to join and be an active part of the community. He did not feel it would affect Main Street and added that of the 213 merchants that make up the Downtown Newark

Partnership, there were only two retailers that were even remotely associated with the type of goods and service sold at Home Depot.

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

MOTION BY MR. CLIFTON, SECONDED BY MR. OSBORNE: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-04.

Mr. Clifton asked Mr. Akin to comment on the speculative business impact and whether a public body could use that as a basis for approval or denial.

Mr. Akin advised that he provided a memorandum to the Mayor and Council before the meeting that addressed some of the issues he thought would come up. He also addressed the subject of economic impact—impact on other businesses that might compete with the Home Depot in the future if the rezoning was approved. He advised that Council was sitting in a quasi-judicial capacity rather than a legislative capacity, which meant they were not considering legislation; rather they were considering the merits of a special proposal. Therefore, when they deliberated and each Council Member stated his reasons for their vote, all members were constrained by the law and by Delaware cases to decide, based on substantial evidence on the record. In his research on the question of whether a land use decision, such as this one, could be controlled solely by the possible economic impact on other existing businesses, he found very little case law in which courts have approved of a land use decision based solely on proof of economic impact or no economic impact. The City of Newark was involved in litigation about 12 years ago involving the Sleep Inn Hotel on S. College Avenue. In that case Council considered, among other things, the inventory of available hotel rooms in the area without the Sleep Inn present as well as vacancy rates. The City argued the case before Vice Chancellor Chandler who said “the Council was enabled or entitled under the code provision to determine what was detrimental to the public welfare to consider the impact of this potential business on surrounding businesses than on the ability of traffic in the vicinity. I think it is encompassed within the broad definition of the public welfare to consider those things.” The judge seemed to say that one of the factors that Council could consider, in his opinion, was the potential economic impact on other businesses that existed in the area. However, in another case in the same year, Judge Kerry of the Superior Court in a Dover case said “unless the ordinance that the Dover Planning Commission specifically permitted it, then the Dover Planning Commission was not permitted to deny a site plan on the speculative evidence that the building of a number of apartment buildings might negatively affect the business of an existing commercial establishment.” He strongly recommended if Council was determined to consider the economic impact issue, they should couple their remarks with other valid land use issues as well as economic impact. Mr. Akin pointed out that there was testimony on the economic impact issue on both sides of the issue and it was up to Council to decide where the more compelling evidence lied on the issue of impact on existing businesses.

Mr. Clifton said he talked to the petitioners, people in the neighborhoods, and Rocco Curro and understood the issues that people were concerned about, especially the concerns of Mr. Curro who has been a great member of the community. He understood people asking Council to hold out for something better, but pointed out that this was not an either/or issue. They needed to make their decision based on the plan that was before them. He thought it would be illegal to deny the request because something better could be down the pike. They needed to make their decision on the merits of the arguments presented. He said he looked at the zoning, and especially considered the auto-oriented use that the Comp Plan put on this property and what else could be on this site. He also thought everyone did a tremendous job articulating the issues on both sides of the issue.

Mr. Clifton said he did not live in Newark when the Suburban Plaza was approved but was aware that there were a lot of objections. Now that that shopping center was an integral part of the community and the successful Acme and Pathmark was still in business, the 7-11 stores were still in business as well as others. Both grocery stores have fine meat markets yet Herman's Meat Market was still in business on Cleveland Avenue because they have their niche. Mr. Clifton said he looked hard at the concerns about traffic. He referred to the 1998 Elkton/Newark Intermodal Transportation Plan provided by WILMAPCO. Since that report, there has been a Charter School and Christina Mill Apartments approved on Elkton Road. The average daily count in 1998 was 33,000 on Kirkwood Highway and 20,000 on Elkton Road (which has less traffic lights and restrictions). He acknowledged there were times during the day where traffic was backed up on Elkton Road. If he were to look at the "either/or" situation that scared him when it came to an office complex. There was concern about traffic at certain peak hours of the day, which were generally the hours when people were going to work or going home from work. He saw the Home Depot as having less of an impact than an office complex. He also said he understood the need for MOR zoned properties, but if this property was viable to somebody, it would have been used for that zoning classification and they would not be having this conversation.

