

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

May 14, 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
Assistant to the City Manager Charles M. Zusag
City Solicitor Roger A. Akin
Planning Director Roy H. Lopata
Parks & Recreation Director Charlie Emerson
Public Works Director Richard M. Lapointe
Water & Waster Water Director Roy Simonson
Building Director Thomas Sciulli
Acting Chief of Police John Potts
Finance Director Dennis McFarland
Cpt. Rick Williams, NPD

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

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

A. Regular Council Meeting of April 23, 2007

Mr. Tuttle corrected page 5, first paragraph, second to the last sentence, by replacing the words "within wrestling range" with "without getting into wrestling range."

Mr. Funk corrected page 6, second paragraph, last sentence, by adding the words "a former member."

MOTION BY MR. CLIFTON SECONDED BY MR. MARKHAM: THAT THE MINUTES OF APRIL 23 2007 BE APPROVED AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

A. Public

Bill Baggott, 21 Winslow Road, expressed his concern about the University's proposed new building on the corner of S. College Avenue and Winslow Road. Prior to the Council meeting, several members of the community

met with Rick Armitage to review the proposed plan (as shown to Council later in the meeting). He asked Council to keep in mind that the area was a classic Newark residential neighborhood and the proposal was a very large, institutional building. The Baggotts view would be a massive 54' high structure blocking the morning sunlight. Mr. Baggott was concerned that the project came about without any long-term planning by the University and with no City involvement. He acknowledged that the University was exempt from zoning, but felt they were obligated to coordinate and cooperate with other people of interest and be open about their plans.

James & Patricia Magee, 30 Winslow Road, acknowledged that the proposed structure was a beautiful, outstanding building. However, their concern was that it would be built too close to Winslow Road in that it would be only 15' from the street and would change the entire dimension of the street. The University claimed that was being done in order to save 12 parking spaces. The Magees suggested moving the building farther north and foregoing those parking spaces. Mr. Funk agreed that the building was too close to the street.

There were no further comments.

4. 3-B. UNIVERSITY

1. Administration

Rick Armitage provided four slides of the new University admissions building, which included views from the Baggott home. The major concerns he heard from the neighbors were the location and its proximity to Winslow Road, and the proposed plantings. He did not have a final landscaping plan but thought the plantings would soften the impact of the building. The 25,000 sq. ft. proposed building would be 24' from the Baggott's property line. The highest point of the building would be 54'. He assured the neighbors that he would relate to the senior administration that they would like the building physically moved back another 15'. Mr. Clifton agreed with the residents that the University should consider a different setback, but expressed his approval with the design of the building.

5. 3-B-2. STUDENT BODY REPRESENTATIVE

There were no comments forthcoming.

6. 3-C. COUNCIL MEMBERS

Mr. Clifton advised that he talked with the attorney for Commerce Bank and learned that the widening of Chapel Street was still on schedule for June. He appreciated Commerce Bank for moving forward with that project.

7. Mr. Clifton suggested that another bump out was needed at the crosswalk on Main Street in the vicinity of The Green. At the present time there was a bump out on the right side. Apparently cars move into the far left lane to make a left turn and that blocked the visibility of students crossing from the right to the left as they pass in front of the cars. Mr. Lopata will look into this because DeDOT had plans to make improvements to crosswalks in the near future.

8. Mr. Clifton commented on Chapelfest that was held on April 28th and attracted about 4,000 people. His concern was with the safety of the participants as well as the police officers. The streets were covered with glass and beer cans and had there been an emergency or a fight, it would have been difficult to respond. He viewed it a very unsafe environment especially with people on top of the roofs. The whole situation was totally out of control. He thought they needed to look at the maximum number of people permitted for an outside event. It was his understanding that a maximum of 250 were allowed per home which meant 5000 people were permitted between the two sides of the street. He also would like to look at innovative ways to stop the situation getting to the point it

was that night. It was so bad that you could not walk behind the houses without stepping on a beer can. He drove down Chapel Street the next morning and found the area still a mess. He hoped they could find legislation to control this type of situation in the future.

Mr. Markham added that he heard from several residents who questioned why the City granted a permit for this event. He stated for the record that the City did not grant a permit. He also heard from the Board of Directors for the Chapel Street Players who said people who were afraid to attend their play, and they had to chain and lock the doors to keep drunken students from going in. He heard that at four in the afternoon there were lines at the liquor store in the Newark Shopping Center and public urination. He understood students were going to party, but felt the City had to do something to limit the number of students at any particular time.

Mr. Clifton questioned how the backyards of the homes along Chapel Street turned into parking lots. Parking on grass was not allowed in other areas of town and he questioned why it was allowed in that area.

9. Mr. Clifton brought up the budget process and questioned if the City Manager knew what he planned to do with cost control in the departments. Mr. Luft said there were no guidelines set but he would be discussing that with the Finance Director. Broad estimates have been made for the Capital Budget which Council would be receiving next week and forwarding it to the Planning Commission for their review.

Mr. Clifton was fearful of getting into a position where all of a sudden the City was faced with a deficit and departments were very tight on their budget and not able to have what they needed to do their job on a day-to-day basis. Mr. Clifton asked the City Manager to consider the costs that have gone up and where the City needed to be as far as the true cost of the departments doing business, rather than just arbitrarily picking a 2% reduction in their operating budgets.

Mr. Clifton said one of the things that brought this to light was when they approved the Tasers. He thought all officers should have Tasers and considered them a part of their operational belt. However, they had to wait for a grant in order to purchase them. He considered that purchase the cost of doing business.

10. Mr. Markham addressed technology and related that he was recently in the City Secretary's Office watching frustration of one of the staff trying to work on her computer. It was taking minutes to open up programs. As a result he made a donation to some of the computers in the office by purchasing a \$30 upgrade that produced less frustration to the employee. He suggested doing a survey of the employees about how they were using technology and try to determine who could be helped in order to better their productivity. He believed the technology in most offices was not far from where it needed to be. An inventory of computers showed there were 100 computers in the City and for \$3,000 they could be upgraded to reduce the frustration of staff, make employees more productive, and reduce the backlog, which would make for a happier atmosphere. In summary, Mr. Markham encouraged the City to look at its technology and other types of technology such as scanners to get everything electronic.

11. Mr. Markham commented that he thought the Curtis Paper Mill workshop went very well, and there was a nice turnout from the citizenship who wanted to see the site cleaned up and the buildings torn down. He hoped to hear demolition costs would be within what was expected and this project moved along in the next year or so.

