

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

April 23, 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
Parks & Recreation Director Charlie Emerson
Public Works Director Richard M. Lapointe
Water & Waste Water Director Roy Simonson
Acting Chief of Police John Potts
Building Director Thomas J. Sciulli
Finance Director Dennis McFarland

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

2. MOTION BY MR. CLIFTON, SECONDED BY MR. OSBORNE: THAT THE AGENDA BE AMENDED BY ADDING THE FOLLOWING NEW ITEMS: 9-A-2, RESOLUTION 07-__ : IN OPPOSITION TO HOUSE BILL NO. 111 RELATING TO LAND USE & THE APPLICABILITY OF LOCAL GOVERNMENTS' REALTY TRANSFER TAXES; 9-B-4, RESIGNATION FROM TOWN & GOWN COMMITTEE; 10-A-1, REAL ESTATE TAX ASSESSMENT QUARTERLY SUPPLEMENTAL ROLL INTERIM BILLINGS FOR THE PERIOD OF APRIL 1, 2007 – JUNE 30, 2007; AND 10-A-2, SETTING DATE & PLACE FOR DISPLAY OF ASSESSMENT ROLLS & APPEALS DAY FOR 2007-2008 REAL ESTATE TAXES.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

3. **2. CITY SECRETARY'S MINUTES FOR COUNCIL APPROVAL:**
A. Regular Council Meeting of March 26, 2007

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

4. **2-B. ORGANIZATIONAL MEETING OF APRIL 17, 2007**

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

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

A. Public

Steven Pilnick, whose family owned 48-50 E. Main Street since 1936, requested that Council reconsider the proposed amendments to the sprinkler ordinance, which was tabled by Council in February 2007. The present regulations were very strict with regard to intended uses and hindered Mr. Pilnick from renting the property to various mercantile unless he invested over \$85,000 to sprinkle the building. For instance, he could not rent to a coffee shop, a fitness center, or the United States Marine Corps without first sprinkling the building. Mr. Funk advised that the sprinkler amendments would be on the May 14th agenda for reconsideration, and thanked Mr. Pilnick for the beautiful renovation of his property.

6. Bruce Diehl, 205 Meriden Drive, advised that his yard that was damaged from the snowplows (which he brought to Council's attention at a previous meeting) was taken care of by City employee, Pat Michini. Mr. Michini called and apologized for not taking care of the problem right away because the ground was too wet. A week later the problem was taken care of and Mr. Michini followed up with a phone call to make sure Mr. Diehl was satisfied with the repair.

7. **3-B. UNIVERSITY**

1. Administration

There were no comments forthcoming.

8. **3-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

9. **3-C. COUNCIL MEMBERS**

Mr. Athey said he was pleased to learn that the American Planning Association had their annual conference in Philadelphia, and the City of Newark was one of their destinations for a daylong tour.

10. Mr. Athey advised that proposed subdivisions plans were now on the City's website in PDF images and applauded the efforts to get that done.

11. Mr. Athey thanked the City Manager for the very comprehensive review of fees and fines. He believed Council asked for that during the debate on the graffiti ordinance and the fines associated with that proposal. The review provided to Council included just the fees recommended to be changed. Mr. Athey envisioned a review of every fee in the Code and asked how timely that could be done. Mr. Luft said staff was looking at the additional areas mentioned in his memorandum, but that was the extent of what would be reviewed. Staff was partial toward fees and fines that had not been looked at or changed in a long time. Mr. Athey thought part of the reason for the review was because of potential inequities brought to their attention.

Mr. Funk thought it was important for the fines to be in line with the fines imposed by the county and the state. He thought some suggestions were a little bit overkill, i.e., the recommendation to raise parking fines from \$5.00 to \$15.00. That particular fine, in his opinion, should be raised gradually.

Mr. Athey reiterated that he appreciated the work that went into the report, and if other members of Council agreed that staff should be looking at all of the inequities, he would not mind seeing that additional information.

12. Messrs. Osborne and Funk had nothing to bring up at this time.

13. Mr. Pomeroy thanked staff for the report regarding an industrial economic development incentive program, and asked that it be placed on a future agenda.

14. Mr. Pomeroy thanked the residents of the First District for giving him the opportunity to serve them for another two-year term.

15. Mr. Tuttle acknowledged the cadre of first responders on Monday morning when an 85' Tulip Poplar, uprooted by the rain and wind, fell on his neighbor's house. The response from the Police Department, Aetna Fire, the ambulance, and the Building Department was very prompt. Information was left so that when his neighbor returned to his house, he knew whom to contact to make sure the house was habitable although it would take a fair amount of repair.

16. Mr. Tuttle gave kudos to those responsible for putting subdivision plans on the City's website.

17. Mr. Markham asked Rick Armitage, from the University, if anything had changed regarding the proposed new admissions building. Nothing had changed according to Mr. Armitage.

18. Mr. Markham reminded everyone that on May 8th Council would be holding a workshop to discuss ideas for the Curtis Paper Mill site.

19. Mr. Clifton thanked Officer Mark Farrell for attending a meeting at George Read Village and offering a lot of suggestions for personal safety for the residents in that area. He also thanked Lt. Jerry Simpson for fielding a meeting at Marrows Court in White Chapel. He thought Lt. Simpson did a tremendous job, but was disappointed with Marrows Court Apartments. The residents claimed management didn't listen to them and had had a cavalier attitude toward Lt. Simpson and the safety of the residents who were mostly senior and/or handicap residents. Mr. Clifton hoped the City would do whatever possible to get management to provide security for the residents.

