

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

May 29, 2012

Those present at 7:00 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, Luke Chapman
District 6, A. Stuart Markham

Staff Members: Interim City Manager Carol Houck
City Secretary Patricia Fogg
City Solicitor Bruce Herron
Finance Director Robert Uyttebroek
Parks & Recreation Superintendent Joe Spadafino
P & D Director Maureen Feeney Roser
Public Works Director Rich Lapointe
Water & Wastewater Director Roy Simonson

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

2. MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT ITEMS 5-E and 8-A-1 BE ADDED TO THE AGENDA.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

Aye – Athey, Chapman, Clifton, Funk, Markham, Morehead, Tuttle.

Nay – 0.

3. **2012 YOUTH SERVICE AWARDS – PRESENTATION BY MAYOR FUNK**

00:50

Mr. Funk was thanked for supporting the Youth Service Challenge and hosting the challenge for the City. The Youth Service Challenge awards were given to students for performing exceptional service throughout the year. The following projects were submitted and received a certificate for their service:

- Kirk Middle School – Thanksgiving Drive held in November.
- Juan Santos-Glasgow High School – Helping make trombones for Boscov's annual 6 ABC Philadelphia Thanksgiving Day Parade.
- Christiana High School – "Light it up Blue" campaign supporting autism awareness.
- Thurgood Marshall Girls on the Run Team – completing a 5K race.
- Gallaher Elementary School – District Day of Kindness.
- Newark High School's Improv Group – Production supporting breast cancer awareness.
- Glasgow High School's Cheerleading Team – "Reading out Loud" to McVey Elementary students.
- Glasgow High School's Family, Career and Community Leaders of America Club – Cinderella's Closet.
- Newark Center for Creative Learning – "NCCL School's Big Give".

The top four winners announced for the City were:

- Leasure Elementary School: Super Bowl Clean Up.
- Newark High School Jefferson Awards Students in Action Team: Camp Cupcake and for winning the Students in Action competition for Delaware.
- Downes Elementary School: Healthy Heart Night.
- Glasgow High School Jefferson Awards Students in Action Team: Global Youth Service Day Canned Food Drive.

4. **1. ITEMS NOT ON PUBLISHED AGENDA**

A. Public - None

5. **1-B. UNIVERSITY**

16:12

Mr. Athey requested Mr. Brainard to follow up on scheduling a Wellspring update at a future Council meeting. Mr. Brainard agreed to discuss this request with Nancy Chase.

6. **1-B-2. STUDENT BODY REPRESENTATIVE** - None

7. **1-C. COUNCIL MEMBERS**

16:50

Mr. Markham

- Mr. Markham issued a reminder for Newark Day on Saturday, 6/2, from noon to 5:00 p.m. and recognized another successful UDon't Need It? program which was currently underway.

8. **Mr. Morehead**

- Mr. Morehead commended everyone involved in the Memorial Day Parade.

9. **Mr. Athey**

- Mr. Athey said he appreciated Ms. Houck's attendance at the Cherry Hill Manor Civic Association meeting last week and noted that Robyn Harland was the new President of the organization.

- Mr. Athey said he attended the League of Local Governments meeting. The League was trying to obtain an additional \$1 million to set aside for Municipal Street Aid. He suggested an outreach to area legislators to encourage increased funding.

- Mr. Athey noted that he received a constituent complaint about late night lawn cutting (and was approached last year with a similar complaint). He asked Council to consider whether they felt an amendment should be made to the noise ordinance to address this situation.

- Mr. Athey suggested scheduling a workshop session with Pat McCullar of DEMEC. Mr. Funk suggested holding the workshop after a decision was made on the City Manager's position.

10. **Mr. Clifton**

- Mr. Clifton thanked Ms. Bruen and Mr. Spadafino for their efforts with the Newark Memorial Parade and recognized the veterans in the audience for their service to the country. Mr. Clifton attended the 1049th Transportation Company return from Afghanistan and commended the unit (which included Newarkers) for doing a tremendous job during their time overseas.