- 12.** Mr. Markham was happy the City found money to do the sidewalks around the reservoir. He hoped to see that project go out for bid in the near future as he saw adding the sidewalks as a safety feature.
- 13.** Mr. Markham observed the recent DUI checkpoint in Newark a few weeks ago. He was impressed with how fast the police were able to keep people moving through. There were 17 DUI's, 2 drug arrests, and several underage consumption arrests.
- 14.** Mr. Markham said he would be curious to know how Jenney's Run does with the new trash carts that were delivered this week.
- 15.** Mr. Tuttle advised that on April 26th Roy Simonson hosted a good public meeting where engineers presented alternatives for fixing the crossings of the sewer pipes over the Christina Creek. The supports of two pipes have decayed and need to be replaced before the pipes fail. Four alternatives were presented, one of which was basically putting things back to where they were. That was not considered a good alternative because years from now they would be going through the same thing. The other three alternatives were long-term fixes and the cost was about one million dollars. Putting things back to where they were would cost about \$650,000 and it made no sense to spend that kind of money if you could fix the problem for one million dollars. Although these were preliminary estimates, he thought it was time to do some creative money finding. He thought the state should be involved because he understood this was a problem the City inherited because at least one crossing predated the City owning any property in that area. When the City annexed the property, the sewer crossing was annexed and some of the material flowing through the sewer came from outside the City. Therefore, he did not think the City needed to bear 100% of the cost.
- 16.** Mr. Pomeroy thought it was noteworthy that the U.S. Small Business Association named Newark the "Small Business Community" of the year and congratulated everybody in the City who was involved in that.
- 17.** Mr. Pomeroy thanked the City Solicitor for his memorandum on "whistleblower statutes." He thought there were several points made that were worth discussing. This item will be placed on a future agenda for further discussion to determine whether any action was warranted.
- 18.** Mr. Osborne reminded everyone that Sunday was the Memorial Parade and Ceremonies and encouraged everyone to attend.
- 19.** Mr. Athey advised that he attended the annual Town & Gown Volunteer Recognition Program last Monday. Thirty-six University students were recognized for their volunteer work in the community and he was very impressed with what the students accomplished.
- 20.** Mr. Athey advised that he, Messrs, Tuttle and Pomeroy, several state legislators, and County representatives attended a legislative breakfast at the Newark Day Nursery last week. The daycare was embarking upon another capital campaign to do some building repairs.
- 21.** Mr. Athey said that he and Mr. Tuttle attended the recent College Park Civic Association meeting, along with Mr. Sciulli, and Acting Chief Potts. The residents have been very happy and impressed with Officer Schwagel who has been working with the neighborhood.
- 22.** Mr. Athey acknowledged that the City Manager celebrated 20 years with the City in February and congratulated him for reaching that milestone.
- 23.** Mr. Funk commented on Chapelfest and said he was not in town after 3 pm that day but discovered a few things that were worth noting. He represented several landlords who owned homes on Chapel Street who claimed last year

they were called by the Newark Police the day before the event and then met with their tenants. The landlords claimed they were not called this year. He also noted that at 2:30 pm there was no police presence on Chapel Street. When an event like this was planned, he thought police presence was needed before the event started. He also learned at lunchtime that day that the duty officer in charge of the University Police was not aware that Chapelfest was going to take place. Mr. Funk believed they could do a much better job curtailing that event by having a police presence and spending the extra money to do that.

Cpt. Potts advised that the officers were on standby as of noon and were to be called in once the event started. He also had an extra shift and extra officers who came in. They were called at 12 noon and got there around 3 pm. Mr. Funk reiterated that it was important to have the officers there at the beginning, and perhaps the liquor store in the shopping center needed to be shut down. That being said, he did not know whether it would be legal to do that but believed the Delaware Alcoholic Beverage Control Commission could have been contacted when the City learned of the event and they would have sent at least half of their force to supplement the City's force.

24. Mr. Athey recognized the board members from the Newark Housing Authority and asked if Item 9-C-1 could be heard as Item 4-C.

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT ITEM 9-C-1 BE HEARD AS ITEM 4-C.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

25. 4. ITEMS NOT FINISHED AT PREVIOUS MEETING

A. 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 (**TABLED 02/26/07**)

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT BILL 07-07 BE LIFTED FROM THE TABLE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Ms. Lamblack read Bill 07-07 by title.

Mr. Pomeroy asked for clarification of the changes. He questioned the following scenario. If a building had residential on the second floor and a shoe store on the first floor, and the shoe store went out of business, would a new owner who wanted to put in another shoe store or another store that fell in that classification need to sprinkler the building. He was told they would not have to sprinkler the building. The building would have to be sprinklered if there was a change in use on the first floor. The proposed changes would not require a sprinkler system if the three conditions listed in the proposed bill were met.

Mr. Pomeroy also clarified by asking if a building had residential on the second floor and wanted to replace a business on the first floor with residential, would it be permitted under this proposal. Mr. Sciulli said it would not be permitted under a number of scenarios such as zoning.

The chair opened the discussion to the public.

John Farrell, 246 King William Street, said he was representing himself, not the Fire Department, because he was responsible for introducing the sprinkler ordinances a few years ago when he served on Council. He claimed there was a series of ordinances that dealt with life safety issues and his goal was not to create hardships, but to create a better life safety standard in the City. He claimed requiring all new buildings to be sprinklered was an easy sell even for single-family dwellings. Council agreed at that time that whenever there would be a change in use, the building would have to be sprinklered. He claimed Council decided at that time to “draw the line in the sand” and encouraged Council to leave the line alone.

Mr. Farrell asked Council to ask themselves if they approved the changes, would they be increasing public safety of the residents and the firefighters. It was his opinion the answer was no. Mr. Farrell claimed every time Council “tinkered” with public safety, there was the possibility of causing injury down the road.

Mr. Funk explained that the proposed change came about because a shoe store on Main Street moved out and an architect wanted to move into the space. He was not allowed to rent the space without the building being sprinklered because it was a change in use. Mr. Funk pointed out that the change of use did not change the level of public safety.

Mr. Farrell reiterated that Council decided that whenever a use changed, the building would be brought up to the present standards and thereby be sprinklered. He urged Council not to “waiver the line in the sand.”

Gene Nyland, 812 Kenyon Lane, Director for Aetna Hose, Hook and Ladder Company and liaison to the City from the Fire Department, claimed the Fire Department hoped the present sprinkler ordinance would eventually lead to all City buildings to improve and enhance the life safety to the occupants and the members of the Fire Department.