20. **4. ITEMS NOT FINISHED AT PREVIOUS MEETING** - None

21. **5. RECOMMENDATIONS ON CONTRACTS & BIDS:**

A. Recommendation to Waive the Bid Process on the Retrofit of Refuse Trucks

Ms. Houck summarized her memorandum to the City Manager, dated April 3, 2007, wherein she explained that the implementation of the automated refuse program allowed the Public Works Department to determine there were fewer areas where the manual pickup would be necessary. For that reason, the plan was to run four automated routes and one manual route. That modification required the addition of a fully automated truck. The work required was considered a proprietary retrofit by Labrie and therefore was not available from any other source. Ms. Houck recommended waiving the requirement to bid this purchase and authorizing the initiation of an agreement with GranTurk for the retrofit of truck No. 409 with a Labrie "Helping Hand" automated arm and associated equipment at the total cost of \$47,397.35.

Mr. Markham said there were a number of new developments coming online in his district and questioned what would happen if the City determined one of those developments should remain manual or semi-automated. Ms. Houck advised that the fully automated trucks could be used as manual as well so there would not be a problem.

MOTION BY MR. TUTTLE, SECONDED BY MR. OSBORNE: THAT COUNCIL WAIVE THE REQUIREMENT TO BID THIS PURCHASE AND AUTHORIZE AN AGREEMENT WITH GRANTURK TO RETROFIT TRUCK NO 409 WITH A LABRIE 'HELPING HAND' AUTOMATED ARM AND ASSOCIATED EQUIPMENT AT THE TOTAL COST OF \$47,397.35

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**22. 5-B. RECOMMENDATION TO WAIVE THE BID PROCESS OF SOLE
SOURCE TASERS UTILIZING GRANT FUNDING**

Ms. Houck summarized her memorandum to the City Manager, dated April 13, 2007, wherein she explained that the Police Department was awarded grant funding for the purchase of 23 Taser units and their accessories. The units were used throughout the law enforcement field including Wilmington, Elsmere, New Castle County, Clayton, and Delaware City.

Taser International was the sole source manufacturer of the less-lethal electro muscular disruption device and held proprietary technology in the development of the X26 Shaped Pulse Delivery unit that was recommended.

Ms. Houck recommended that Council authorize the sole source purchase of 23 Taser X26E units at the total cost of \$33,630.80, utilizing the grant funding noted.

Mr. Osborne thought the Wilmington Police Department got in trouble with Tasers not long ago. He was concerned that police already carried a whole lot of equipment on their belts and asked if the Tasers would be carried on the officer or left in their car. Cpt. Potts said generally they carried the Taser on their belt and the Taser provided a less than lethal option to the officers. It was the size of a small firearm and was a different color so it would not be mistaken for a firearm.

Mr. Funk advised that he had a request from Jean White to speak on this item and asked Council if they wanted to suspend the rules to hear her comments.

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT
COUNCIL SUSPEND THE RULES TO HEAR FROM THE PUBLIC.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Markham asked if the officers would receive training and was told the purchase included training.

Mr. Akin added that there have been a series of lawsuits challenging the use of Tasers, but the courts have almost uniformly approved of their use and determined it was not unconstitutionally excess force as long as the officer used the device as he/she was trained to do and the use of the device was not abused.

Jean White, 103 Radcliffe Drive, expressed concern with people who have been exposed to the Taser that resulted in heart attacks, injuries, and death. She questioned how often Tasers had to be used and what would prevent such serious results from occurring. Ms. White noted that in the 35+ years she lived in Newark she never felt unsafe because police did not have Tasers. She clarified that her remarks were about this model because there have been negative consequences from their use.

Cpt. Potts said the use of the Taser would be incorporated into their use of force continually to direct the officers when appropriate to use the Taser. It would not be used for somebody who was just resisting arrest; rather it had to be

something beyond that. He had no problem with his officers being equipped with this equipment.

MOTION BY MR. CLIFTON, SECONDED BY MR. POMEROY: THAT AUTHORIZATION BE GIVEN TO PURCHASE 23 TASER X26E UNITS AT THE TOTAL COST OF \$33,3630.80 FROM TASER INTERNATIONAL, THE SOLE SOURCE MANUFACTURER.

Mr. Tuttle advised that for 12 of the 25 years he worked for the University of Delaware Police Department, he was responsible for that department. At that point in time the Taser was not available, but the handheld stun gun was and there were a lot of limitations to its use. He believed the Taser was an excellent tool for law enforcement to have at their disposal. He said it was important to recognize that without that tool, the police were left to use a firearm or an impact weapon such as a club, which could break a bone. The Taser filled a very important immediate niche and had the advantage over the old stun gun in that it could be employed within wrestling range of the individual who was being apprehended. He encouraged seeking funds to supply all officers with a Taser.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

23. 5-C. RECOMMENDATION RE REQUEST FOR PROPOSAL (RFP) NO. 07-01 ENGINEERING SERVICES FOR THE DESIGN OF THE POMEROY BRANCH RAIL TO TRAIL PROJECT

Ms. Houck summarized her memorandum to the City Manager, dated April 16, 2007, wherein she explained that this Request for Proposal provided for the selection of an engineering design firm to develop the design for the Pomeroy Trail project. The trail, approximately two miles in length, followed the abandoned Pomeroy and Western Railroad.

