

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

February 13, 2012

Those present at 6:30 pm:

Presiding: Mayor Vance A. Funk, III
District 1, Mark Morehead
District 2, Jerry Clifton
District 3, Doug Tuttle
District 4, David J. Athey
District 5, Ezra J. Temko
District 6, A. Stuart Markham

Staff Members: City Manager Kyle Sonnenberg
City Secretary Patricia Fogg
City Solicitor Bruce Herron
Assistant to the City Manager Carol Houck
Assistant to the City Manager Charles Zusag
Finance Director Robert Uyttebroek
Planning & Development Director Roy Lopata
Assistant P& D Director Maureen Feeney Roser

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1. MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT COUNCIL ENTER INTO EXECUTIVE SESSION WITHOUT THE PRESS TO DISCUSS LABOR NEGOTIATIONS.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Council entered into Executive Session at 6:30 p.m. and returned to the table at 6:52 p.m.

Mayor Funk announced as a result of the Executive Session, a motion was needed by Council.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT COUNCIL APPROVE THE AGREEMENT WITH FOP LODGE 4 AS PRESENTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

3. MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT ITEM 8-A-1, RESOLUTION NO. 12-B: RETIREMENT OF ROY H. LOPATA, PLANNING & DEVELOPMENT DIRECTOR, BE MOVED TO ITEM 3.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

4. MOTION BY MR. CLIFTON, SECONDED BY MR. TEMKO: THAT ITEM 6-A, BILL 12-02, AN ORDINANCE AMENDING CH. 32, ZONING, BY REDUCING THE PERMITTED RENTAL APARTMENT DENSITY AND PROVIDING DENSITY BONUSES FOR OWNER OCCUPANT MULTI-FAMILY HOUSING IN THE BB ZONING DISTRICT, BE TABLED TO THE 2/27/12 COUNCIL MEETING.

Mr. Temko requested a presentation at the next meeting to make the ordinance easier to understand. Mr. Morehead suggested that each amendment be voted on separately.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

5. **8-A-1. RESOLUTION NO. 12-__ : RETIREMENT OF ROY H. LOPATA, PLANNING & DEVELOPMENT DIRECTOR**

03:05

The resolution honoring Mr. Lopata for his 37 years of exemplary leadership and faithful service to the citizens of Newark was unanimously endorsed by Council. Mr. Lopata took this opportunity to thank the past and present mayor(s) and city council(s), the past and present city manager(s) and the past and present members of the Planning Commission who permitted him to make the Council Chamber his home away from home for so many years.

(RESOLUTION 12-B)

6. **PRESENTATION OF JEFFERSON AWARDS FOR PUBLIC SERVICE**

09:20

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

Bob Bloom has taken a very active role in the Senior Surfers as an instructor and Board Member. His amazing depth of knowledge of all things technical is complemented by his sense of humor. His gift is presenting a wide array of topics with excitement, patience and enthusiasm. He helps seniors stay connected with their families and friends near and far. His knowledge has helped enrich the lives of over 400 members of the “Senior Surfers” computer club at the Newark Senior Center, and he is a treasured volunteer.

Natalie Ginsberg organized her fourth annual food drive in the Abbotsford neighborhood in October 2011 when she was only ten years old. Natalie and her friends Rachel Carlson, Jeffrey Carlson and Elizabeth Imhoff collected 716 pounds of food this year and collectively since 2008 have collected 3,300 pounds of food in their neighborhood. These young members of our community are excellent role models for other young people as they go door-to-door collecting food for those who are less fortunate than themselves.

Hassan Henderson-Lott has logged over 2,000 hours of service since 2004 serving the community through a variety of organizations. He displays leadership, creativity and enthusiasm in all of his volunteer jobs at organizations including the Mt. Zion Music Ministry team, Junior Usher Board, Nursing Home Ministry, Newark Symphony Orchestra, American Cancer Society, and Newark High School’s Brother and Sister’s Student Union. With so many hours volunteered, Mr. Henderson-Lott has made quite an impact in the community.