Mr. Clifton also pointed out that the 1998 Intermodal Transportation Plan said in 1995 to 2020 employment in the WILMAPCO area would increase by 14,000 workers and the greatest employment growth would be the City of Newark, which would gain 8000 workers. That has not happened since that report was published. He reiterated that he understood the emotions and positions, but in his mind he saw no credible or legal reason why Council should deny the rezoning. Therefore, he would support it.

Mr. Tuttle explained that zoning regulations existed to encourage the most appropriate use of land and promote the general welfare of the community. He was gratified to see that a portion of the community showed up for the meeting. Also, he heard from many others who were not able to attend. He further explained that Council was being asked to decide whether they should permit this property to be developed commercially, in a way that would generate more automotive traffic and more truck traffic that existed today. As the zoning currently stands as MOR, an office park could be built, the Interchange Industrial Park could be replicated on this site, and if there was a demand for that sort of development, he was sure the property owners would pursue that. But no such requests have come forward since the MOR zoning was originally applied. No matter how it got developed, more traffic would be generated than what was there today. He explained that Council was being asked to adjust the zoning only on the portion of the site that would be leased to the Home Depot. The balance of the site would remain zoned MOR, which provided the future opportunity for the development of an office/research or light industrial component in that area. Mr. Tuttle said he looked at the arguments that were typically raised when someone wanted to locate a Home Depot in a community. He found the arguments fell into three typical categories. First, the issue of adjacency to residential properties. That was clearly not the issue here. The neighbors who were closest to it in Abbotsford generally gave a positive response. Second, that large retail stores should be built on the periphery of the town and that was exactly what was being requested here. Suburban Plaza was located close to his neighborhood and he shared the concerns about traffic volumes on Elkton Road and about DelDOT's ever lengthening time schedule for improvements. In terms of the overall layout of the City, there was no question that this site was clearly on the periphery of the City and had excellent access to I-95 so the supply of materials to the site would seem to be better. The third typical objection was that the Home Depot was really more of a warehouse than a retail store. He pointed out that warehousing was one of the activities permitted within the BC zoning. In many jurisdictions the requirement would be that the Home Depot be located in what Newark called the MOR zone. Rather than the general commercial zone, it would be moved a step further away pretty

much exactly where this site fell in the City of Newark. The general retail would be more where you find the existing Acme store. He thought that contradiction when you compared the City's land use plan to some other jurisdictions, showed there was not a huge gap between the BC zone and the MOR zone. As mentioned, the City's Comp Plan called for commercial development (auto-related) in that whole portion of the City, and both BC and MOR zoning fit within that category. In fact, in the southern portion of the Interchange Industrial Park a Tecot Electric business was located there. The scale was very different from Home Depot, but the type of business was very much like Home Depot although they were considered a warehouse with sales that were incidental to the rest of their business. It was a very small setting.

Mr. Tuttle continued by saying in BC zoning warehousing, warehouse sales with related storage, wholesale sales, as well as retail and specialty stores were also permitted. Therefore, he did not see the Home Depot as being anywhere near the jump you would be making or what was made when this land was originally brought into the City. It was previously zoned residential and the change from residential to MOR or to BC was a significant change, but the change between BC and MOR was not a real major differentiation. Because the request for the rezoning was consistent with the Comp Plan and the character of the existing development at Suburban Plaza, he would vote in favor of the rezoning.

Mr. Markham said he found it interesting the City was pretty well split 50/50 on their feelings on this project. He thought the arguments he heard could be used either direction. He appreciated the Mayer's diligence with the property along Elkton Road, but thought the past Council and the Planning Commission got it right to leave it at MOR. He thought the traffic issues went further than Elkton Road and there were hidden costs to the City that weren't being addressed. He thought when you put a shopping center at the corner of Delaware/Maryland/Pennsylvania, it was regional because it would attract from three states. He commented on DelDOT's delayed plans for Elkton Road and the large amount of money they have to come up with that made it difficult to know when that would ever happen. He was concerned about jobs and said he didn't know how that would play out because there would be giving and taking from both areas and that wasn't a land use issue. He thought there wasn't a community commitment from Home Depot and he would not support the zoning change.