Six proposals and separate sealed budgets were received. An evaluation committee composed of seven individuals independently reviewed the proposals and participated in ranking the firms in relation to the criteria set forth in the RFP.

Mr. Funk interjected that he was nervous with the wide range of budget proposals -- \$158,900 to \$824,290. Ms. Houck claimed that happened quite often with RFP's because of a company's experience or how familiar they were with the type of project. She further explained that State Code dictated the RFP process followed. In this case, the committee felt the price was justified for what the firm would be providing.

Mr. Funk claimed he went online to look at the companies that provided proposals and thought RBA came across as the most qualified company. They received all kinds of awards for the trails they built. He called RBA and asked several questions including whether they were licensed to do engineering in Delaware. He was told they used Landmark Engineering and Tetra Tech, which he thought had good ratings with the City of Newark. He could not understand how they got the worse rating since they were the lowest bidder and looked like one of the more outstanding companies on the east coast.

Ms. Houck said they got the lowest rating because the seven people who reviewed their proposal rated them using certain criteria and put them at the bottom of the list. According to the RFP process, if Council did not go with the first ranked firm, they would have to take the second ranked firm and in this case it would be JMT. She had no reason to disqualify the top ranked firm.

Mr. Funk said he had no problem with Pennoni Associates, but RBA's proposal was \$220,000 less than Pennoni and he felt that money could be spent on something else. He asked if the problem with RBA was timing. Ms. Houck said she would have to go back and review everybody's comments, but thought timing was an issue with many of the proposals. Mr. Funk thought the timeframe for Pennoni and RBA was similar.

Mr. Markham asked if the Mayor wanted to see the ranking sheets before making a decision. Mr. Funk said he could not understand the \$236,000 difference and was told by Karin & Associates that RBA was the company to get.

Mr. Clifton said he would not mind seeing the ranking sheets especially because of the wide spread in the proposals. He asked if it was common for the companies to use subcontractors and was told that was not unusual. He also questioned whether Pennoni had done work in the City and was told they did the Jim Hall Trail.

Mr. Athey pointed out that there were two issues -- one was the most qualified and top ranked firm; and two was the price. He further pointed out that Delaware was a "qualifications based state" and the City followed that policy exactly and that was why the numerical part of the bids came in a separate envelope. You don't retain professional services on fee—you retain it on qualifications and then you negotiate the fee. He averaged all of the bids and Pennoni was just above the average cost. As one who prepared design budgets for a living, Mr. Athey said it was not easy and the widespread range was not uncommon. He asked Ms. Houck if she found it advantageous to get the fee and the designers to stick to that based solely on information they were given in the RFP; or was it better to not lock in a fee at that early stage.

Ms. Houck said it could be done either way, but the City has been satisfied with the way they have always done it. She added that they met with Pennoni to negotiate the price but they were not willing to change the fee. The Committee was convinced that the cost was appropriate for the services rendered.

Mr. Funk said he also learned that RBA had Tetra Tech lined up and that was who did the environmental work for the state for the Pomeroy Trail. Mr. Athey pointed out if they weren't comfortable with the top ranked firm, the process dictated you had to go to the second ranked company. RBA was at the bottom of the rankings so five companies would have to be eliminated or the City would have to rebid the RFP.

Mr. Clifton suggested giving Council time to look at the rankings because it was good public fiscal policy to review them to understand how the firms were ranked and why. Ms. Houck said that information could be provided to Council for their next meeting.

MOTION BY MR. CLIFTON, SECONDED BY MR. POMEROY: THAT THIS ITEM BE TABLED UNTIL THE NEXT MEETING.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

- A. Bill 07-15 - An Ordinance Amending Ch. 20, Motor Vehicles & Traffic, By Prohibiting Parking at All Times on Both Sides of Townsend Road Between Manns Avenue & Ritter Lane.

Ms. Lamblack read Bill 07-15 by title only.

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-15.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(ORDINANCE NO. 07-11)

25. 6-B. BILL 07-13 - AN ORDINANCE AMENDING THE ZONING MAP BY REZONING FROM RS (SINGLE-FAMILY DETACHED) TO RM (MULTI-FAMILY, GARDEN APARTMENTS) .724 ACRES LOCATED AT 279 & 281 NEW LONDON AVENUE

(NOTE: The public hearing on 6-B and 7-A was held at the same time, but voted on separately.)

Ms. Lamblack read Bill 07-13 by title only.

MOTION BY MR. OSBORNE, SECONDED BY MR. TUTTLE: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-13.

Kevin Mayhew, 3 New London Road, owner and developer of the property, provided a power point presentation on his proposal. Ten units were planned (six fronting New London Avenue with four units behind the six) with parking located behind the units.

Barry Stinger, Director of Planning for Hillcrest Associates (responsible for the site planning and engineering), reviewed the request for the rezoning and the layout of the proposed 10-townhouse style apartments. Each unit would have their own exterior door. The sidewalk system would be tied into the existing sidewalk along New London Road. The property generally sloped downhill from New London Road, toward the back of the property, where the stormwater management facility would be located. An extensive landscaping plan was proposed that would provide some visual screening along the borders of the property. Each unit would have two interior parking spaces and one exterior parking space along with 10 guest parking spaces for the entire complex.