11. **2. APPROVAL OF CONSENT AGENDA**
- A. Approval of Regular Council Meeting Minutes – May 14, 2012
 - B. Receipt of Alderman’s Reports – May 10, 2012 and May 24, 2012
 - C. Approval of Special Council Meeting Minutes – May 21, 2012

25:30

Ms. Fogg read the Consent Agenda in its entirety.

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

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

12. **3. ITEMS NOT FINISHED AT PREVIOUS MEETING:**
- A. Recommendation re Smart Meter Project – Investment Grade Audit – Break Fee – *Tabled May 14, 2012*

26:00

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT ITEM 3-A, RECOMMENDATION RE SMART METER PROJECT – INVESTMENT GRADE AUDIT – BREAK FEE, BE LIFTED FROM THE TABLE.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

Ms. Houck explained that the City would be required to pay the break fee to Honeywell only if they did not move forward with the Smart Meter project. Honeywell would complete the audit and present a guaranteed energy performance agreement. If Honeywell did not conclude that they could provide guaranteed savings, the City would not have to pay the \$150,000 break fee. If the City decided not to proceed with such a project after the audit was completed, they would be required to pay the fee. Ms. Houck pointed out that although there was a risk that the City may not move forward, the benefits far outweighed the risk.

Mr. Clifton said if Honeywell came back and said this would save the City money, it was preordained that the contract would go to Honeywell. When considering the dollars involved, he thought that was problematic and would circumvent the competitive bid process. While Ms. Houck understood this concern, she explained that several years ago when Honeywell did the feasibility review, they did that at no cost to the City. By the nature of their efforts in gathering information, they already had working knowledge which provided them a step up on other vendors. Honeywell was an approved State of Delaware performance contractor. Mr. Clifton asked if we had the ability to cross check Honeywell with competitive bidding. Ms. Houck did not think any firm would guarantee savings unless they performed their own audit.

Michelle Peterson, Honeywell representative, explained the amount of effort that went into developing projects and forming a relationship with the City. Honeywell assisted the City with its energy efficiency conservation block grant applications, and all was done pro bono. She could not imagine a company that would do an investment grade audit at no cost without a break fee. The break fee was to show the City’s commitment to move forward with the project because Honeywell already incurred costs and extended significant resources to develop the project.

Mr. Athey had a hard time picturing a scenario where the City would analyze all the information and determine not to proceed. What disturbed him was that Council was making the decision tonight to move ahead with this multi-million dollar, multi-year program that they were told would happen after having the opportunity to evaluate the pros and cons before making their decision. He compared this to some degree like a design-build Public Works project.

Ms. Houck responded that Council was being asked to give her the green light for the \$150,000 commitment. Once everything was finalized, Council would make decisions as to the projects they wanted to complete. She brought the recommendation to Council last month to obtain the most attractive funding available (ARRA funding at 1.99%). Once Council decided to move forward, Honeywell was required to post a bond for 100% of the project costs. Ms. Houck also reminded Council that the State passed legislation so municipalities did not have to go through the regular bidding process for energy performance type projects.

Mr. Chapman asked if there was a percentage of savings in the audit that was required by Honeywell in order to provide their guarantee. Ms. Peterson replied there was not a percentage required, but the City had to be able to self fund the project through savings. If a project could not be self funded, the City was not required to pay the break fee. Ms. Peterson also noted there was a stipulation in the agreement that if at any time during the process the City chose not to move forward, the only applicable costs would be Honeywell's development costs up to that point.

Mr. Chapman asked how long the audit would take to complete and whether the City would have the opportunity to review the presentation and make amendments. Ms. Peterson stated they were on a tight time frame based on the timing with the stimulus dollars, and they had to present something to the City the week of July 16. On the current project they did a 30% review, a 60% review and then a 90% review. During that review process, staff decided what made sense for Newark from a project standpoint. Honeywell's job as the City's energy service company was to present this information to the City and for Council/Staff to decide what was best for the City.