K-9 Police Officer Paco was nominated for service as a patrol and narcotics K-9 for the Newark Police Department before an early retirement due to bilateral-hip dysplasia. During his career, he and his partner handled over 1,500 complaints, 400 burglar alarms, performed over 111 tracks for suspects/missing persons, searched over 700 vehicles/rooms for narcotics and performed 33 demonstrations for the public. K-9 Paco was responsible for the seizure of over 30 pounds of marijuana, 7 kilograms of cocaine, \$150,000 in drug tainted currency, two handguns and two vehicles used for narcotics transportation. Additionally, he apprehended 12 criminals at the conclusion of tracking or building searches. K-9 Paco is now retired and living with his handler and family.

Kim Zitzner serves as a representative and liaison between the University of Delaware and the religious communities. She often is an advocate for students and challenges them to maturely accept responsibility for their actions. She encourages students to follow their own journey of faith and is a willing and welcoming listener for children suffering from the difficulties they encounter in their student lives.

7. 2012 YOUTH SERVICE CHALLENGE

15:43

Melanie Gonsecki and Urszula Stankiewicz from the Jefferson Awards presented the Youth Service Challenge program. The purpose of the program was to highlight young Americans who were making a difference in their communities and in the world around them, engage one million youth in student led service projects over a five-year period and help young Americans embrace service as a way of life.

The program was open to elementary through college-age students. Its focus areas were: Food and Hunger; Health and Wellness; Environment; Bring Your Own Service Project. Projects can be submitted through: www.YouthServiceChallenge.org and run October 2011 through April 30, 2012. For further information contact: m.gonsecki@jeffersonawards.org

8. 1. ITEMS NOT ON PUBLISHED AGENDA

A. Public

22:16

Andy Hegedus, a Newark resident, said there was a storm brewing between advocates for expanding the Newark Charter School and those who were advocating for a more just and united Newark community. He noted that Council was charged with a very serious decision and urged them to take time to consider people's opinions on the issue since their decision would have repercussions for many years to come.

9. Rick Celeste, a Newark resident, presented a concept for consideration about downtown parking. He knew a count study was recently done but was not sure it provided adequate data about whether to expand parking capacities. He suggested the City consider paring up with the University on a mathematical modeling.

10. Catherine Ciferni, a Newark resident, announced a strategic planning meeting on 2/24/12 for another prescription drug drop off scheduled in April (date undetermined). She hoped the Newark Senior Center would be an active participant in this project. She was told a Newark Police Department officer would attend the meeting and hoped Dana Johnston would also be available to attend so a strategy could be implemented every time a collection occurred.

11. Steve Dentel, a Newark resident, planned to make a return visit to Bamendjou, Cameroon (which Newark had adopted as a sister city) in June for the inauguration of the water distribution system now completed in that area. Newark's Mayor and Council members were invited to attend. Mr. Dentel pointed out that Newark was the only U.S. city having a sister city in that country. A

proclamation was provided by Bamendjou, Cameroon that will be translated into English and provided to the City in the near future.

12. 1-B. UNIVERSITY

39:20

1. Administration

As a result of the University's presentation at the last Council meeting about campus building plans, Mr. Armitage reported they had one citizen contact him who was very interested in the future of the Rodney complex. He said it would be at least several years away before anything would happen at that location.