Mr. Athey pointed out that there would be about 11 acres retained as MOR surrounded by the Home Depot, the Acme, and residential, which made him think it would be just a matter of time for somebody to come back and ask for the remaining MOR to be rezoned. He asked if the rezoning was approved and Home Depot decided tomorrow they did not want to build their store, did the rezoning go with the land and not the plan. Mr. Lopata answered if the rezoning and subdivision was approved, and Home Depot changed their mind, and Lowes came in tomorrow, they could build there. The subdivision plan and agreement would have to be revised to change the name, but it would be an approved use. Mr. Athey said he was not convinced the costs, such as police calls and things along those lines were really accounted for very well. He would have liked to have seen an estimate of the service costs from other stores. He appreciated getting the fiscal model, but thought they could have gotten a better handle on exactly what some of those other costs would be.

Mr. Luft interjected that Cpt. Potts made a few phone calls today and got a few statistics to share. Cpt. Potts reported that the Home Depot in New Castle generated 65 investigations in 2006. The Pathmark, Acme, and K-Mart in the City of Newark generated far more investigations across-the-board than the Home Depot. Pathmark had 219 police complaints that required an investigation and report written in 2006. The Acme had 138 in 2006 and the K-Mart had 80 in 2006.

Mr. Athey said he would not support the rezoning. He pointed to the conversations about the appropriate use of the land. He thought they would be shutting the door to future opportunities and admitted nobody had a crystal ball as to what would happen in two or five years if a high-tech firm wanted to locate office space at this site and now the Home Depot was there. He thought they could be slamming the door on future opportunities. He was concerned they were putting 11 acres out there that was still zoned MOR and he bet money if they approved this rezoning it was just a matter of time before someone asked for that land to be rezoned. He was disappointed that the applicant said at the Planning Commission that no customers at this store would come from any of their existing stores. He did not understand that argument and in the same sentence Home Depot said they did not think businesses in Newark would be negatively impacted.

Mr. Athey said he found some studies on his own and was clear that people who owned small businesses in town, and lived in that town, were inclined to spend more money in town. The applicant said the engineer he hired was local, the land use attorney was local, but once the plan was designed, the engineer and the land use attorney were out of the picture once the deal was done. He also noted that 10% of the employees (mostly the managers) would come from out of town. Last, but not least, he pointed out that there was a Planning Commission for a reason and when there was a 6-0 vote to deny the rezoning, he was not willing to go against their recommendation. Therefore, he would not support it.

Mr. Osborne said he concurred with some of the things that were said tonight. He remembered a few years back a very interesting proposal came up on land in the shopping center to build a bank and office building and elaborate plans were presented. In the end it fell through and nothing happened. This area has been looked at for a long time to be developed. He was sure if an office park area were developed, a lot better paying jobs would be created. But he did not think that was likely to happen anytime in the near future. At this point, he thought this was the best offer the City has seen and the City should take advantage of it.

Mr. Pomeroy thought members from the community spoke passionately on both sides of the issue. He thought there were issues tied to inviting in a Home Depot as stated by Rocco Curro and then you hear from people like the Mayer family that have been here forever and have contributed to this area and made up a good part of what Newark was today. He did not want to see one side go away unhappy and that was the reality of the situation which made this particular case hard. Pomeroy thought it was worth mentioning that he did not hear any negatives about Home Depot as a corporation. People he talked to outside of the community said Home Depot was a community player and they get engaged with the community. Given the volume of calls he fielded on this project, he did not have anybody say the land should be left for open space. This was private property that would be developed and he thought it was important to remember that. There have been emotion on both sides of this issue and Mr. Pomeroy felt it was important to separate emotion from fact. He felt emotions on the one side meant big box stores were the end of communities. On the other side, as mentioned by Home Depot, they did things such as build parks, an emotional side that did not play into his decision today. Some of the comments he received included the issue of competition. For example, the True Value Store, a homegrown store that would have to go up against the Home Depot competition. He acknowledged that competition was a reality in business, and he thought Rocco Curro would be the first person to say that because he knew it because of the volume of competition he already had. He did not think Rocco was blind to competition, nor did he think anybody in the community was blind to the fact that when you have a big box store move in, it changed the dynamics of a local business community. Another point that was brought up was how a big box store changed the character of a community. Mr. Pomeroy thought the character of a community and the perception that somebody had of their