Facades of the building would be primarily brick with architectural details, including bay windows and metal roofs on the bay windows and the impediments over the doorways. Dormer details would also be on the buildings. The row of townhouses in the back would be slightly different.

The chair opened the discussion to the public.

Stephanie Lane, 61 Kennard Lane, objected to the proposal due to the fact that her neighborhood originated as single-family homes and many of the original owners still lived there. The project would change their neighborhood in that it conflicted with family oriented living. Her community already dealt with violations of the noise ordinance, parking, etc. coupled with traffic issues and the lack of police supervision on New London Road.

Jean White, 103 Radcliffe Drive, thanked the developers for supplying the elevations that were revised by the Planning Commission that now included the utility poles and wires. Ms. White questioned who would be living in the units and pointed out if rented to students, with four students to a unit, 40 cars would be generated. She questioned what the back of the buildings would look like because she was concerned with the view of those living in the second row. She did not want to see a wall of stucco and preferred that each floor be delineated.

Mr. Lopata advised that the City would require that the design of the architecture be carried out on all physical sides of the building (which was included in the resolution and the agreement).

Mr. Mayhew said he would probably use stucco and some brick in the back of the buildings and there has been some discussion about doing some off setting of the units. He claimed he spent a lot of money on this project and did not want to go into more architectural detail if the project did not go forth. As for who would be renting the units, it would be whoever would pay him the money to rent them.

Mr. Athey questioned what the three houses that would be razed were now used for. Mr. Mayhew said he owned one of the houses that now housed tenants, one house had a rental permit but was vacant for four years, and the third house had a single man who contacted Mr. Mayhew because he was interested in selling his house.

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

Mr. Clifton referred to the site plan and the reference to properties outside of the 100-year floodplain (dated 10/6/2000) and questioned if that was the last floodplain plan the City had for that area. Mr. Lopata said the City had a later plan (2005-06) and did not know why that one was referenced on the plan. However, there have been no changes in this area. Mr. Clifton questioned how the rental permit fee would be applied to which Mr. Lopata said it would be handled as an apartment complex. Mr. Clifton questioned whether there would be a problem similar to what happened with Washington House regarding to the number of stories and the maximum height of the building, and asked if this building would be a maximum of 35'. Mr. Lopata said the Washington House was a different issue and the maximum height of this project was 35'.

Mr. Markham asked if there would be decks to which Mr. Mayhew answered no. He asked if there would be any restrictions on left turns in or out in light of the heavy traffic on New London Road.

Matt Longo, Hillside Associates, advised there would be no restrictions on turning movements at this time. They have submitted the plan to DeIDOT, but have not received any comments to date. Mr. Markham questioned whether the Traffic Committee reviewed this, and Mr. Luft explained that because this was a state road, DeIDOT needed to comment. The Traffic Committee did not review subdivision plans.

Mr. Markham assumed there was no historic factor to the buildings being removed. He questioned how the City let the building at 279 New London Road get to its present condition. He questioned if Mr. Mayhew would be managing the complex to which Mr. Mayhew said he would manage it and had no plans to sell it after it was built.

Mr. Athey said he intended to support the project. He recognized the issue of whether it was an appropriate use because of residential areas next to it. However, there were other town homes in the area, and he believed this would be an improvement to the area.

Mr. Osborne said he looked at the site and thought this would be a great improvement over what was presently there. He agreed that at one time it used to be a residential area but most of the residents have moved. With another apartment complex in the area, the George Wilson Center nearby, and the hotel across the street, he felt there were very little private residences in that area. As for the residents who resided behind the project, the stream provided a natural barrier that would prohibit people from moving back and forth between the two areas. He believed this was a big improvement to the area and would support the rezoning and project.

Mr. Pomeroy said he supported the project and thought it was clearly an upgrade from what was there. This kind of project would have the domino effect that he was hoping for in the City of Newark. He commended the nice design and the considerations for the back of the buildings because the folks living in the second row needed a nice view as well.

Mr. Funk said he supported the project for the same reasons expressed by Council Members. He added that he talked to the manager of the Marriott at the Courtyard who was very happy to have this built across the street.

Mr. Tuttle said he supported the project and saw it as an improvement over what existed there today. It was a great example of the creative use of grade—the fact that the parking would be below ground level and a nice frontage was proposed created a significant improvement to the area.

Mr. Markham said he would support the change as well. He reiterated that he would like to discourage left turns in and out of the property because the traffic could be intense at times. He also hoped Mr. Mayhew would actively manage the property.

Mr. Clifton supported the project. He thought the zoning would be compatible. Although more than likely it would be student rentals, if the dynamics changed, he saw it potentially becoming a traditional family complex. With regard to the condition of a nearby apartment complex mentioned by Mr. Markham, he was concerned with safety and hoped the City would be diligent on its inspection of that building.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(ORDINANCE 07-12)

26. **7. RECOMMENDATIONS FROM THE PLANNING COMMISSION/DEPT.**
A. Request of North Campus, LLC, for the Construction of 10 Town-House Apartment-style Dwellings in a Development to be Known as Campusside, Located at 279, 281 & 285 New London Road (RESOLUTION & AGREEMENT PRESENTED)

(Note: The Public Hearing on this item was held under Item #25.)

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

MOTION PASSED UNANIMOUSLY. Vote 7 to 0.