13. 1-B-2. STUDENT BODY REPRESENTATIVE - None

14. 1-C. COUNCIL MEMBERS

40:20

Mr. Temko

- Mr. Temko advised Council that he thought it made sense procedurally before voting for the rezoning and minor subdivision for the Charter high school that the school should be approved or denied by the State.
- Mr. Temko suggested that Mr. Celeste connect with Maureen Feeney Roser regarding his parking ideas.
- Mr. Temko provided a traffic calming update for Country Club Drive. Based on survey results sent to residents, the suggested plan will move ahead. Once the weather improves the next step will be for the City to install a counter analyzer and install mock-up devices for traffic and speed surveys to determine whether the mock ups created any traffic calming. If they do, actual construction can move forward.
- Mr. Temko received a complaint regarding signage from a constituent whose vehicle was towed from the lot behind the Learning Station. This lot is controlled by Lang Development and Mr. Locke of Lang Development (who was present at the meeting) reported there were numerous signs in that parking lot clearly indicating the lot was for the use of customers only.

15. Mr. Markham

Mr. Markham was pleased the City received a \$250,000 grant from Delaware Land and Water Conservation for the Curtis Paper Mill project.

- Mr. Markham thanked Public Works for salting the northern part of the City during a recent snow/ice event.
- Mr. Markham announced he filed his petition to run for another term on Council for District 6.

16. Mr. Tuttle

- Mr. Tuttle added that he also filed his petition to run for another term on Council for District 3.

17. Mr. Morehead

- Mr. Morehead commented that since this Mr. Sonnenberg has resigned and this was his last meeting, he wanted to highlight some successes the City had during his brief tenure. One of the most important to Mr. Morehead was that Mr. Sonnenberg promoted funding preventive maintenance of the City's infrastructure and introduced a number of efficiencies to the way the City

provided its services. He appreciated the efforts and wished Mr. Sonnenberg well.

- Mr. Morehead attended a committee meeting for the Skate Spots and reported the project was moving forward.

18. Mr. Clifton

- Mr. Clifton thanked Pat Bartling, Public Works, for helping neighbors with some issues regarding trash.
- Mr. Clifton said it seemed Council hardly got to know Mr. Sonnenberg and wished him well in his future pursuits.
- Mr. Clifton noted the retirement of Mr. Lopata and said he was a true friend to him and to the City and he admired his passion for his work. Mr. Clifton will miss him immensely.

19. Mr. Athey

- Mr. Athey offered a sincere thank you for the condolences he received when his father passed away.
- Mr. Athey acknowledged how pleasant it was now to drive over Wyoming Road since the railroad tracks were removed.
- Mr. Athey said Council was just getting to know Mr. Sonnenberg and develop a good working relationship, but he understood his reasons for moving on. He did exactly what Council asked for in taking a top-to-bottom look at City operations and making recommendations for improvements. Mr. Athey thought the City was in a far better place with infrastructure improvements that were made and wished him the best.
- In regard to Mr. Lopata's retirement, Mr. Athey said the really important thing he brought to the City that could not be replaced was that he was the one who knew how things worked or did not work around the City. Mr. Athey said the City has benefitted tremendously from having Mr. Lopata around.

20. 2. APPROVAL OF CONSENT AGENDA

- A.** Approval of Regular Council Meeting Minutes – January 23, 2012
- B.** Receipt of Alderman's Report – February 2, 2012
- C.** ***First Reading – Bill 12-07 – An Ordinance Amending Chapter 32, Zoning, Code of the City of Newark, Delaware, By Establishing a New Zoning Category to be Designated as STC (Science and Technology Campus District) and By Deleting Limited Commercial Laboratory Districts – 2ND Reading March 12, 2012***
- D.** ***First Reading – Bill 12-08 – An Ordinance Amending the Zoning Map of the City of Newark, Delaware, By Rezoning from MI (General Industrial) to STC (Science and Technology Campus) a 221.22864 Acre Parcel Located at South College Avenue and the Christina Parkway – 2ND Reading March 12, 2012***
- E.** ***First Reading – Bill 12-09 - An Ordinance Amending Chapter 20, Motor Vehicles and Traffic, Article XXIV, Theft, Unauthorized Use of Vehicles, Code of the City of Newark, By Bringing the Code Into Conformance with the State Code with Regard to the Display of Number Plates – 2ND Reading February 27, 2012***