community was relative. There were people in the room that remember Newark 25 to 35 years ago, a perspective Mr. Pomeroy did not have. His perspective was based on the time he has been here and the Newark he knew and loved. He was convinced if Home Depot was not here, people like him who move in and decide this was where they wanted to raise their family, would appreciate and love Newark just as much as somebody who moved in two years from now with a Home Depot behind Suburban Plaza. The newcomers won't think they live in a horrible town.

Mr. Pomeroy thought the issue at hand was the fact that it came down to jobs to which there were sides to that issue. He said it was jobs now versus jobs later. He thought the reality of the situation was Home Depot comes in and they bring real jobs now. They also bring a certain degree of tax base and a certain type of job into the community. Everybody recognized how important jobs were in general as related to Chrysler, Avon, MBNA, Stine Haskel, etc. He said he labored with this tremendously, and he may be too young, too stubborn, or too stupid, but he was not ready to give up on Newark being a home for 21st century industry moving forward. He was not ready to say the City was in the position to sacrifice precious MOR zoning for the type of industry that he did not feel propelled the City farther into the 21st century. Mr. Pomeroy reiterated his concern for economic development that he has talked about since he got on Council. He has visited other university communities and seen what they have done in the area of promoting economic development and economic growth and not one of them have assets better than Newark. He believed other communities have found a way to promote it more appropriately and more aggressively. They have made it a priority to get that kind of job growth and job development. The biggest disappointment he heard was that nobody has gone to the Mayer family with any other plans. He thought the most valuable asset that anybody has was land for business growth. He continued by saying diversifying economies was what this was all about. He thought there was room for service economy jobs but promised everyone that the future of Newark required an economic industry based on more than just the University and just service industry jobs. That was the reality of the situation in his opinion. He felt that government officials across all levels have, for some reason, stopped taking long-term looks at things, but rather look at things for what was the quick hit and what was the here and now. He believed if Home Depot comes to Newark, it would not be the end of the community or the end of the City's possibility for economic development growth. He believed Home Depot would be a good player and he believed the Mayer family would make sure it was a quality project. After searching his heart on this one, he said he had to stick with his principle on this and vote no.

Mr. Funk said he went to Rocco's store all the time and could not understand why he was so against Home Depot. He claimed the service he and his neighbors got from Rocco's was outstanding and most people would continue going to his store. He did not see where the hardware store would be hurt because Rocco was a first-class entrepreneur who knew how to market his products, knew how to select his employees, etc. Mr. Funk said he was also a small businessperson and everybody goes through this kind of thing. Right now the title companies were coming into Delaware, which made it hard for him to compete with them. That, however, did not give him the right to say they couldn't come. The jobs were needed and he realized they did not match up with what Chrysler was losing or Avon was losing, but the jobs were needed. There would be a positive cash flow—they would buy electricity from the City, which was the City's major source of income. Therefore, he would vote for the Home Depot.

Question on the Motion was called.

MOTION PASSED. VOTE: 4 to 3.

Aye – Osborne, Funk, Tuttle, Clifton.

Nay – Pomeroy, Athey, Markham. **(ORDINANCE 07-04)**

6. **7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS:**
A. Request of Home Depot USA, Inc. for the Construction of a 114,968 Square foot Home Depot Home Improvement Store, to be Located West of the Suburban Plaza Shopping Center & North of the Christina Parkway Extended (**Agreement & Resolution Presented**)

(Note: Public Hearing was held under Item #5.)