Mr. Nyland claimed the Fire Department looked at Main Street as an extremely vulnerable area within their district due to the density of the buildings, the mishmash of occupancies in every building, and with the residential aspects in the rear of so many commercial fronts. They hoped the original ordinance would drive sprinklers into every one of those buildings to lower the exposure to people dying in tragic fires on Main Street. He claimed the other aspect was the fact that it was a very tight Main Street. When a fire occurred on Main Street, they run into the situation of trying to save the original building plus the ones on either side of it and sprinklers in the buildings would solve that problem for the Fire Department. In summary, because of the density of the buildings, and the large number of living spaces above and behind the commercial sections of the buildings, it was their hope that Council would not amend the ordinance. They hoped, in the next ten years, all buildings on Main Street would have an adequate sprinkler system. He acknowledged that Council had to deal with the monetary issues relating to putting sprinklers in, but in the Fire Department’s opinion, the ordinance should be left alone.

Steve Pilnick, owner of 48 & 50 E. Main Street, stated that his family owned this property since 1938 and have been good stewards, not only to the property but to downtown Newark as well. He believed the sprinkler system was a good ordinance but too restrictive. He thought what was once viable on Main Street (that being mercantile types of businesses like the shoe store) was no longer in demand. There has been a shift from mercantile to other types of business utilizations. His property has been on the market for a number of years and the market was dictating the terms that it was time for a change.

Mr. Pilnick clarified that it was not his intention to have the sprinkler ordinance thrown out but rather have it modified. He agreed with Mr. Farrell that there was a “line in the sand,” but sometimes the “line” was too sharp and precluded other types of businesses from occupying older buildings. The type of

businesses he was not seeking to put in under an amended ordinance included: restaurants or businesses that would cause a hazard. He was seeking to bring in businesses such as architectural firms, creative shops, fitness shops, etc., all less demanding on that space than a mercantile utilization would be.

Mr. Pilnick claimed the present ordinance turned the National Fire Code on its head. For example, he could lease to a mercantile destination – take the merchandise off the shelf, put it in a bag, and the customer walks out the door. However, an office was not allowed. If you examined some of the Fire Codes that existed nationally, there was less of a restriction on a business classification. He assured Council the reason his property has been sitting idle for three years was the demand and the market realities have made a distinct shift on the street and he asked Council to assist him, not only on a personal level but from an economic development level, to slightly broaden the ordinance to allow other types of businesses to come in. Otherwise, this issue would continue to surface year after year because there were other property owners on Main Street who were in the same predicament.

Jane White, 103 Radcliffe Drive, questioned for clarification, if the ordinance passed, could the building that housed the shoe store be allowed to have a restaurant or a take-out food type business. Mr. Sciulli said if the occupancy was below 50 people, and other zoning requirements were met, that would be allowed.

Todd Ladutko, 1101 Millstone Drive, owner of 131 and 133 E. Main Street, said both properties would fall under the new revision in terms of being able to modify the use should his existing tenants leave. He asked if the fire risk of an architect, lawyer, or insurance office would be as great a risk as if it was a retail store, or a shoe repair store with flammable shoe polish. He also noted that the current Code required a separate water line for a sprinkler system which meant you had to tap into Main Street and get extraordinary permits from DelDOT and have an extraordinary expense to resurface the road over and above the actual cost of sprinklering the building. The huge cost could only be absorbed on a small amount of square footage making it very difficult to make your building competitive.

Mr. Ladutko said when he refurbished 131 E. Main Street in 1996, the Fire Marshal at that time required him to put aluminum siding/metal siding/masonry siding as opposed to vinyl in order to create a fire barrier between 131 and the property next door. That was an example of how one could minimize the fire risk floating from building to building. He questioned what was more of a fire hazard—a vacant building or an occupied building.

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

Mr. Athey asked Mr. Sciulli how many buildings this change would apply, to which Mr. Sciulli answered it would apply to any building with residential on the second floor that was changing use on the first floor. Mr. Athey said he assumed the cost for Mr. Pilnick to sprinkler the building could not be recovered by an increase in the rent. Mr. Pilnick said he received two estimates on sprinklering the building and both were in excess of \$85,000. There was a significant amount of leeway that the sprinkler system companies gave themselves due to several factors. One was tapping into the City's main line on Main Street and the depth of the line. Another factor was all the work had to be done at nighttime. All of the factors made it too expensive for him to consider doing it. The cost for the outside work was slightly more than the cost to retrofit the interior of the building.

Mr. Athey assumed the implication was by spending the money to put the system in, Mr. Pilnick would never be able to recoup the money. Mr. Pilnick said he saw no way to recoup the money. Mr. Athey asked if there was a justification for a rent increase by making the building safer. Mr. Pilnick said the easy notion

of simply passing the cost through to the tenant was not unheard of; however, the amount would put it out of the market. In other words, the rental rate would be so much higher than Main Street would demand and he would not be able to get a tenant at that price. That was why he was asking for a slight modification to the sprinkler ordinance. He reminded Council that he could not even lease the building to the United States Marine Corps, but under the mercantile guidance, theoretically, he could lease to an adult magazine store.

Mr. Athey said he understood Mr. Pilnick's comments, but he found Aetna's comments enlightening and it was really the bigger picture of the long-term hope that sometime in the future all buildings on Main Street would be sprinklered. He asked for clarification if a small café (with heating utensils and food preparation), which would increase the odds of a fire, would be permitted if the ordinance passed as long as they did not go over 49 persons and the building did not exceed 2,000 square feet. Mr. Sciulli said a café would still need to meet other fire safety requirements, but it would not need to be sprinklered. Mr. Luft interjected a question by asking if the "live loads as specified in Table 1607" would knock out a café. Mr. Sciulli answered no. He claimed that number (1) in the ordinance was a design for live loads, which was a factor of the use and occupancy of the building. There was also a design load for an occupant load for a means of egress.

Mr. Athey asked if there were definitions in the Code that defined a more hazardous use such as a restaurant. Mr. Sciulli answered yes and explained it classified hazardous occupants as low, moderate, and high hazardous. The NFPA defined those three categories. Mr. Athey suggested adding fourth criteria that so long as the hazard did not increase the building would not need to be sprinklered.

Mr. Sciulli said according to his interpretation, it would go from mercantile to assembly occupancy and if it was less than 50 people that could be done. They would be considered the same use group classification in the Building Code and that Code would tell how much fire protection would need to be provided depending on the occupancy classification, square footage, height, etc.

Mr. Athey asked if fourth criteria that a use could not convert to a higher hazard use without being sprinklered could be added. Mr. Sciulli answered yes.

Mr. Osborne pointed out when Main Street was resurfaced there was an opportunity for the building owners to put in the necessary plumbing underneath the street and bring it up to the building to avoid the cost of having to tear up the street in the future. He did not think property owners took advantage of that and asked Mr. Pilnick to comment. Mr. Pilnick said he looked at the overall cost of doing the project and was deterred by that cost. He could not remember the exact cost of doing it at that time, but the overall cost of running the lines to the building and introducing the service was cost prohibitive. Mr. Funk interjected that there were a few owners who took advantage of that and he thought it cost between \$20,000 and \$30,000.