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

(RESOLUTION 07-J)

27. 6-C. BILL 07-14 - AN ORDINANCE AMENDING THE ZONING MAP BY REZONING FROM BN (NEIGHBORHOOD SHOPPING) TO BB (CENTRAL BUSINESS DISTRICT) .958 ACRES, LOCATED AT 100 ELKTON ROAD

NOTE: The public hearing on this item, 7-B and 7-C was held at the same time, but voted on separately.)

Ms. Lamblack read Bill 07-14 by title only.

MOTION BY MR. OSBORNE, SECONDED BY MR. TUTTLE: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-14.

Jeff Lang, Lang Development Group, 6000 Woolen Way, Newark, explained that this project was for the site known as the Grainery Station, which he obtained over a year ago. There were five tenants in the building, which was about 10,000 sq. ft. on its footprint on a little less than one acre. The property had a number of uses over the years including an offloading area for railroad cars and grain, a number of restaurants, as well as a number of other businesses. The building has a great deal of structural repair and maintenance issues, the design doesn't really work, and the parking areas were split. Part of the building stuck out making it difficult to walk on the sidewalk. He believed the design of the new building was needed. A structural engineer looked at potential reuse and found no real structure or foundation to save. At the present time the building had almost 90% coverage on the lot with very little green space. Their proposal contained 65% to 75% coverage with about 35% green space. They were also able to incorporate stormwater management practices through the cooperation of the Public Works Department that would detain some of the water coming off the site.

The design of the building was a combination of what was done at Pomeroy Station and Madeline Crossing. Retail would be on the first floor with a second floor apartment living area with a loft in the roofline. The roofline would not be symmetrical like Pomeroy Station so they exposed windows in the third floor area because all units were two-story apartment units. There would be one stairway that accessed one or two apartments. With regard to parking, they met Code by supplying the exact amount of spaces required for the redevelopment of the project – two parking spaces allocated for each apartment.

Mr. Lang commented that at the Planning Commission there was a discussion about the proximity to the railroad. Presently there was no fencing or ability to control access to the railroad. The plan had all access to the property in the front so there would be no reason to go to the back of the site. A solid fence (almost 570') was proposed which would curtail any pedestrian traffic up towards the railroad.

Mr. Lang thought his project provided the opportunity to begin an extension of Main Street down Elkton Road, which has always been a traffic speedway. He believed it was the beginning of rethinking Elkton Road. Through the cooperation of the City and DelDOT and other property owners on Elkton Road, he hoped to see similar redevelopments that would create a pedestrian friendly Elkton Road. He suggested one lane traffic going each way with parking meters. He envisioned a proliferation of restaurants and things that everyone would like to embrace in the community.

Mr. Markham asked if the Design Committee reviewed the project.

Joe Charma, Landmark Engineering and Chairman of the DNP Design Committee, said no but noted that this area of Elkton Road would be added to the boundaries for which the Partnership would have some influence and

responsibility. As the Chairman of the Design Committee, he assured Council the building was designed in accordance with the Committee's guidelines. He also added that the architect designed a number of buildings around town so he was very familiar with the guidelines.

The building would be constructed of almost 100% masonry with the minor exception of lap siding on the upper vertical elevation due to structural concerns. They planned to use stone accents on the corners of the building and possibly around some of the window openings.

Mr. Markham asked what CSX's comments were on the plan. Mr. Lang advised that CSX sent a letter to Mr. Lopata that was basically a form letter stating they were not in favor of residential dwellings close to the railroad. Mr. Lang reminded Council there were already a number of residential dwellings abutting the railroad tracks.

Mr. Markham pointed out there were five poles in front of this property, with only one supplying power to the building and providing a streetlight. He asked if consideration would be given to putting the wiring for services other than electric underground while everything was dug up. Mr. Lang said he would be happy to eliminate poles and he would do that if he could coordinate between the different entities involved.

Mr. Markham asked if any arrangements were made for the current tenants. Mr. Lang said there were five tenants in the building – three on a month-to-month basis. One lease expired the end of the year and one lease expires in October 2008. He would like to maintain and respect their tenancy from a legal perspective. He really couldn't do anything without getting cooperation from the tenants that have a legal arrangement with him. He would like to keep the tenants with the month-to-month leases because they have been successful at this location. Two tenants said they wanted to remain tenants. He expected two tenants to move to smaller spaces. He continues to have conversations with one tenant about options and whether they want to move to another building.

Mr. Athey referred to the letter from CSX that was read into the Planning Commission minutes where they said, among other things, "we are concerned that when land adjacent to railroad corridor is rezoned for residential use, past experience has shown that people move into their new homes and complain about train noise and other activity." He questioned whether there was any concern from the developer about being able to rent the apartments since they were so close to the railroad tracks. Mr. Lang said the complex was very similar to Madeline Crossing and he had no problem keeping that complex rented. He explained it had a lot to do with how the building was built. It had to be insulated well, the back wall had to be built out of 2 x 6's with extra insulation, double pane windows, heavier blinds, etc.

Mr. Osborne asked if any thought was given to the type of fence that would be used. Mr. Lang said he liked board on board construction, which made a fence more permanent because it allowed wind to go through it, but it would not get knocked over in a big windstorm. Although chain link fences were good for security, they were not good for visibility. Mr. Lang said his company was an active management company that would make sure the fence was taken care of.