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: THAT THE AGREEMENT/RESOLUTION BE APPROVED AS PRESENTED.

MOTION PASSED. VOTE: 4 to 3.

Aye – Osborne, Funk, Tuttle, Clifton.

Nay – Pomeroy, Athey, Markham.

(RESOLUTION 07-E)

7. **3. ITEMS NOT ON PUBLISHED AGENDA:**

- A. Public

There were no comments forthcoming.

8. **3-B. UNIVERSITY**

1. Administration

There were no comments forthcoming.

9. **3-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

10. **3-C. COUNCIL MEMBERS**

Messrs. Pomeroy, Osborne, Athey, Funk, Markham, and Clifton had nothing to bring up at this time.

Mr. Tuttle commended the Police Department for expanding their landlord notification policy. They would now be letting landlords know not only about loud party and disorderly premise arrests, but also a range of other offenses.

11. **4. ITEMS NOT FINISHED AT PREVIOUS MEETING**

There were no comments forthcoming.

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

- A. Recommendation to Waive the Bid Process for the Purchase of Electric Transformers

Ms. Houck summarized her memorandum to the City Manager, dated February 20, 2007, wherein she explained the Electric Department issued a Request for Quotations in January to six companies that included specifications and quantity requirements for this purchase. The quantities and costs associated with the items required this year exceeded the City's sealed bid threshold of \$25,000 as a result of escalating costs. It was not anticipated that the threshold would be exceeded at the time the request for quotations was issued.

Ms. Houck noted that the delivery date for availability associated with each quote showed that the lowest price vendor had the longest delivery time. Such a wait was in excess of what the Electric Department thought was advisable.

Therefore, she recommended that Council waive the sealed bid requirement and authorize the purchase of transformers from Wesco, the company that provided the second lowest price quotation and its delivery timeframe would offer the greatest opportunity for the City's operational needs to be met. Total cost was \$35,658.

MOTION BY MR. TUTTLE, SECONDED BY MR. OSBORNE: THAT COUNCIL WAIVE THE SEALED BID REQUIREMENT AND AUTHORIZE THE PURCHASE OF TRANSFORMERS FROM WESCO AT THE TOTAL COST OF \$35,658.

Mr. Clifton was concerned that they were asked to waive the sealed bid process for a reoccurring product needed by the City because of the timeframe involved. He thought the bid looked liked an unqualified bid. Also, since the materials were purchased all the time, he asked why wasn't the City proactive to have the material here when apparently the money was there.

Mr. Luft explained that the Electric Department took quotations rather than formal bids because they estimated the cost to be less than \$25,000. In order to save time, rather than rebid, they brought the quotations to Council based on the documents prepared in-house by the Electric Department.

Ms. Houck added that normally when this was done, the cost was under the threshold of \$25,000. Nobody anticipated this type of cost increase would occur. Mr. Vitelli has done purchasing of the transformers with the quotation process in the past, but now anticipated because of the cost this year they would have to do a sealed bid in the future. She also noted that the delivery times were listed in the recommendation and Wesco had the shortest delivery time, which was 11 weeks. The lowest bidder had a delivery date of 52-54 weeks.

Mr. Clifton apologized for his concern because he overlooked the delivery time provided in the memorandum.

Mr. Vitelli added that they used to do a blanket bid for ten years but because the cost of materials was changing so fast, nobody would do a blanket bid for a year. In fact, they won't give prices for a one-month timeframe. The last time electric transformers were purchased they were \$949 each two years ago. The cost has gone up 300% in two years. He also mentioned that the companies who provided quotations were the same companies that usually provided a quote on sealed bids.