Mr. Pomeroy said he heard from folks on both sides of this issue so he gained a lot of appreciation on both sides. Nobody wanted vacancies on Main Street and from an economic standpoint and a health and happiness standpoint, it was important to fill those vacancies. He found it difficult to understand that an architect's office would be more hazardous than a shoe store. On the other side of that, he did not go into burning buildings, so that made him pause and think about Aetna's comments. If Council was inclined to pass the ordinance, he thought there were a couple exceptions worth adding. He did not think they wanted to move from a low risk to a high-risk business without sprinklering. Although that would take out a chunk of potential businesses in that location, it would leave in architects and those sorts of businesses that would allow the properties to be marketed more liberally than they were now. Because they were

dealing with residential units and sprinklering was not a part of it, he suggested requiring hard-wired smoke alarms with a central call in the building.

Mr. Tuttle said he thought residential occupancy was about as high a hazard as you could put in a building because every residence had a cooking utility, extension cords under carpets and other things they should be smart enough not to do. Not having been on Council when the ordinance was originally approved, it was his assessment that Council's action was to give consideration to existing businesses, but over the long term transform Main Street into a safer environment. He thought the recognition had to be there that sooner or later uses would change and that would be the trigger—when the use changed, that triggered the improvement. He did not think he could argue with the contention that it was better to have an occupied building than an unoccupied building because an occupied building was safer. When there was residential on the second floor, he did not think it mattered what the business was on the ground floor. In the long run, for community safety, he thought the building should be sprinklered so he saw no reason to amend what was done in the past.

Mr. Markham asked what magnitude of building improvements and renovations would trigger requiring it to be sprinklered. Mr. Sciulli said there was a section of the Code that would require it to be sprinklered once the building was renovated more than 50% of the cubic volume of the space.

Mr. Markham asked for an explanation for the reason for two separate water mains to the building. Mr. Sciulli said the second main was required because if someone did not pay his or her water bill and the water had to be turned off, you would not want to turn off the fire sprinkler system.

Mr. Markham hoped to find a compromise because vacant buildings on Main Street were not safe. However, he did not want to give up the entire sprinkler ordinance. He thought if only one water main was required that would cut the price in half, the building would be sprinklered, and the value of the building should increase.

Mr. Simonson explained that the NFPA required the second water main primarily for the flow to the system. Typically the lines serving the residential or business use was not sufficient for fire flow to operate the sprinklers, which required the new line.

Mr. Funk asked if there was an agreement with DelDOT that when Main Street was repaved that nobody was allowed to tap into the water main for two years. He was advised that it was five years. Mr. Lopata said he understood there was an appeal process, but DelDOT preferred not ripping up a road within five years of paving.

Mr. Clifton asked for an example of the most fire-impacted use versus what a high-risk type of business would be. Mr. Sciulli said they would not classify it as specific as a shoe store or deli; rather they followed broad classifications. He claimed he took the eight most common changes of use and at the present time, under those use groups, the whole building would have to be sprinklered for each change. Under the proposed ordinance, you would still have to sprinkler the building under four of the category changes.

Mr. Pomeroy asked if a shoe store wanted to become a pizza shop with a couple of tables, would it be permissible even though it did not change the live load. Mr. Sciulli answered that as long as it had no open flame (pizza shops usually had ovens), it would be permitted, but it would need a fire suppression system (not a sprinkler system) if this ordinance were adopted.

Mr. Clifton said he would like to see a reasonable compromise. He noted that the original sprinkler ordinance was amended in 2003 for a local car dealership in order to put up a temporary building that surpassed the time limit for

temporary buildings. He liked the ideas suggested by Councilman Pomeroy and Athey, especially the idea of an automatic call-in system. Although he disliked voting against the Fire Department, he thought it was their department's responsibility to oppose the change. It was not his intention to dismantle the original ordinance piece by piece, but he thought these changes were workable and he would support them with the proposed changes suggested by Councilmen Pomeroy and Athey.

Mr. Pomeroy asked if they were going to amend the ordinance to say that some classifications would take it to a higher risk, and did they have enough information to know what took something to a higher risk. Mr. Athey said he understood everything was defined. Mr. Pomeroy was concerned that a pizza shop would not take it to a higher risk. Mr. Sciulli said he used the NFPA, fuel loads, and things like that to define the classifications. For instance, they classified a business occupancy as an ordinary hazard.

AMENDMENT BY MR. ATHEY, SECONDED BY MR. MARKMAN: THAT A NEW CRITERIA 4) BE ADDED TO READ: THE HAZARD CLASSIFICATION, AS DEFINED BY THE MOST CURRENT EDITION OF THE NFPA 101 IS NOT INCREASED.

AMENDMENT PASSED. VOTE: 7 to 0.

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

AMENDMENT BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT A NEW CRITERIA 5) BE ADDED TO READ: AN AUTOMATIC FIRE DETECTION SYSTEM WITH A REMOTE CENTRAL STATION.

AMENDMENT PASSED. VOTE: 7 to 0.

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

(Note: The following Motion was made at the 2/26/07 meeting:

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

and was lifted from the table at the beginning of the discussion.)

Question on the Motion as Amended was called.

MOTION AS AMENDED PASSED. VOTE: 5 to 2.

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

(ORDINANCE NO. 07-14)

26. 4-B. RECOMMENDATION REGARDING REQUEST FOR PROPOSAL (RFP) NO. 07-01 ENGINEERING SERVICES FOR THE DESIGN OF THE POMEROY BRANCH RAIL TO TRAIL PROJECT (TABLED 04/23/07)

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT REQUEST FOR PROPOSAL (RFP) NO 07-01 BE LIFTED FROM THE TABLE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Funk asked if the people who did the ratings knew the bid price to which Ms. Houck answered no. The bids were opened after the ratings were completed, and Ms. Houck claimed that was customary so that the company was hired for their qualifications as opposed to the bid price. She further stated that if the City's budget was unable to afford the bid and the City was not able to negotiate a lower price, then the next rated company would be selected.

Mr. Athey said, in his experience, it was qualifications based—engineering, architect, etc. for professional services—and you didn't submit a fee even if it was in a separate sealed envelope. The most qualified won the job and then you sat down and negotiated the scope—the number of hours it would take to complete the job, etc.

Mr. Funk questioned why they submitted a bid to which Ms. Houck said that it was always done that way. She was considering in the future asking for the budget proposal after the ratings were completed. That was how the state did their RFP's.