1:00

Ms. Fogg read the Consent Agenda in its entirety.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE CONSENT AGENDA BE APPROVED AS SUBMITTED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

21. 3. ITEMS NOT FINISHED AT PREVIOUS MEETING:

A. Bill 11-29 – An Ordinance Amending the Zoning Map of the City of Newark, Delaware, By Rezoning from BL (Business Limited) to BB (Central Business District) the .345 Acre Portion of 132 and 136 East Delaware Avenue (***Tabled January 9, 2012***)

1:02

MOTION BY MR. TEMKO, SECONDED BY MR. TUTTLE TO LIFT ITEMS 3-A, 3-B AND 3-C FROM THE TABLE.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

Mr. Lang, Lang Development, responded to Mr. Temko's request from the previous meeting for modifications to the front of the building which he felt they had accomplished. He provided pictures of the modifications and the rear elevation of the building where fewer balconies were incorporated to deal with some of the concerns of Washington House residents.

Mr. Lang noted a revised site plan was submitted which showed parking underneath the building that resulted in no parking waiver being required for this project.

Mr. Clifton asked Mr. Lang what his direction was into achieving some assurances that he would capture the target market spoken of at the last meeting. Mr. Lang said occupancy in a project could best be managed by the number and the size of apartments in a project. The project was revised from 14 to 12 units and by creating balconies and having smaller units, he said they would appeal to the target market. The size of the unit was what would drive the occupancy and the potential occupant.

In response to questions from Mr. Morehead, Mr. Lang referred to drawings which outlined the parking plans for the project. One parcel had 20 parking spaces under the building with two additional spaces along the side. By Code, 22 spaces were required. The front building exceeded the required parking by 41 spaces because of the parking waiver that was granted in 1997.

Mr. Morehead noted when this project came through the Subdivision Advisory Committee there was a requirement that the 10' drainage easement be 20'. Mr. Lang said it was requested. However, they met with the Public Works Department and they were now satisfied with the 10' easement since it was consistent with what was done at 129 E. Main Street and as part of that agreement at 129 E. Main Street, the developer agreed to assume the responsibility for the maintenance of that pipe. They further agreed to maintain the stormwater pipe from Main Street all the way to Delaware Avenue.

(Note: The public hearing for items 3-A, 3-B and 3-C was held at the January 9, 2012.)

MOTION BY MR. ATHEY, SECONDED BY MR. MOREHEAD: THAT THE RULES BE SUSPENDED FOR THE DISCUSSION TO BE OPENED FOR PUBLIC COMMENT.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

Pamela Bobbs, a Newark resident, said she received notification from the Alcoholic Beverage Control Commission for a restaurant going in where the Learning Station was located. She wondered how the existing parking would handle both the residential requirements for the apartments and the commercial space, D.P. Dough, the bank and a 100-seat restaurant in the Learning Station. She did not see how that was going to work. Mr. Lopata said a restaurant at this location would also need a Special Use Permit from Council.

Catherine Ciferni, a Newark resident, questioned and was advised there would be access to the parking area by Paratransit buses and was informed that the stormwater drain previously discussed would remain the burden of the property owner.

Sheila Anderson, a Newark resident, said it would be nice if Mr. Lang would actually have an owner-occupied project and build it for that purpose rather than claiming it could be, knowing it would be student rental and would never become owner-occupied in the future. She also expressed concern about the chaos that will be created if a restaurant goes in the Learning Station.

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

Mr. Athey intended to support the project. Although it was not ideal, he appreciated Mr. Lang's efforts to work through concerns and he thought overall it would be beneficial to the City.

Mr. Clifton did not believe this would ever be converted and would remain student rentals and the idea of conversion was a smokescreen. While he heard the argument that they can't build something else because of the economy, this property was working fine the way it was. He said every time something like this happened it was one less opportunity to develop downtown into something other than student dormitories. He thought Council needed to refocus their vision on what they wanted downtown, and he felt there were enough student apartments. Therefore, he was not supporting the project.