Mr. Markham asked if the companies were told the City wanted the transformers in "x" number of weeks. Mr. Vitelli said they just asked for the best price. Mr. Markham asked if we told them they were needed in 12 weeks, would a different price be given. Mr. Vitelli said they would give a higher price. He further explained that each company could only make so many transformers. Mr. Markham thought if they standardized how much was needed, the quotes would be given for that number in that number of weeks from everybody. Mr. Vitelli explained that each factory had their own quantity of what they could make so some could make it faster than others. In the past two years, Ermco got all of the City's bids, but he heard they took in so much business that their deliveries were way out (52-54 weeks). He claimed that the same length of delivery was occurring with cable, too, so they would have to be really proactive with new developments.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

13. 5-B. RECOMMENDATION FOR CURB INSTALLATION ON S. COLLEGE AVENUE

Ms. Houck summarized her memorandum to the City Manager, dated February 16, 2007, wherein she explained that DeIDOT would be repaving South College Avenue from Amstel Avenue to the bridge at the Amtrak rail line this spring. The replacement of curb was not included in the DeIDOT contract. They have agreed to include the curb work in their contract if the City provided the funding.

The City did an evaluation to get a price based on the City's recent street contract. It was anticipated that if bid separately, the cost per linear foot would be approximately \$35.00. DeIDOT offered to do the work at a cost of \$25.00 per linear foot and to cover all costs associated with traffic maintenance and project management. The estimate cost for this effort at the DeIDOT rate would be \$39,650. Funds were available from the capital project for the annual street and curb repairs.

Ms. Houck recommended authorization to enter into an agreement with DeIDOT for the inclusion of curb repairs on S. College Avenue during the completion of its paving project, and to approve the amount of up to \$45,000 for this effort.

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: THAT COUNCIL AUTHORIZE ENTERING INTO AN AGREEMENT WITH DeIDOT FOR THE INCLUSION OF CURB REPAIRS ON S. COLLEGE AVENUE DURING THE COMPLETION OF ITS PAVING PROJECT, AND APPROVE THE AMOUNT OF UP TO \$45,000 FOR THIS EFFORT.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

14. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING:

A. Bill 07-05 – An Ordinance Amending Ch. 22, Police Offenses, By Reclassifying a Tampering with Firefighting Equipment Charge to a Disorderly Conduct Charge

Ms. Lamblack read Bill 07-05 by title only.

MOTION BY MR. TUTTLE, SECONDED BY MR. ATHEY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE FO BILL 07-05.

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 07-05).

15. BILL 07-06 – AN ORDINANCE AMENDING CH. 17, HOUSING & PROPERTY MAINTENANCE, BY EXPANDING PROPERTY MAINTENANCE STANDARDS TO INCLUDE IMPACTS ON OTHER PROPERTIES & TO INCLUDE THE CONDITION OF OVERHANGING EXTENSIONS & TO LIMIT THE TEMPORARY BOARDING OF WINDOWS, DOORS & OTHER BUILDING OPENINGS

Ms. Lamblack read Bill 07-06 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-06.

Mr. Markham asked if Mr. Akin reviewed this and had any questions on it. Mr. Akin said it was fairly straightforward and would allow the Building Department to enforce Building Code violations when there was impact on adjacent structures or the general public.

Mr. Sciulli added that it was basically housekeeping language. Mr. Luft interjected that Bill 07-06 and Bill 07-07 were the result of the economic development Council workshop held in September on the downtown area.. Mr. Sciulli said the bill included housekeeping language on exterior property's overhangs and the boarding up of windows and doors.

Mr. Tuttle said the exceptions to the boarding standard recognized there might be exceptions for repair and replacement and asked what about extreme weather. For instance, the precautionary boarding when there has yet been damage that people might do in case of a hurricane. He did not want to tell people they could not board up windows before they were broken. Mr. Sciulli said he would not prevent people from doing that. What he wanted to prevent was once the hurricane or some other similar event was gone, for the boarded windows/doors to remain. Mr. Tuttle suggested adding the words "extreme weather" to the exceptions.

Mr. Akin did not think changing the language was necessary because in a situation where a hurricane was coming up the coast, he did not expect the Building Department would take any enforcement action with people protecting their property.