The chair opened the discussion to the public.

Susan Logan, 48 E. Mill Station, Newark, stated that she worked for the Newark Arts Alliance and wanted to witness the presentation by Mr. Lang to make sure he was accurate when he characterized his dealings with the tenants. She believed Mr. Lang had done that.

Jean White, 103 Radcliffe Drive, thanked the developer and architect for supplying revised elevations that were modified since the Planning Commission meeting and now showed the utility poles and wires. She agreed with the removal of the utility poles, but if that could not happen, she would like the pole located in the middle of the sidewalk to be moved back. She appreciated the fact that the developer changed the name from Chessie Station to the Millyard.

Ms. White thought the present building had a very interesting skyline that she would miss. She appreciated the fact that the building might be hard to rehab and it may be better to tear it down. However, in its place, she would like to see a building that was equally unique. She questioned the height of the building and was told it would be less than 35'. She thought the storefronts were monotonous and was also concerned with the side view. She would like to see different rooflines.

Ms. White said her main concern was the fact that she believed the present BN zoning was proper. The only reason for the rezoning was to allow the apartments, and because the property was located next to the railroad, she did not think Council should rezone it and allow the apartments. The property was very narrow and when the freight train goes by, it was very noisy and the whole building vibrated. Although there were other residential units up and down the tracks, Ms. White did not think that was justification to approve these. Many of those developments, as well as the dormitories, were built a long time ago. She even thought one day the University could decide they no longer wanted those dormitories because of the location.

Ms. White thought the City could get a clearer comment from CSX on the proposal.

Ms. White pointed out that an additional curb cut on the Star of India side was proposed. With Elkton Road being considered a major artery, studies showed that the fewer access points along the road, the fewer accidents occur. Therefore, she suggested reducing that additional curb cut. With regard to the fence, she argued a 6' chain link fence would be a better decision. It would last longer, its posts would be in concrete, and the chain part could be covered with a rubberized or plastic screen to make it last longer. Plantings along the fence would help soften the look of the chain link fence. A solid fence would block her view of the trains. She also claimed when the property was sold to Mr. Lang, the deed referenced the terms, conditions, and obligations as regarded in a previous deed (in 1976) when the railroad sold the property and asked for a 4' chain link fence behind the building.

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

Mr. Clifton acknowledged that the number of parking spaces provided met the Code. However, he found it disturbing that the 18 parking spaces for the apartments weren't necessarily marked for that use. Since the Code did not require using the parking spaces for that purpose, he thought Council should look at possibly changing that. He looked at this as a backdoor parking waiver for the apartments and was a process for parking waivers that needed to be respected.

Mr. Clifton thought CSX wanted to weigh in on issues like this and he was not in total disagreement with what they were saying. That being said, if the apartments were such a big deal for CSX, he suggested letting them add police officers to protect their property. In talking with a CSX employee, he learned there weren't enough of them to patrol the railroad, and Mr. Clifton thought a college town would be more important to patrol rather than an open stretch of tracks through Cecil County. Although he thought it was an issue of personal responsibility for those who may want to cross the tracks in that area, he believed it was CSX's responsibility to provide that safety and security.

Mr. Clifton lives in Stafford and noted that Stafford Avenue backed up to the railroad tracks and that development was built in 1988. What he found disturbing about living near a railroad was the horn. He thought now was the time to force CSX to use the technology that allowed the horn at level crossings. In other words, it directed the noise of the horn to the motorists at the at-level crossing. They would still be able to blow the horn if they saw someone on the track. This concept has been brought to the attention of CSX for many years and they were always in opposition. He asked the City Manager to look into what could be done to get CSX to use the new technology.

Regarding the design of the building, Mr. Clifton thought it was plain and did not have the character that could be put into that building. In conclusion, he thought this project and the plans for the Trap would be good anchors for the extension of Main Street down Elkton Road and, therefore, supported the project.

Mr. Markham asked for a commitment from the developer to make a good faith effort to remove the telephone poles and bury the wires, and to make a good effort to keep the current tenants, particularly the Newark Arts Alliance. He thought the project would clean up the site and, therefore, would support the project.

Mr. Tuttle found the design tolerable. He agreed the project would “wrap Main Street around the corner and down Elkton Road.” He thought that was positive. He concurred with Mr. Clifton that the City should work on the at-grade horn issue because the horn was the most annoying part of the trains going by. He supported the proposal.

Mr. Funk said he supported the proposal although he was not in favor of more student rentals because he thought the City had reached the point where there was no need for more. He liked the design of the building.

Mr. Pomeroy supported the project and hoped whatever fence was erected that it was the least prone to vandalism as possible. He agreed with Ms. White’s concern about the side view of the building. It was important that the view captivate people as they make that turn. He also encouraged keeping the tenants, especially the Newark Arts Alliance because they were an important part of the community. The fact that open space would be added and there would be a reduction in the impervious surface was clearly a step up in Mr. Pomeroy’s opinion. He was excited about the future of this area and it being more pedestrian friendly and a logical extension of Main Street that would strengthen the downtown area. The attention of detailing and the quality of the workmanship that goes into this would further that along and help the overall cause in that area.

Mr. Osborne liked the design and the fact it would extend Main Street down Elkton Road. He thought it would be a real asset to the community to have this project and, therefore, would support the proposal.