Mr. Morehead said the developer has shown a willingness to accommodate what the public and Council has requested in the design of the building. The project started as a much larger, more involved building that basically covered the whole parking lot. Now it was a much smaller building. He felt the City's long-term finances had to be taken into consideration. The building was appropriately sized for the location. He also believed the building was designed to be converted into reasonable owner-sized units. He was also pleased the building needed no parking waivers and planned to support the project.

Mr. Tuttle planned to support the project as well. In terms of the zoning, if rezoned to BB it was consistent with properties that abut it and it would blend in better than if the zoning remained unchanged. Regarding its convertibility, he hoped that it could be converted. He said even in its current iteration it added diversity to the rental market that currently did not exist in that part of the City and may be attractive to a different group of clientele.

Mr. Markham reiterated it was surrounded by BB now. His hope was that if you attract a different group of people such as grad students or people who want a smaller building that would improve the environment and thus make it possible to do owner occupied. The developer has talked to quite a few people and made quite a few changes. Since the project was based on consensus and compromise, he would support the project.

Mr. Temko thought it made complete sense for this parcel to be zoned BB. He pointed out the City did not have “owner-occupied” zoning and there was a mix in every zone. He thought RS would have a higher proportion of owner occupancy than BB and he thought the City had a long way to go and a lot of steps to take to encourage owner occupancy before that expectation was put onto projects. He also thought the City was likely to see in the future other types of projects hopefully (for example the New Street area) that was designed as owner occupancy for young professionals as opposed to initially converting things like this. Regarding the project, Mr. Temko appreciated the cosmetic changes that were made. He thought the developer was very responsive and he thought it was a mistake to reduce both the commercial size and the number of units in order to increase the parking. He felt parking was a larger downtown issue and because the City had a parking waiver fee system they could look at parking in a broader sense. They needed to discuss meeting the parking needs downtown. Overall he thought this was a building designed to offer something slightly different than the other buildings on Main Street in terms of the bedrooms within it and that it would be an asset to our downtown.

Mr. Funk thought the rezoning was a no brainer--the whole area should be BB. He thought the larger picture was, and the residents of the Washington House should be congratulated on this, was that there were different standards now for downtown. One of the things that caused all these problems, he believed, was the parking waivers and he thought the developers who have other projects in the making now have a very clear message – you have to have the parking spaces if you want to get a plan approved. He pointed out that Jeff Lang developed rentals, not condos and currently the market for condos was not there and banks were not financing condominiums

(Note: The following motion was made at the January 9, 2012 meeting and was the motion that was lifted from the table.)

MOTION BY MR. MOREHEAD, SECONDED BY MR. TEMKO: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 11-29.

Question on the Motion was called.

MOTION PASSED: VOTE: 6 to 1.

Aye – Athey, Funk, Markham, Morehead, Temko, Tuttle.
Nay – Clifton.

(ORDINANCE NO. 12-02)

22. **3-B. REQUEST OF 132 E. DELAWARE AVENUE ASSOCIATES, LLC FOR THE REDEVELOPMENT AND MAJOR SUBDIVISION OF 132 AND 136 EAST DELAWARE AVENUE, IN ORDER TO CONSTRUCT A THREE-STORY MIXED USE BUILDING WITH 4500 GROSS SQUARE FEET OF FIRST FLOOR COMMERCIAL SPACE AND 12 APARTMENTS ON THE SECOND AND THIRD FLOORS (RESOLUTION AND AGREEMENT SUBMITTED – TABLED JANUARY 9, 2012)**

MOTION BY MR. MOREHEAD, SECONDED BY MR. TEMKO: THAT THE RESOLUTION BE APPROVED AS PRESENTED.

MOTION PASSED: VOTE: 6 to 1.

Aye – Athey, Funk, Markham, Morehead, Temko, Tuttle.
Nay – Clifton.