Mr. Luft added that Mr. Sciulli was the Emergency Operations Coordinator for the City so he certainly would not point to a specific law in the case of a hurricane. Mr. Sciulli said the emergency would supercede the day-to-day operation of boarding. He explained just because the Code said the City had the authority to prevent someone from boarding, one had to use their common sense to allow it in the event of an emergency.

AMENDMENT BY MR. CLIFTON, SECONDED BY MR. TUTTLE: ON PAGE TWO, IN THE FIRST SENTENCE, AFTER THE WORD FOR, ADD "SIGNIFICANT WEATHER EVENTS,"

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

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

Question on the Motion as Amended was called.

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

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

Nay – 0.

(ORDINANCE 07-06)

- 16. 6-C. BILL 07-07 – AN ORDINANCE AMENDING CH. 7, BUILDING, BY PROVIDING FOR AN EXCEPTION TO THE REQUIREMENT FOR SPRINKLERS WHEN A**

CHANGE OF USE OCCURS IN AN EXISTING STRUCTURE WITH RESIDENTIAL OCCUPANCY

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

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

Mr. Pomeroy said he was aware there was a lot of history with the sprinkler ordinance, and since he got a couple calls from people from Aetna he would rather not be discussing it at 11:00 pm. He also questioned whether they should ask Aetna to comment on this issue.

Mr. Funk explained that this ordinance came about to address situations such as when the shoe store on Main Street closed and an architect studio wanted to move in. Because it was a change of use, a sprinkler system was required and the landlord refused to put it in. The architect did not move in and the store has remained empty.

Mr. Sciulli added that the ordinance was a result of Council's Workshop and it was to deal mainly with the two or three hardcore vacant storefronts with residential on the second floor. The Code now required any change of use in any existing building that has a residential occupancy attached to it to be sprinklered. He believed the ordinance was put into effect to provide a level of fire protection above the minimum requirements. That was a good thing but the unintended consequence was you have several stores that were hardcore vacancies that would be occupied were it not for the fact that the ordinance as written now required either the tenant, the owner, or a combination of both to sprinkler the whole building. He further explained that the three exceptions in the ordinance dealt with any new occupancy that would not create a more hazardous condition than existed prior to the vacancy. In other words, the sprinkler system would not be required if there was no increase in live loads, occupant load, or the building area did not exceed 2,000 square feet floor area. He also noted that the original ordinance allowed the Building Director to require sprinklers if there was an increase in occupant load, but what it did not do was give the Building Director discretion to not require sprinklers if there was no increase.

Mr. Pomeroy said he was not against the ordinance but because Aetna members raised some concern to him, he thought Council might need their comments. Mr. Sciulli said there were two members of Aetna at the meeting earlier but did not know whether they were for or against the change.

Mr. Athey asked if the problem vacancies on Main Street had residential units on top of them, and Mr. Sciulli answered yes. Mr. Athey said that made him think twice about making any changes.

Mr. Markham asked if buildings that were occupied were considered safer than buildings not occupied because he thought they were trying to deal with an issue of occupancy without making expenses. Mr. Sciulli said they suggested the changes in the context of promoting economic growth for vacant storefronts. He thought an occupied building was a safer building for fire protection purposes.

Mr. Funk noted that he had been trying to work with the landlords to get the vacancies on Main Street filled and everyone screamed at him about not having \$60,000 to put a sprinkler system in. The landlords said it was cheaper for them to leave the buildings empty.

Mr. Clifton said he was on Council when the sprinkler ordinance was passed and it was amended because of what was an undue financial hardship. There was a situation dealing with a Jeep dealer who was told he needed to

sprinkle a temporary building. Mr. Clifton had no problem tabling this ordinance and suggested when contacting the Fire Department, Mr. Sciulli should talk only to the Fire Chief because there would probably be a diversity of opinion amongst the members.

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

MOTION PASSED. VOTE: 6 to 1.