Mr. Chapman asked if there were options to give the City more time to make decisions. Ms. Peterson said they could go back to the Department of Energy and ask for another extension or they could potentially look at just the electric portion right now because the stimulus dollars available (about \$3 million) at the 1.99% rate applied only to the electric meters. Ms. Houck interjected that a phone call with DNREC last week led her to believe it was unlikely the City would obtain an extension.

Mr. Morehead said he understood how a water meter became less reliable over time, but it was not clear to him that an electric meter would do the same thing. Ms. Peterson said with electric meters it was not so much about the degradation of accuracy but about having real time access to data, being able to offer better constituent services and providing the ability for an electric utility to put in demand response programs or create programs that made sense for the constituents as far as peak charges were concerned.

Mr. Athey said from a conversation he had with Ms. Houck, the Smart Meter as he envisioned it would not be real time for constituents. He believed that was something to consider as the program unfolded.

Mr. Markham asked if the City was satisfied with the current Honeywell project and Ms. Houck said yes. He noted that Council had a lot to digest and decide on in a short period of time. He thought Smart Meters would save the City money and be helpful over the long run.

Mr. Morehead referred to the fact that the projects could be selected on an a la carte basis. He had trouble understanding the guaranteed savings and asked if they were offered a la carte as well. Ms. Peterson said the savings would match whatever the measure would be, so it depended on the measure and those savings would be associated with that measure. Mr. Morehead asked if the break fee was built into each of the a la carte items. Ms. Peterson said it was not built into each of the a la carte items since Honeywell had expenses based on their resources to develop the project, and a lot of time and investment was involved from a resource standpoint.

Mr. Clifton pointed out it was a foregone conclusion that the City would save money. He asked what Honeywell provided to the City that could not be put out on competitive bids. Ms. Peterson said in looking at a project of this size and magnitude, the City would be challenged to have the time and the resources to develop a similar program. Honeywell brought to the table the resources, expertise and experience to help the City develop the program. Ms. Houck added this would require an RFP. She was not sure how the City would go about creating it, and it would not be a guaranteed performance contract.

Mr. Chapman asked what percentage of Honeywell's audits did not guarantee savings. Ms. Peterson estimated this to be 2-4%. Mr. Chapman asked if the break fee was a standard fee. Ms. Peterson said it was based on whatever measures were being considered, for example, traditional energy conservation measures like lighting versus putting in a solar farm. He asked if the City was paying more or less because of the tight time frame. Ms. Houck said Honeywell did not know about the short time frame when they presented their break fee which, when it was originally discussed, was higher (in the \$220,000 range.)

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THE BREAK FEE IN THE AMOUNT OF \$150,000 ASSOCIATED WITH THE SMART METER PROJECT FINAL AUDIT BY HONEYWELL BE APPROVED.

Question on the Motion was called.

MOTION PASSED: VOTE: 6 to 1.

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

13. 4. FINANCIAL STATEMENT

01:05

Mr. Uyttebroek presented the Financial Report for the period ending April 30, 2012. Consolidated Surplus was \$23,000 over budget. Mr. Uyttebroek was no longer concerned about gas prices.

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THE FINANCIAL REPORT FOR THE PERIOD ENDING APRIL 30, 2012, BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

14. 5. RECOMMENDATIONS ON CONTRACTS & BIDS:

A. Professional Services Former Curtis Paper Mill Site – Final Design, Contract Preparation, Construction Phase and Post Construction Phase Services

01:06

MOTION BY MR. MARKHAM TO SUSPEND THE RULES AND ALLOW PUBLIC COMMENT ON ITEM 5-A.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

Ms. Houck summarized the purpose of the recommendation which was to gain Council's support and approval for the final phases of the redevelopment of the former Curtis Paper Mill site purchased by the City in 1999. In addition to gaining approval to move forward, Ms. Houck asked Council to make a decision regarding the restoration or demolition of the smoke stack which was necessary for determining the design. Funds were available of \$1,027,838. It was recommended that Pennoni be hired to handle the final stages of the design and construction phase of this project. Their fees for Tasks 1-4 were \$403,594. Of that total it was currently estimated that the City would receive reimbursement of approximately \$82,669. This area was certified as a Brownfield site, and the City received reimbursement funding for anything considered remediation including design, construction and environmental efforts. It was therefore recommended to authorize the City Manager to enter into an agreement with Pennoni to complete the design of this site at a total of \$403,594. At this time Council would approve the design only. The estimate for construction was to make Council aware that some of the funding in place would go towards that expense.