(RESOLUTION NO. 12-C)

23. **3-C. REQUEST OF 132 E. DELAWARE AVENUE ASSOCIATES, LLC FOR A SPECIAL USE PERMIT TO ALLOW 12 UPPER FLOOR APARTMENTS IN THE PROPOSED THREE-STORY COMMERCIAL/RESIDENTIAL MIXED USE BUILDING TO BE CONSTRUCTED AT 132 AND 136 EAST DELAWARE AVENUE (TABLED JANUARY 9, 2012)**
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MOTION BY MR. MOREHEAD, SECONDED BY MR. TEMKO: THAT THE SPECIAL USE PERMIT BE GRANTED AS REQUESTED.

MOTION PASSED: VOTE: 6 to 1.

Aye – Athey, Funk, Markham, Morehead, Temko, Tuttle.
Nay – Clifton.

24. **4. FINANCIAL STATEMENT:** None

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

- A. **Contract No. 12-01, Furnishing Labor Equipment for Electric Line Tree Trimming**

1:40

Ms. Houck summarized her memo of 2/2/12 wherein it was recommended that Contract No. 12-01 be awarded to Asplundh Tree Expert Company for a fixed hourly rate for 36 months not to exceed the budget amount of \$167,000 for labor and equipment to carry out the necessary tree trimming along the electrical distribution lines. Two sealed bids were received and funds were available to cover the cost in the Operating Budget totaling \$167,000.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT CONTRACT NO. 12-01, FURNISHING LABOR EQUIPMENT FOR ELECTRIC LINE TREE TRIMMING, BE AWARDED TO ASPLUNDH TREE EXPERT COMPANY FOR 36 MONTHS FOR AN AMOUNT NOT TO EXCEED \$167,000.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

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

- A. **Bill 12-02 – An Ordinance Amending Chapter 32, Zoning, Code of the City of Newark, Delaware, By Reducing the Permitted Rental Apartment Density and Providing Density Bonuses for Owner Occupant Multi-family Housing in the BB Zoning**

(Note: Tabled to 2/27/12 Council meeting – See Item #4)

27. **6-B. BILL 12-03 – AN ORDINANCE AMENDING CHAPTER 21, PEDDLERS, VENDORS AND SOLICITORS, BY REQUIRING ADJACENT PROPERTY OWNER AND COMMERCIAL TENANT CONSENT TO PERMIT VENDING ON SIDEWALK**
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1:41

Ms. Fogg read Bill 12-03 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 12-03.

Mr. Clifton asked if when a permit was issued that the vendor would be located in front of the building. He was told that was correct. This amendment was designed to put the burden on the applicant to obtain written consent from both the commercial tenant and the property owner.

The Chair opened the discussion to the public.

Bruce Chase, a Newark resident, asked when it says you have to get the permission of the property owner, if you have something like Washington House, would that require permission from the council who is considered the owner of the building or would they have to get permission literally from every single unit owner. Mr. Funk said it would be the condominium council because the area in question was the common area and not the individual unit area.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

(ORDINANCE NO. 12-03)

28. 6-C. BILL 12-04 – AN ORDINANCE AMENDING CHAPTER 31, WEAPONS, CODE OF THE CITY OF NEWARK, DELAWARE, BY ADDING A NEW SECTION TO PROHIBIT THE POSSESSION OF STUN GUNS AND TASER GUNS WITHIN THE CITY OF NEWARK

1:45

Ms. Fogg Read Bill 12-04 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 12-04.