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

17. 8. ORDINANCES FOR FIRST READING:

A. Bill 07-08 - An Ordinance Amending Ch. 20, MV&T, By Bringing the Code into Conformity with the State Code as it Relates to the Operation of Vehicles on Approach of Authorized Emergency Vehicles

Ms. Lamblack read Bill 07-08 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. POMEROY: THAT THIS BE THE FIRST READING OF BILL 07-08.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 3/12/07)

18. 8-B. BILL 07-09 – AN ORDINANCE AMENDING CH. 32, ZONING, BY INCREASING THE FEES FOR THE REVIEW OF SPECIAL USE PERMITS

Ms. Lamblack read Bill 07-09 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE FIRST READING OF BILL 07-09.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 3/26/07)

19. 8-C. BILL 07-10 – AN ORDINANCE AMENDING CH. 17, HOUSING & PROPERTY MAINTENANCE & CH. 22, POLICE OFFENSES, BY ADOPTING NEW GRAFFITI REGULATIONS

Ms. Lamblack read Bill 07-10 by title only.

MOTION BY MR. ATHEY, SECONDED BY MR. OSBORNE: THAT THIS BE THE FIRST READING OF BILL 07-10.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Pomeroy, Athey, Osborne, Funk, Markham, Tuttle, Clifton.
Nay – 0. **(READING 3/12/07)**

20. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:

A. Council Members:

1. Resolution 07-___: Declaring a City-Owned Parcel of Land Located on Sue Lane as Surplus

Mr. Luft read the resolution in its entirety. He added that the owner of 6 Sue Lane desired to obtain this property and the owner at 2 Sue Lane was not interested in the property.

Mr. Pomeroy asked if we knew what the new owner wanted to do with the land. Mr. Funk said it would become a part of their lot and they wouldn't be able to do anything with it. Mr. Markham asked if it would increase the value of their parcel, and was told it would.

Mr. Pomeroy questioned if 6 Sue Lane was a rental and was told no.

Mr. Markham asked if the land was paved and was told it was grass, which has been maintained by the Parks Department.

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(RESOLUTION 07-F)

21. 9-B. COMMITTEES, BOARDS & COMMISSIONS:

1. Resignation from Community Development/Revenue Sharing Committee – Dist. 2 Appt.

MOTION BY MR. CLIFTON, SECONDED BY MR. POMEROY: TO ACCEPT THE RESIGNATION FROM JANET YODER FROM THE COMMUNITY DEVELOPMENT/REVENUE SHARING COMMISSION BECAUSE SHE MOVED FROM DISTRICT 2 TO DISTRICT 1.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

22. 9-B-2. APPOINTMENT TO BOARD OF ETHICS

MOTION BY MR. POMEROY, SECONDED BY MR. ATHEY: THAT RAYMOND PETERS, 116 BRIAR LANE, BE REAPPOINTED TO THE BOARD OF ETHICS FOR ANOTHER FIVE-YEAR TERM; SAID TERM TO EXPIRE FEBRUARY, 2012.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

23. 9-B-3. PLANNING COMMISSION MINUTES OF FEBRUARY 6, 2007

MOTION BY MR. ATHEY, SECONDED BY MR. OSBORNE: THAT THE PLANNING COMMISSION MINUTES OF FEBRUARY 6, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

24. 10. SPECIAL DEPARTMENTAL REPORTS:

A. Special Reports from Manager & Staff: None

25. 10-B. ALDERMAN'S REPORT

MOTION BY MR. OSBORNE, SECONDED BY MR. ATHEY: THAT THE ALDERMAN'S REPORT DATED FEBRUARY 20, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

26. 10-C. FINANCIAL STATEMENT

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: THAT THE FINANCIAL STATEMENT ENDING DECEMBER 31 2006 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

27. 10-D. REQUEST FOR EXECUTIVE SESSION RE PENDING LITIGATION (DURKIN V. NEWARK)

Mr. Akin advised that he provided Council with a memorandum that discussed some issues regarding the *Durkin* case and advised that an Executive Session was not necessary since there have been no significant developments since they last discussed the case.

28. Meeting adjourned at 11:18 pm.

Susan A. Lamblack, MMC
City Secretary

/pmf