Mr. Markham thanked Ms. Houck for bringing this forward. Saving the smoke stack would incur a separate cost of \$160,000. Ms. Houck said no work had been done to it in over 50 years and required full restoration, taking it down completely or keeping a portion of it for a memorial. Mr. Funk felt it should be taken down. Mr. Markham said it was not a particularly nice gateway to the City at this time.

Mr. Funk was surprised there were no other bids on the \$200,000 contract. Ms. Houck advised that a lot of effort was required to identify and create a design for DNREC based on the complexity of the contract, the Brownfield funding and the environmental situation.

The Chair opened the discussion to the public.

Bob Methvin, a Newark resident, asked if the report about the current condition of the smoke stack was based on visual observance or whether there was a structural report. Ms. Houck responded that a company specializing in restoring smoke stacks provided the quote and said that when you touched the mortar, it crumbled like sand, even at the lower level. Mr. Methvin was a resident of Ridgewood Glen and said his neighbors would like to keep the smoke stack and felt it would integrate well with the area.

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

Mr. Chapman asked if the smoke stack was protected on any historical registries. Ms. Houck responded that due to the poor condition, it did not qualify.

Mr. Clifton did not believe the smoke stack should be preserved because of the \$200,000 cost. He said there would be about four pallets of bricks from the stack and suggested reusing the bricks to commemorate the plant and the people who worked there. Mr. Markham and Ms. Houck confirmed there would be recognition to commemorate the Paper Mill. Mr. Funk understood a kiosk on the Pomeroy Trail would provide the history of the site, and he agreed the bricks should be preserved and repurposed.

Regarding the Opinion of Probable Cost, Mr. Athey noted there was only a 10% contingency on it, which was not a lot of wiggle room and was another reason for not keeping the smoke stack. Second, he commented that a lump-sum proposal had the word estimate next to it. He asked Ms. Houck to take a closer look to make sure this was appropriate before she signed the agreement.

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: THAT THE CITY MANAGER BE AUTHORIZED TO ENTER INTO AN AGREEMENT WITH PENNONI ASSOCIATES TO COMPLETE THE DESIGN, DEVELOPMENT OF CONSTRUCTION DOCUMENTS, CONSTRUCTION CONTRACT BIDDING AND CONSTRUCTION OVERSIGHT FOR THE FORMER CURTIS PAPER MILL SITE IN THE AMOUNT OF \$403,594.01 AND THAT THE SMOKE STACK NOT BE PRESERVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

15. 5-B. RECOMMENDATION ON CONTRACT 12-04 – 2012 STREET IMPROVEMENT PROGRAM

01:22

Mr. Lapointe reviewed the details of Contract 12-04 for the 2012 street improvement program. Diamond Materials, LLC was the lower of the two bidders at \$2,262,969.50 and had satisfactorily performed street improvement contracts in the past. Funding was available through the Community Transportation Fund of \$277,627.00 and Capital Project H1201 of \$1,985,342.50. It was therefore recommended that the contract be awarded to Diamond Materials, LLC.

MOTION BY MR. ATHEY, SECONDED BY MR. TUTTLE: THAT CONTRACT 12-04 BE AWARDED TO DIAMOND MATERIALS, LLC, THE LOWEST RESPONSIBLE BIDDER, FOR A TOTAL OF \$2,262,969.50.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

16. 5-C. RECOMMENDATION ON THE AWARD OF CONTRACT 12-06 KENT WAY WATER LINE REPLACEMENT

01:24

Mr. Simonson detailed the May 16, 2012 memo regarding water line replacement on Kent Way. Bids were received from eight firms, and Reybold Construction Group, LLC was the lowest responsive bidder on this project. Funds were available in the Capital Improvement Program for the project, and it was recommended the contract be awarded to Reybold in the amount of \$138,000. In response to Mr. Markham's question as to why Kent Way was chosen, Mr. Simonson said Kent Way was a listed project since he started working at the City. It had a small water line that was badly corroded and was in a location where relining it would not serve any purpose. The City would benefit by the increase in size with a larger line between Orchard Road and South College Avenue.