Mr. Athey said it was difficult to estimate hours even though it was a well-written RFP. His experience included sitting down with the client once they won the job and you start to get into the project much more and that could take weeks or months to go through. He asked if the budget proposal was a lump bid or was it for time and material, to which Ms. Houck said it was a lump sum. Mr. Athey asked if there was anyway to compare the hours or the billing rate. Ms. Houck said she could do that from the submission of information from the vendors. They provided the hourly rate of all the people working the different categories of the project. They also provided the number of hours.

Mr. Funk said RBA had two subcontractors who already did a lot of work on the line. Tetra Tech was the subcontractor who addressed environmental concerns and they represented DeIDOT when they did the environmental study for the Pomeroy line.

Ms. Houck interjected that all that information was available to the City. Mr. Funk interjected that the City got charged for it. He also pointed out that RBA selected Landmark Engineering to do their fieldwork and Landmark had done fieldwork on the Pomeroy line and it might have been done for the people who filed a lawsuit.

Mr. Athey said that theoretically it would be an issue if the City were paying for someone to do the same work twice. He stressed that you had to think real carefully before using another engineer's work because of liability issues or professional disagreements, etc.

Ms. Houck added that if the budget proposals were not submitted with the RFP, Council would not see all them. Rather they would only get the one quote with her recommendation.

Mr. Funk said he was involved with the litigation on the Pomeroy Trail regarding issues on the title. He claimed the person who sued DeIDOT brought in an engineer to survey the whole line and it was his understanding that was one of the reasons the RBA bid was lower. Mr. Funk said he gave up with his wanting RBA.

Ms. Houck said that all of the engineers who bid were used to this format. In fact she had a call from the person who submitted the bid from RBA prior to her recommendation to Council to find out the ranking and how they fell short. That person understood the rankings because he was familiar with the process. Mr. Funk said that Ms. Houck might have thought he understood, but when he

called RBA, he ended up talking to someone in New Jersey and wasn't sure they understood. Mr. Luft interjected that that brought up another problem in that his office was dealing with a Columbia, MD office and the Mayor was talking to someone in New Jersey. Mr. Funk said he was told to talk to somebody in Columbia and that it was not RBA who contacted him. He also claimed he looked at the prices and that raised a red flag to him.

Mr. Athey thought Ms. Houck had a real good point with the way the DelDOT process was done, that being nobody would see the range in bids. Therefore, he thought the City's process might be a better safeguard to determine whether the City was getting a good price. He pointed out that Pennoni was just a little bit above the average bid.

Mr. Clifton thanked Mr. Luft and Ms. Houck for the information they provided. He believed the State Code clarified a lot of questions and seeing the scoring also helped him to understand the process.

Mr. Markham asked if it could be standard policy for Council to see the rankings of future RFP recommendations.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE REQUEST FOR PROPOSAL NO. 07-01 ENGINEERING SERVICES FOR THE DESIGN OF THE POMEROY BRANCH RAIL TO TRAIL PROJECT BE AWARDED TO PENNONI ASSOCIATES FOR THE TOTAL COST OF \$537,000.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

27. 4-C. (9-C-1.) DISCUSSION RE NEWARK HOUSING AUTHORITY

Donald Gouge, Wilmington, DE, attorney for Newark Housing Authority, advised that the NHA wanted to dispose of the Cleveland Heights property. They applied to HUD to be allowed to demolish and sell the property, which consisted of 13 buildings with 42 units on about 6.8 acres. Cleveland Heights was built in 1960 and currently only nine units were occupied. Maintenance on the occupied units was done by using materials from the unoccupied units due to the lack of funds. He claimed the residents wanted to move. Cleveland Heights was a public housing complex as opposed to Section 8. The residents have been paying anywhere from \$0 in rent up to perhaps 30% of their income, depending on the size of the family, composition, income, and a variety of other factors.

NHA also owned 36 units on Independence Circle, which catered to senior citizens and owned 20 sites in different parts of the City that were also public housing. NHA also administered a Section 8 Program that provided about 90 vouchers to eligible residents.

Mr. Gouge reviewed the makeup of the NHA, which included the Executive Director, a Housing Manager, and a part-time Inspector, and was run by a Board of Commissioners appointed by the Governor and the Mayor.

For several years the NHA has tried to get HUD approval to sell and demolish Cleveland Heights because substantial funds were needed to renovate the units. It was estimated that the cost to renovate was about \$50,000 per unit or \$2-2-1/2 million dollars for the entire site. The NHA received about \$150,000 a fiscal year to do capital projects and repairs to the units.

In March 2007, the City sent a letter acknowledging it was aware of the NHA plan to seek the disposition and demolition of the Cleveland Heights housing project to HUD. Since then, HUD has changed the rules, regulations,

and guidelines. They were requiring a letter of support from the City of Newark before approving the demolition and disposition.

Mr. Gouge said he could not be real specific with NHA's plans because they don't know what they were. Some things they have in mind included purchasing another apartment complex in the City, and depending on the number of units, maybe doing a mixed use type of facility such as 42 public housing units with the rest at market rental rates. The NHA met with a developer from Philadelphia several months ago and discussed a mixed-use type of development, but no site was determined. He understood with this type of project they could get tax credits and leverage the money.

Mr. Gouge concluded by saying Cleveland Heights was obsolete. It was old, not economically viable to rehabilitate, and there was no money to do that. The sale of the property would allow them to develop a quality mixed-use development or perhaps purchase an apartment complex that might be available for sale.

Mr. Clifton asked what would make him believe that in two or three years they would not be having the same conversation about the units on Independence Circle because there was no money to maintain them. Mr. Gouge thought they would realize enough money from the sale of Cleveland Heights to put money aside to take care of the maintenance of those units.

Mr. Clifton asked what happened in other municipalities who were also having problems with lack of funding. Mr. Gouge said the Wilmington Housing Authority had a Hope Six Grant and were able to tear down and put up a new development. The Hope Six money was no longer available.

Mark Dubarry, Philadelphia, PA, the NHA's accountant said his company worked exclusively with housing authorities across the country. He explained that Hope Six Grants were very competitive and most authorities that applied for them don't get the money for a long time. Large cities, such as Philadelphia, have the clout to get the Hope Six Grants. In the NHA situation, they have the land that would generate the cash to put together a deal that would make sense for the NHA as well as for the Newark community. His company will make sure the NHA would be able to survive once a new development was built or taken over. They want to make sure there were replacement reserves for future expenses to keep the building(s) going. He also reinforced the fact that HUD has changed their rules and that was why they were asking for another letter of support from the City. Personally he was glad the rules changed because the Executive Director, Ms. Jordan, has always wanted the City of Newark to be on board working with her on this project.

Mr. Clifton asked what the life expectancy was on a building to which Mr. Dubarry said it was 40 years.