Mr. Athey commented on the proliferation of student rental units by saying that on the plus side there were a lot of “For Rent” signs on homes in his neighborhood. He complimented the various programs the City implemented such as the POOH Program that helped revert homes back to single-family homes.

Mr. Athey agreed with Mr. Clifton’s recommendation to follow up with CSX and the use of horns at the at-level crossings. He remembered the Traffic Committee contacting CSX several years ago and learned the price was over \$100,000 an intersection. This project and its proximity to the railroad tracks worried him a little bit and he didn’t think he would want to rent a unit. However, he thought the project was good and the fact that it would be wrapping Main Street down Elkton Road was a good thing. He also would appreciate Mr. Lang working with Newark Arts Alliance to help them find a new home.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(ORDINANCE NO. 07-13)

28. **7-B. REQUEST OF MILLYARD PROPERTY ASSOCIATES, LLC, FOR THE CONSTRUCTION OF A THREE-STORY APPROXIMATELY 8,700 SQUARE FOOT RETAIL & NINE LOFT-APARTMENTS FACILITY TO BE KNOWN AS THE MILLYARD, LOCATED AT 100 ELKTON ROAD (RESOLUTION & AGREEMENT PRESENTED)**

(NOTE: The public hearing on this item was held at the same time as Item 26, but voted on separately.)

MOTION BY MR. OSBORNE, SECONDED BY MR. ATHEY: THAT THE RESOLUTION BE APPROVED AS PRESENTED.

Comment [IS1]: ADEL

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(RESOLUTION 07-K)

29. **7-C. REQUEST OF MILLYARD PROPERTY ASSOCIATES, LLC, FOR A SPECIAL USE PERMIT TO ALLOW NINE LOFT APARTMENTS IN A BB (CENTRAL BUSINESS DISTRICT) ZONING CLASSIFICATION FOR THE SUBDIVISION TO BE KNOWN AS THE MILLYARD, LOCATED AT 100 ELKTON ROAD**

(NOTE: The public hearing on this item was held at the same time as Item 26, but voted on separately.)

MOTION BY MR. OSBORNE, SECONDED BY MR. ATHEY: THAT THE SPECIAL USE PERMIT BE GRANTED TO ALLOW NINE LOFT APARTMENTS IN A BB ZONING CLASSIFICATION FOR THE SUBDIVISION TO BE KNOWN AS THE MILLYARD.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

30. **8. ORDINANCES FOR FIRST READING:** None

31. **9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:**

A. Council Members:

1. Resolution 07-__: Final Approval of the Development Known as Casho Mill Station, Acceptance of Streets & Open Area, Incorporating the Streets Onto the Official Map of the City & Release of the Surety Bond

Ms. Lamblack read the resolution by title only.

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

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.
Absent – Athey (Away from Table).

(RESOLUTION NO. 07-L)

32. 9-A-2. RESOLUTION 07-___: IN OPPOSITION TO HOUSE BILL NO. 111 RELATING TO LAND USE & THE APPLICABILITY OF LOCAL GOVERNMENTS' REALTY TRANSFER TAXES

Ms. Lamblack read the resolution by title only.

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

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Clifton, Markham, Tuttle, Funk, Pomeroy, Osborne.
Nay – 0.
Absent – Athey (Away from Table).

(RESOLUTION NO. 07- M)

Mr. Clifton asked what the financial impact to the City would be if House Bill No. 111 passed. Mr. Luft said it would probably be zero, but the City's biggest concern was the preservation of the City's ability as a Home Rule community to annex property. Mr. Pomeroy thought it was important to contact the Newark's legislators to make sure they were aware of how important it was that this bill does not pass.

33. 9-B. COMMITTEES, BOARDS & COMMISSIONS:

1. Resignation from Planning Commission

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: THAT COUNCIL ACCEPT THE RESIGNATION OF JAMES SOLES FROM THE PLANNING COMMISSION.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(NOTE: At this time Steve Dentel, chairman of the Conservation Advisory Commission needed to time to set up his power point presentation. Therefore, Council proceeded to the next agenda items. SEE ITEM #40.)

34. 9-B-3. PLANNING COMMISSION MINUTES OF APRIL 3, 2007

MOTION BY MR. OSBORNE, SECONDED BY MR. ATHEY: THAT THE PLANNING COMMISSION MINUTES OF APRIL 3, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

35. 9-B-4. RESIGNATION FROM TOWN & GOWN COMMITTEE

MOTION BY MR. OSBORNE, SECONDED BY MR. TUTTLE: THAT THE RESIGNATION OF JOHN BISHOP FROM THE TOWN & GOWN COMMITTEE BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

36. **9-C. OTHERS:** None

37. **10. SPECIAL DEPARTMENTAL REPORTS:**

- A. Special Reports from Manager & Staff:
1. Real Estate Tax Assessment Quarterly Supplemental Roll
Interim Billings for the Period of April 1, 2007 – June 30, 2007

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: THAT THE REAL ESTATE TAX ASSESSMENT QUARTERLY SUPPLEMENTAL ROLL INTERIM BILLINGS FOR THE PERIOD OF APRIL 1, 2007 – JUNE 30, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

38. **10-A-2. SETTING DATE & PLACE FOR DISPLAY OF ASSESSMENT ROLLS & APPEALS DAY FOR 2007-2008 REAL ESTATE TAXES**

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: THAT APPEAL DAY BE HELD MAY 29, 2007 AND THE ASSESSMENT ROLLS BE DISPLAYED FROM APRIL 30, 2007 THROUGH MAY 25, 2007.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