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THE CITY MANAGER BE AUTHORIZED TO ENTER INTO CONTRACT 12-06 WITH REYBOLD CONSTRUCTION GROUP, LLC FOR THE KENT WAY WATER MAIN REPLACEMENT IN THE AMOUNT OF \$138,000.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

17. 5-D. RECOMMENDATION TO PROCEED WITH A DESIGN-BUILD REQUEST FOR PROPOSAL FOR SKATE SPOT PROJECT

01:28

Mr. Spadafino presented the recommendation to proceed with a design-build request for proposal for the Skate Spot project. It was recommended that the Skate Spots be located at Handloff and Phillips Parks which were readily accessible to several neighborhoods. Funding of \$160,000 was available from several sources. A third Skate Spot would be considered at Wilson Park in the future based on available funding. Expansion of parking at the Phillips lot was also recommended. Mr. Morehead expressed his appreciation to the citizens who were part of this Committee. He reported the structures were poured in place which would provide the greatest reliability for the money and would have the least impact from a noise perspective.

MOTION BY MR. MOREHEAD, SECONDED BY MR. ATHEY: THAT THE CITY MANAGER BE AUTHORIZED TO PROCEED WITH A DESIGN-BUILD REQUEST FOR PROPOSAL FOR THE SKATE SPOT PROJECT AT HANDLOFF AND PHILLIPS PARKS.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

18. 5-E. RECOMMENDATION TO AWARD WATER LINE CLEANING AND CEMENT LINING CONTRACT IN ACCORDANCE WITH A CITY OF WILMINGTON AWARDED CONTRACT

01:35

Mr. Simonson reviewed the recommendation for water line cleaning and cement lining on various City streets. This was a similar project to what was done on Kent Way and Wollaston to correct the work where only cleaning was done. The focus was on an area of the City which had the highest volume of calls. This was the most aggressive program in water main relining during Mr. Simonson's time with the City. They brought this in to get the water lines cleaned up while working with the Public Works Department to get into these streets before paving was completed. Funding from various Capital Improvement Program sources was in place for the work.

Mr. Markham asked if this work was being funded by the water increases passed last year. Mr. Simonson said yes, the increases allowed the City to take on these projects.

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THE CITY MANAGER BE AUTHORIZED TO ENTER INTO A CONTRACT WITH J. FLETCHER CREAMER & SON IN THE AMOUNT OF \$516,772.50 FOR THE WATER LINE CLEANING AND CEMENT LINING PROJECT IN ACCORDANCE WITH THE UNIT PRICING, TERMS AND CONDITIONS OF WILMINGTON, DE CONTRACT NO. WD 11009.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

19. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING:
None

20. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS:

A. Request of Independent Investors, LLC for the Major Subdivision of 144-150 East Main Street, 21-27 Choate Street and Ancillary Parcels, In Order to Demolish the Existing Buildings at 144-150 East Main Street and Construct a Four-Story Building Consisting of First Floor Commercial Space, First Floor Public Parking and 22 Upper Floor Two-Bedroom Apartments; and Demolish the Existing One-Story Building at 21-27 Choate Street and Construct Five Four-Bedroom Townhouse Apartments. **(Agreement & Resolution Presented)(See Item 7-B)**

01:38

(Note: This was the public hearing for the Major Subdivision and the Special Use Permit.)