Chief Tiernan said the City's ordinance included an exception for individuals on their own property or within their own business but was otherwise consistent with County Code.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

(ORDINANCE NO. 12-04)

29. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS:

A. Request of Amstel Avenue, LLC, for a Revision to the Approved Subdivision Agreement and Construction Improvement Plan for the Redevelopment of the .49 Acre Parcel Located at 116 Amstel Avenue to Increase the Number of Townhouse Apartments Units from Six to Seven **(Addendum Submitted)**

1:46

Lisa Goodman, Esq. said the application was for the purpose of adding no additional tenants and no additional bedrooms. When Council approved the plan in June to build a new Baptist Student Ministry building with six townhomes to the rear, the occupancy limit was 36 which would remain the same. Late in the process there was a change in architects. In laying out the final floor plans it was discovered that when they got to the "L" part of the layout, the interior of the "L" laid out in more square footage than they had anticipated in terms of how that would comprise bedrooms which would have ended up with one unit with eight

bedrooms and one unit with seven bedrooms. Thus, it was proposed to take that space and carve it up into an additional unit. There would be the same number of bedrooms (29) but instead they would end up building an extra kitchen and the additional amenities for another unit but it would be a much better sized unit and a nicer complex than to have two large units. Because Council approved this as six units, they needed to seek a plan amendment to add the seventh unit which would have three bedrooms.

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

MOTION BY MR. CLIFTON, SECONDED BY MR. TEMKO: TO APPROVE THE REVISION TO THE APPROVED SUBDIVISION AGREEMENT AND CONSTRUCTION IMPROVEMENT PLAN TO INCREASE THE NUMBER OF TOWNHOUSE APARTMENT UNITS FROM SIX TO SEVEN.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

30. 7-B. REQUEST OF SCHILLING-DOUGLAS SCHOOL OF HAIR DESIGN FOR A SPECIAL USE PERMIT TO ALLOW A TRADE SCHOOL AT THE SHOPPES AT LOUVIERS, PAPER MILL ROAD, NEWARK, DELAWARE

1:51

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

Lisa Goodman, Esq. represented the applicant and was accompanied by Tara Price, Director of Student Services and Susan Wilson, Director of Education. They sought a Special Use Permit to permit the school to relocate from Amstel Avenue to the Shoppes at Louviers. The lease at this location was for a shop to occupy a little more than 8,000 square feet. The school was in existence in Newark since 1974 and wanted to stay in Newark. The location was properly zoned. Ms. Goodman said the school will not have an adverse affect on health or safety of persons living or working nearby. It will not be detrimental to the public welfare or injurious to property and it will not be in conflict with the Comprehensive Plan. This was a school for those who wanted to become professionals, had to be licensed by the State, had a high school degree or its equivalent and were serious about becoming professionals. The school had a good track record in Newark and was a quiet and orderly use, very well suited to a commercial area. They were moving to this location for better parking and to get out of an old building.

Ms. Goodman stated the current hours of operation were a day program Mon-Fri 9-4 and t a part-time program for people who otherwise worked on Tues-Wed-Thurs from 5-9 and Saturday from 8-3:30. These hours will not be detrimental to public welfare. It was a totally inside use in an already approved commercial building in a shopping center. Ms. Goodman felt it was good to keep this business in the City.

The school planned to designate certain parking areas away from the residential development so that would not be an issue. It was light commercial which was consistent with the Comp Plan.

Mr. Markham recommended adding restrictions on the hours in the Special Use Permit of 8-9 Monday through Friday and 8-4 on Saturday with no Sunday hours. Ms. Goodman thought that would be fine and asked if it could be worded that those will be the educational hours because instructors sometimes

come in early in the morning to do set up and she did not want any misunderstanding about Council's intent.

Regarding the parking, Mr. Markham suggested that best efforts should be used to direct students not to use the fire lane behind the building.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

31. 7-C. REQUEST OF THE GREENE TURTLE RESTAURANT (NEWARK GT, LLC) FOR A SPECIAL USE PERMIT TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES AT THEIR PROPOSED NEW RESTAURANT AT THE NORTHEAST PORTION OF THE FIRST FLOOR OF THE RITTENHOUSE STATION BUILDING, 250 ELKTON ROAD, NEWARK, DELAWARE

2:00

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

Lisa Goodman, Esq. represented the Bariglio Corporation. The Special Use Permit was to permit the sale of alcoholic beverages and not to restrict the hours of operations that would prohibit serving until 1:00 a.m. The corporation had over 30 locations and was a family-oriented business. They did not intend to be a college bar.