Mr. Osborne said he would have liked to have been on board for a long time, but he hasn't heard very much about this. Every time the NHA brought this to their attention it was always "hush hush" and all the NHA wanted Council to do was sign an agreement to sell the land. He said he lived here when the project was first built and the quality of the units was very good. However, over the years no maintenance was done and that was why he thought they fell into disrepair. If the units had been maintained properly, they would not be in this position. He understood funding was hard to come by, but he thought management had a lot to do with it as well. Mr. Gouge said the problem came down to funds – there were not enough funds to maintain the buildings.

Mr. Pomeroy said if the City gave a letter of support, it would be moving to a shared responsibility. The City never has a developer come in and say they had some great ideas about what they wanted to do and then ask the City to hop on board because they were going to make some special things happen. That

wasn't how things worked. The City has a process that everybody has to go through before getting approval. If the City was moving toward a shared responsibility, he thought they needed to move toward more shared information. He apologized if it fell unfairly on the NHA, but they were asking for a big favor and a big leap of faith from the City and providing very little information. He did not doubt they had good intentions, but he was hesitant about a shared responsibility with very little information.

Mr. Gouge said he wished he could be more specific about what and where it would happen, but until they got approval from HUD to move forward, they could not go out for proposals. He apologized for not being able to provide any additional information.

Mr. Athey viewed it as a Catch 22 situation – the NHA could not move forward until they got a letter from the City, and the City was leery about giving a letter without knowing how they wanted to move forward. He thought it could be a real win-win proposition, but without knowing the possibilities or where they would be moving to, he found it tough to give a blanket endorsement. A few months ago when Ms. Jordan asked for a letter of acknowledgement, she told Council she could not tell the location because it was real estate and they were involved in negotiations. He assumed that was why details could not be given at this time.

Mr. Gouge said he would be happy to go into executive session, which Council would not be allowed to do. He added that he really did not know what direction they would go but they were very excited with the developer from Philadelphia who had a lot of great ideas.

Mr. Athey suggested the City Solicitor work on language for the letter that would not be a blanket endorsement. Mr. Funk thought HUD wanted a letter that said the City did not object to the demolition of Cleveland Heights. Mr. Gouge said the City had to use the word "support" in their letter.

Mr. Gouge said he and Mr. Akin would draft language that would satisfy Council's concerns and at the same time give HUD what they needed.

Susan Eggert, 306 Apple Road, a member of the NHA, said they were asking for a sense of support from the City so the NHA could move forward with the disposition of Cleveland Heights. It was not a broad support of what sort of development might result in the future.

Mr. Markham said the residents he heard from were much more worried about moving so he would like to see some resident support for the demolition. Mr. Gouge said several residents attended the last monthly meeting of the board and indicated their concern with the vacant units and said they wanted to go elsewhere. Mr. Markham said he would like to see more than what was in the minutes. He had no problems with the demolition as long as there were equal or better quality homes provided for the residents and their lives were disrupted as little as possible.

Mr. Clifton said he would like Mr. Akin to verify the process NHA has claimed they had to go through with HUD. Mr. Gouge will provide that information to Mr. Akin.

Mr. Clifton asked Representative John Kowalko to comment on this request.

Rep. Kowalko, 134 N. Dillwyn Road, advised he was involved with this site since February of 2005 when a series of letters went from Councilman Kevin Vonck and the City Manager to Gov. Castle regarding the status of the site. At that time over 20 units were occupied and, as a member of ACORN, he represented the residents. They wanted to demolish the site then and

Councilman Vonck wrote that the proposal was detrimental to the residents of Cleveland Heights because there was little incentive for the NHA to perform repairs or preventative maintenance on the units since the ultimate goal was to tear them down. He thought an effort should have been made to rehabilitate the units because of the long waiting list of people looking for housing. He thought the residents were intimidated and that was why he was trying to help them through ACORN. If the property was sold, he questioned whether the tenants would be housed in a high-rise apartment complex. He suggested approaching developers who would be willing to demolish the existing Cleveland Heights and rebuild there with a mixed-use facility even though there was a problem with the DNREC landfill on the site. He reminded Council that whatever decision they made, if it came back in the wrong direction, they would be ultimately responsible because they do appoint members to the Board.

28. 5. RECOMMENDATIONS ON CONTRACTS & BIDS:

A. Contract 07-05, Purchase of Police Uniforms

Ms. Houck summarized her memorandum to the City Manager, dated May 7, 2007, wherein she explained that this contract provided unit pricing of the purchase of uniforms for the Police Department personnel including sworn police officers, parking enforcement officers, and the animal control officer. The contract was for a two-year period with the option of two additional one-year renewal options. One bid was received from Red the Uniform Taylor for an estimated cost of \$34,047 for 2007.

Ms. Houck recommended that Contract 07-05 be awarded to Red the Uniform Taylor for a two-year period at an estimated cost of \$34,047 for 2007. She also advised that typically they got two bids for this contract, but this year they had additional requirements in the contract to make the uniforms better fitting, and they added stricter requirements for the speed of replacements because of problems with that in the past.

MOTION BY MR. CLIFTON, SECONDED BY MR. POMEROY: THAT CONTRACT 07-05, PURCHASE OF POLICE UNIFORMS, BE AWARDED TO RED THE UNIFORM TAYLOR FOR A TWO-YEAR PERIOD FOR AN ESTIMATED COST OF \$34,047 FOR 2007.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

29. 5-B. RECOMMENDATION TO WAIVE THE BID REQUIREMENT FOR THE PURCHASE OF UPGRADES TO NEW WORLD CRIMINAL AIDED DISPATCH (CAD) & RECORDS MANAGEMENT SYSTEM (RMS)

Ms. Houck summarized her memorandum to the City Manager, dated May 3, 2007, wherein she explained that this purchase was for additional upgrades to the recently activated New World CAD & RMS system in dispatch in the Police Department. That system was purchased by the State of Delaware at no cost to the City in an effort to standardize the systems used statewide. The value associated with the system was \$360,000. The department has now identified items that were not included in the state's purchase that the department made use of with its former system.

Ms. Houck recommended that Council waive the requirement to accept bids for the purchase of upgrades to the New World System for the total cost of \$150,225.

Mr. Markham asked Chief Potts if he was happy with this company's equipment to which Chief Potts said he received no complaints from dispatch and understood they were very happy to date. Mr. Tuttle added that compared to some other software purchased by the University, this was good equipment.