39. **10-B. ALDERMAN'S REPORT**

MOTION BY MR. OSBORNE, SECONDED BY MR. TUTTLE: THAT THE ALDERMAN'S REPORTS, DATED APRIL 3 AND APRIL 17, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

40. **10-C. FINANCIAL STATEMENT**

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: THAT THE FINANCIAL STATEMENT ENDING MARCH 31, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

41. **9-B-2. PRESENTATION BY CONSERVATION ADVISORY COMMISSION RE CREATION OF GREEN ENERGY BUILDING**

Steve Dentel, 59 Kells Avenue, Chair of the Conservation Advisory Commission (CAC), advised that the CAC worked on this topic for almost two years. He proceeded with a power point presentation regarding the creation of

“green” energy building. With energy costs rising rapidly, the demands for fossil fuels has outpaced their availability. Therefore, buildings should be constructed with this future in mind. He claimed that “green” buildings were also environmentally friendly in other ways such as providing a pleasing workspace that enhanced productivity.

Mr. Dentel believed the program was consistent with, and would strengthen Newark’s image as an environmentally friendly community. In the long term, the Green Building Incentive Program would further enhance the appearance of homes, offices, businesses, and the campus. Mr. Dentel explained “green” buildings, the certification program, the LEED certification, the Green Home Choice Program, and the additional cost of construction for a “green” building among other things.

The CAC recommended incentives that would accelerate “green” building in Newark. They suggested no requirement for building “green.” The City would encourage construction projects to incorporate principles of conservation and sustainability in their design and construction. At the present time LEED was not available for residential buildings. Therefore, the CAC recommended encouraging all commercial and industrial developments requesting site plan approval to participate in the program. A Green Building Fund would be established with a contribution from site plan projects of \$.03 per square foot of gross floor area. That contribution would be refunded if a developer applied for and obtained formal certification of the project from the US Green Building Council. Alternatively, the funds would provide resources for any additional expenses required of the City in administering the program, and also be used for additional education, outreach and support on “green” building issues.

Because the LEED program was not available for residential buildings, the CAC recommended a voluntary Green Home Choice program.

Studies have shown that basic LEED certification may be achieved in some cases with no extra development or construction costs. The CAC also recommended that the City adopt the goal that all construction of new City buildings, and major renovations to existing City buildings meet or exceed a Silver Certification based on LEED criteria.

Staff reviewed the “green building” recommendation with Mr. Dentel prior to the meeting. Their discussion focused on three areas: (1) amending the Site Plan Approval Code to include wording pertaining to the LEED program as a voluntary option for residential, commercial, and industrial development; (2) experiment with LEED for a future new City building/facility prior to making a decision whether or not to adopt it for all future City funded projects; and (3) evaluate the current Code to determine if and where it could be changed to enhance energy conservation and environmental sustainability for all development projects. The Building Department will do a comparison of the City Code and the LEED Program checklist to see how the City presently stacked up against the program’s energy and conservation components. Input will be received from the departments that deal with building and development codes and regulations. It appeared that the existing Building Code met at least a few of the LEED standards. A recommendation would be forthcoming as to the next step.

Additional information provided in the presentation is available in the City Secretary’s Office.

Mr. Sciulli added that in the very near future he would be proposing to Council the adoption of the 2006 version of all the International Codes and part of that was the International Energy Conservation Code. By doing that he thought the City would be achieving some of the goals proposed by the CAC.

Mr. Pomeroy thought the work done by the CAC on this proposal was remarkable. He envisioned that it was a matter of time before everyone was participating in the LEED program, and he hoped Newark would be a leader rather than a follower. He asked Mr. Dentel if he thought everyone would be forced to go in this direction, or would it be up to individual municipalities to move forward. Mr. Dentel believed it would be left up to the communities. Mr. Pomeroy asked if retrofitting would be impossible to deal with to which Mr. Dentel answered that LEED had a point system for building renovations of commercial and industrial type buildings.

Al Matlack, a Hockessin resident, and professor at the UofD, advised that he thought the LEED program was fine, but it ignored a lot of energy that could be saved through passive solar construction that would save a lot more energy than LEED. He proposed when incentives and Building Code modifications were submitted to Council, they ask the California Energy Commission how to modify it to include passive solar construction for Delaware. He believed that program would save much more money. Mr. Dentel agreed with Mr. Matlack in principle and in philosophy. He advised that the CAC wanted to recommend something they could "pull off the shelf" because they did not think the City of Newark wanted to develop a new scoring system for LEED certification.

There were no further comments.

**42. 10-D. REQUEST FOR EXECUTIVE SESSION RE PENDING
LITIGATION (DURKIN V. NEWARK)**

MOTION BY MR. OSBORNE, SECONDED BY MR. ATHEY: THAT COUNCIL ENTER INTO EXECUTIVE SESSION WITHOUT THE PRESS TO DISCUSS PENDING LITIGATION.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Council, excluding Mr. Athey, entered into Executive Session at 10:23 pm and returned to the table at 10:53 pm at which time Mr. Funk advised there was no action required by Council at this time.

43. Meeting adjourned at 10:55 pm.

Susan A. Lamblack, MMC
City Secretary

/pmf