Ms. Goodman believed the Green Turtle met the first two provisions of the Special Use Permit – will not have an adverse affect on health or safety of persons living and working nearby and will not be detrimental to the public welfare. She said they were incredibly serious about underage drinking and intoxication and described how employees were instructed to handle alcohol-related situations. A demonstration was provided of the electronic ID card readers used in all the restaurant's locations.

Regarding the request to serve until 1:00 a.m., Ms. Goodman said given the experience and professionalism of the Green Turtle and all of the evidence presented, they requested being allowed to serve until 1:00 a.m. She said by not being allowed to serve until that time, the business would be at a disadvantage to other restaurants in the City. Given the large investment to fit out of the restaurant of approximately \$1.5 million, the owners had to be sure they could make a go of it.

Regarding the patio, they proposed a small patio on the front corner at Veteran's Lane. The NPD had concerns that a patio would be a distraction and suggested it be moved down which would be difficult for the client based on the change in the building's elevation and the fact that it had to make sense with the interior circulation of the restaurant. Mr. Funk said the concern was the 35 mph speed limit. Markham recommended some type of landscape screening. There Ms. Goodman said that was something that could be done.

The Chair opened the discussion to the public.

Catherine Ciferni, a Newark resident, said because there was no buffer of cars parked along Elkton Road, it did not feel safe for pedestrians sitting on a patio.

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

Regarding the hours of operation, Mr. Clifton said Green Turtle was a big organization but the local owner had only four locations. He thought the card checking equipment was a good system that worked well. He said there was a great case made by Council on the operation of this particular establishment and he was comfortable with a 1:00 closing on this business. He also said if the City was serious about bringing Main Street down Elkton Road, this was a key element in that vision.

Mr. Temko was comfortable with the 1:00 a.m. closing time because he felt restaurants in the downtown area should operate under the same rules and thus have a more level playing field. He also thought some kind of landscape screening was needed and hoped when Elkton Road was complete, the bike lanes would provide more of a buffer.

Mr. Athey pointed out since the area was a diagonal perhaps the language should state "so the patio was not visible from Veterans Lane" but he was not sure that would not encroach upon an existing easement. Mr. Lopata suggested specifying that a six-foot high screen or similar barrier be installed subject to the review and approval of the Police Department or his department. He thought lattice might work better than a screen. Council members thought plants would be more attractive.

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THE SPECIAL USE PERMIT BE GRANTED WITH THE CONDITION THAT THE PROPOSED PATIO INCLUDE A 6' LANDSCAPE SCREEN OR SIMILAR BARRIER TO BE INSTALLED TO ENSURE THE PATIO WILL NOT BE VISIBLE FROM VETERANS LANE; SAID LANDSCAPE SCREEN OR BARRIER BE SUBJECT TO REVIEW AND APPROVAL BY THE PLANNING AND DEVELOPMENT DEPARTMENT DIRECTOR.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

32. 8. ITEMS SUBMITTED FOR PUBLISHED AGENDA

A. Council Members:

- 1. Resolution No. 12-B:** Retirement of Roy H. Lopata, Planning & Development Director

(Note - See Item #5)

33. 8-A-2. SETTING SALARY FOR INTERIM CITY MANAGER

02:34

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THE SALARY FOR INTERIM CITY MANAGER CAROL HOUCK BE INCREASED BY \$15,000 PER YEAR EFFECTIVE FEBRUARY 25, 2012.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

34. 8-B. OTHERS: None

35. **9. SPECIAL DEPARTMENTAL REPORTS:**
A. Special Reports from Manager & Staff: None
36. **Meeting adjourned at 9:32 p.m.**

Patricia M. Fogg, CMC
City Secretary

/av