MOTION BY MR. POMEROY, SECONDED BY MR. OSBORNE: THAT COUNCIL WAIVE THE BID BIDDING PROCESS AND APPROVE THE PURCHASE OF UPGRADES TO THE NEW WORLD SYSTEM FOR THE TOTAL COST OF \$150,225.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

30. 5-C. CONTRACT 07-04, VEHICLE TOWING & IMPOUNDING SERVICES

Ms. Houck summarized her memorandum to the City Manager, dated May 2, 2007, wherein she explained that this contract provided unit prices for various towing services initiated by the City and within the City limits. In an attempt to adequately evaluate the bids received, it was necessary to confirm equipment, references, operations, and accuracy of information provided in the bid offering.

Ms. Houck and Cpt. Rick Williams conducted site visits, contacted references, confirmed insurance and all equipment described by each bidder. Horton Brothers of Delaware, Inc. had the greatest number of low costs associated with the services required.

Ms Houck recommended that Council award Contract 07-04 to Horton Brothers of Delaware, Inc. under the conditions of the contract and at the fees represented in their bid.

Mr. Clifton said the one concern he had with the low bids was the fact that they were probably making up the money with the fees they charged when they towed vehicles from private properties. Although the City was saving money, it was at the cost of having lots staked out, cars towed, and hurting the business community.

Ms. Houck questioned the low costs and was told that their overall business with this contract allowed them to charge that low towing fee. Other fees in the contract made up the difference.

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT CONTRACT 07-04, VEHICLE TOWING & IMPOUNDING SERVICES, BE AWARDED TO HORTON BROTHERS OF DELAWARE, INC., UNDER THE CONDITIONS OF THE CONTRACT AND AT THE FEES REPRESENTED IN THEIR BID.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

31. 5-D. CONTRACT 07-07, STREET IMPROVEMENT PROGRAM

Ms. Houck summarized her memorandum to the City Manager, dated May 7, 2007, wherein she explained that this contract provided for curb replacement, hot mix patching, milling, and hot mix resurfacing on eight city-maintained streets. Option I was included in the contract to allow for the replacement of curb, roadway milling, and hot mix placement on Minquil Drive.

Ms. Houck recommended that Council award Contract 07-07, Street Improvement Program, to Diamond Materials, LLC for its total Basic Bid and Option I for a total amount of \$593,598.25.

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT CONTRACT 07-07, STREET IMPROVEMENT PROGRAM, BE AWARDED TO DIAMOND MATERIALS, LLC FOR ITS TOTAL BASIC BID AND OPTION I FOR A TOTAL AMOUNT OF \$593,598.25.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

None

33. 7. RECOMMENDATIONS FROM THE PLANNING COMMISSION/DEPT.

- A. Request by 108 Main Street Associate, LLC, for the Major Subdivision of 108 E. Main Street, by Adding a Second & Third Story Addition with 15 Condominium Apartments Over a Portion of the Existing One-Story Retail Building at that Location to be Known as Olde Town Apartments (**RESOLUTION & AGREEMENT PRESENTED**)

Richard Beck, attorney for the applicant, explained that this was the same application brought before Council by Richard Handloff and Gibbons Young and that application was in litigation with the City. Messrs. Handloff and Young were selling the property to 108 Main Street Associates, LLC with James Baeurle as the Managing Member.

Mr. Beck said the main changes between the applications included the identity of the applicant and the concessions that Mr. Baeurle was willing to make to the City. Those concessions included deeding a parking lot to the City, making the project a condominium to enhance the ability to control and regulate the occupancy of the apartment units, and the dismissal of litigation against the City. Otherwise, it was the same project that was previously reviewed by the Planning Commission and Council. Because of the litigation schedule, Mr. Beck said a decision by Council was necessary at this time. To date, the litigation pending before the Supreme Court has been extended at least twice and no more extensions were permitted.

Mr. Markham pointed out that the Planning Commission recommended 10 units and the applicant was still requesting approval for 15 units.

Mr. Athey asked how Mr. Baeurle would have better control if the units were condominiums. Mr. Beck said the units would be primarily student rentals as initially presented. However, by making the apartments condominium units, capable of individual ownership by investors, several things would happen. First, the values of the units would be higher and the rentals higher because when you have one landlord, it would be assessed as one apartment project, not as individual units. Each condominium unit would have higher taxes. Mr. Funk interjected that every time a unit was turned over there would be a transfer tax. Mr. Beck said by offering the condominium form of ownership with a council, they could incorporate a number of the same controls that were offered by Washington House. However, he stressed it would not be the same situation where there would be a limit on just 20% rentals. They planned to offer deed restrictions and a set of regulations to try to make sure the project had real teeth to keep it from becoming problem rental units as seen with some student housing. He believed with the type of controls they would offer, it would be a much better situation than 10 unregulated standard rental units. Mr. Funk added that condominium projects in university towns traditionally had 60-75% of the

units owned by parents who had their children living there, and many times when the students graduated and found a job locally, they stayed in the units.

Messrs. Tuttle and Osborne raised issues that were discussed at the Planning Commission when this project was first presented by the former owners. Mr. Lopata advised that all the issues that were raised at the Planning Commission were addressed before the applicant ultimately went before Council for final approval.

Mr. Clifton asked if Mr. Bauerle would consider 10 units to which he said that would be a deal breaker. He had to have 15 units to make it economically feasible so it was not negotiable

The chair opened the discussion to the public.

Frances Hart, 257 W. Main Street, Newark, pointed out if 15 units were approved, it would add 60 people instead of 40 people and she questioned where they would park their cars. She further pointed out that the Court had already decided on this issue, and City Council already decided against this proposal. She asked what new information or evidence occurred to change the number of units to 15. She believed Mr. Baeurle's record in the past has not been good for the City. He enlarged Washington House from four floors to six floors and she questioned if he would do that again at this site.

Jean White, 103 Radcliffe Drive, asked if Messrs. Handloff and Young were partners of the applicant, to which Mr. Funk advised that they were selling the property to 108 Main Street Associates, LLC to which Mr. Baeurle was a managing member. She asked if each apartment would be sold as a condominium and was told that was correct.

Ms. White gave a brief history of this development which began with Messrs. Handloff and Young presenting their 15-unit plan. The Planning Department recommended 10 units and eventually the Planning Commission approved 10, four bedroom units in 2004 with other conditions. In 2005, Council approved 10 units and was then sued by Messrs. Handloff and Young because they wanted 15 units. The City won that case and that decision was being appealed by Messrs. Handloff and Young. Ms. White urged Council not to approve the plan before them and did not think their giving the parking to the City warranted approval by Council for the 15 units.

Ms. White questioned whether the second and third floors would be built over the whole length of the building or just a portion of the building.

Mr. Gibbons Young, owner of the property, interjected that he needed to correct Mrs. White by saying that the issue was not 10 units versus 15 units. He claimed the issue was the parking, and Mr. Baeurle changed the concept of the project by making the units condominium. He claimed his whole issue was the parking lot and that he tried his best to make the ten units work. After many dollars and many months working with engineers and builders, he determined it was not economically feasible to build 10 units. Mr. Young said at one point during the hearing, the offer was 15 units with him turning over the parking lot in the rear of the building to the City, which he and Mr. Handloff declined and that precipitated the court action.

Ms. White provided photographs of the view of the site from Lot #3 to show the length of the CVS building as well as a view from Center Street to illustrate the length of the buildings. She provided other photographs to show the setback of the building because she was concerned that the properties on each side of the site were set farther back making the CVS building stick out like a sore thumb by about 10 feet. She suggested that the additional stories be set back from the front, or 9-10 feet be cut off of the front of the building and use that extra space for a patio with an awning for the business located on the first floor.

She referred to the DNP's design guidelines that suggest new building setbacks should be consistent with that of neighboring buildings.

Mr. Baeurle reminded Council that the Design Committee reviewed the design of the building and their comments were favorable.

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

Mr. Osborne asked what was planned for the ground floor. Mr. Baeurle advised that the current owners worked with the City to create a condominium regime on the ground floor. Therefore, if someone wanted to buy that space as a condominium, they could do that. Mr. Baeurle said he would own the entire building until the units were sold. He further explained that the first floor consisted of two condominiums.

Mr. Young added that the condominium was originally proposed to be the existing CVS store which could possibly be subdivided. It was considered one tax unit. The wall separating the CVS store and the dance studio formed another condominium, which was now the dance studio. All the units on the second and third floors would be separate condominiums. Space on the outside of the building that was not deeded over to the City would be the last piece of condominium.

Mr. Osborne asked if the front part of the building was likely to be subdivided into two condominiums for a restaurant. Mr. Young said that would be up to Mr. Baeurle and it would probably be up to the tenant he obtained.

Mr. Beck added that the first floor would remain in some sort of a commercial use. Mr. Osborne understood that and his question was whether it would be divided into two units and was told that depended on the market.

Mr. Funk said he thought the night Council turned down 15 units, there were four votes for 15 units if the applicant would have agreed to deed the parking lot to the City. In terms of litigation, he said he thought the City had a very strong case.

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

Mr. Pomeroy said he would like to see less units but he liked that there would be a use for the property. He thought condos were better than the previous arrangement, and getting the parking was helpful and resolving the litigation was a good thing even though he thought the City had a good case. He appreciated the comments by Ms. Hart and Ms. White, but thought 15 units downtown were better than having those units in Nottingham Green. He was a big believer in putting density where it belonged downtown, especially it was intended to be student housing. He also liked the fact that the condos would produce the transfer tax.

With regard to the setback, he agreed with Ms. White that three floors would cause the building to stick out, and asked if anything could be done with that. Mr. Baeurle said he really did not know whether that could be done but he promised a good faith effort to move the building and/or the second and third floors.

Question on the Motion was called.

MOTION FAILED. VOTE: 3 to 4.

Aye – Tuttle, Funk, Pomeroy.

Nay – Clifton, Markham, Osborne, Athey.

34. 8. ORDINANCES FOR FIRST READING:

A. Bill 07-11 - An Ordinance Amending Ch. 2, Administration, Article IX, Personnel, By Adding a New Section Regarding Benefits for Job-Related Injury for Civilian Employees

Ms. Lamblack read Bill 07-11 by title only.

MOTION BY MR. POMEROY, SECONDED BY MR. OSBORNE: THAT THIS BE THE FIRST READING OF BILL 07-11.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 5/29/07)

35. 8-B. BILL 07-17 – AN ORDINANCE AMENDING CH. 2, ADMINISTRATION, ARTICLE IV, DOWNTOWN NEWARK PARTNERSHIP, BY EXPANDING BOUNDARIES OF DOWNTOWN NEWARK

Ms. Lamblack read Bill 07-17 by title only.

MOTION BY MR. OSBORNE, SECONDED BY MR. ATHEY: THAT THIS BE THE FIRST READING OF BILL 07-17.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 5/29/07)

36. 8-C. BILL 07-16 – AN ORDINANCE ANNEXING & ZONING TO RT (SINGLE-FAMILY, DETACHED) A .15 ACRE PROPERTY ADJACENT TO THE SINGLE –FAMILY HOME PARCEL AT 13 SPRING WATER WAY, STONE SPRING

Ms. Lamblack read Bill 07-16 by title only.

MOTION BY MR. OSBORNE, SECONDED BY MR. POMEROY: THAT THIS BE THE FIRST READING OF BILL 07-16.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 5/29/07)

37. 8-D. BILL 07-18 – AN ORDINANCE AMENDING CH. 20, MOTOR VEHICLE & TRAFFIC, BY DELETING A PORTION OF A SECTION PERTAINING TO THE OPERATION OF VEHICLES ON APPROACH OF AUTHORIZED EMERGENCY VEHICLES WHICH IS A DUPLICATE OF AN EXISTING REGULATION

Ms. Lamblack read Bill 07-18 by title only.

MOTION BY MR. OSBORNE, SECONDED BY MR. MARKHAM: THAT THIS BE THE FIRST READING OF BILL 07-18.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 5/29/07)

38. 8-E. BILL 07-20 – AN ORDINANCE AMENDING CH 20, MOTOR VEHICLE & TRAFFIC, BY PROVIDING STOP SIGNS IN BOTH DIRECTIONS ON DALLAS AVENUE AT BEVERLY ROAD

Ms. Lamblack read Bill 07-20 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE FIRST READING OF BILL 07-20.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 5/29/07)

39. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:

A. Council Members:

1. Discussion re Economic Development Report (Pomeroy)

Mr. Pomeroy referred to a memorandum from Messrs. Lopata and McFarland to the City Manager, dated April 3, 2007 wherein he addressed a City Industrial Economic Development Incentive Program. It was decided to put this item on the next agenda for Council's discussion.

40. 9-B. COMMITTEES, BOARDS & COMMISSIONS: None

41. 9-C. OTHERS:

1. Discussion re Newark Housing Authority (Request by NHA)

(Note: This item was discussed under Item # 27.)

42. 10. SPECIAL DEPARTMENTAL REPORTS: None

43. 10-B. ALDERMAN'S REPORT

MOTION BY MR. TUTTLE, SECONDED BY MR. ATHEY: THAT THE ALDERMAN'S REPORT, DATED MAY 7, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

44. 10-C. REQUEST FOR EXECUTIVE SESSION RE PENDING LITIGATION (DURKIN V. NEWARK)

Mr. Funk announced that the City Solicitor advised that an Executive Session was not needed at this time.

45. Meeting adjourned at 11:12 pm.

Susan A. Lamblack, MMC
City Secretary

/pmf