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE MAJOR SUBDIVISION BE APPROVED FOR 144-150 EAST MAIN STREET, 21-27 CHOATE STREET AND ANCILLARY PARCELS, IN ORDER TO DEMOLISH THE EXISTING BUILDINGS AT 144-150 EAST MAIN STREET AND CONSTRUCT A FOUR-STORY BUILDING CONSISTING OF FIRST FLOOR COMMERCIAL SPACE, FIRST FLOOR PUBLIC PARKING AND 22 UPPER FLOOR TWO-BEDROOM APARTMENTS; AND DEMOLISH THE EXISTING ONE-STORY BUILDING AT 21-27 CHOATE STREET AND CONSTRUCT FIVE FOUR-BEDROOM TOWNHOUSE APARTMENTS.

Lisa Goodman, Esq. of Young Conaway Stargatt & Taylor, represented Independent Investors, LLC. Also attending for the applicant was Joe Charma, Project Engineer and Rick Longo, Project Engineer.

The plan proposed the redevelopment of the two buildings to the left of Klondike Kate's and the former Casablanca Restaurant building around the corner on Choate Street. Both were owned and operated by Independent Investors, LLC, who also owned Klondike Kate's. The Planning Commission made a favorable recommendation for the project.

Ms. Goodman referred to exhibits of the project. The request was for townhomes on Choate Street and retail and apartments on Main Street. The total property area was 1.079 acres which did not include the Klondike Kate's parcel. It was currently occupied by two buildings on Main Street and approximately 57 parking spaces that made up a fair chunk of Municipal Lot #4 currently leased to the City.

This was a combination of five parcels with 86 total parking spaces. Fifteen of the parking spaces were being kept because they were located inside the garages of the townhouses.

The Main Street project (Kate's Place) replaced the two existing buildings. It was proposed to be one building – first floor retail and 21 parking spaces under cover to the rear of the retail. There were two stories of apartments at the front of the building and three stories of apartments to the rear. The 21 parking spaces would be leased to the City for 100 years for \$1.00 and would be revenue generating for the City. The building was proposed to have 22 two-bedroom apartments.

The Choate Street townhomes replaced the former Casablanca building. The proposal was for five townhomes, each with a three-car garage. They would be fully compliant for parking.

The two projects bordered Municipal Lot #4. A big part of the plan included the proposal to dedicate almost .493 acres of the current Lot #4 to City ownership. After reconfiguration, about 50 spaces would be given to the City. The plan also gave the City control over the 21 spaces under the building. In lieu

of the proposed 71 spaces being given to the City, a 17-space parking waiver was requested.

The Special Use Permit for the apartments above the retail would have no adverse effects and was the type of redevelopment the City was encouraging, especially with the two-bedroom units. Ms. Goodman felt they met all the standards for the Special Use Permit and for the parking waiver.

Mr. Chapman questioned how many spaces from the parking lot would be off line during construction and for how long. Mr. Charma explained they would use the abandoned Choate Street property as a staging area to minimize the impact to the parking lot as much as possible. Mr. Chapman asked about establishing an agreed-upon cost paid by the developer for each spot per day that was removed from the lot. Ms. Goodman said the spots that would be disrupted were owned by her client. She believed the staging would keep disruption to a minimum and said the revenue flowing to the City was in everyone's interest.

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

Mr. Chapman felt it was a smart design.

Mr. Tuttle was pleased to see an increase in smaller units on Main Street.

Mr. Morehead asked the dimensions for the parking spaces. Mr. Charma said all the spaces were 9 x 18 City-standard parking spaces.

Mr. Funk asked why there was no masonry on the southern end of the townhouse row and felt it looked out of balance. Mr. Longo, Hillcrest Associates, said they decided not to use stone and not to make one side exactly like the other for architectural reasons. Ms. Goodman said they would use masonry there as requested by Mr. Funk.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

21. 7-B. REQUEST OF INDEPENDENT INVESTORS, LLC FOR A SPECIAL USE PERMIT TO CONSTRUCT 22 UPPER FLOOR TWO-BEDROOM APARTMENTS AT 144-150 EAST MAIN STREET AND FIVE FOUR-BEDROOM TOWNHOUSE APARTMENTS AT 21-27 CHOATE STREET (SEE ITEM 7-A)

(Note: The public hearing for the Special Use Permit was held under Item # 20.)

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

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

22. 7-C. REQUEST OF GUMBA ENTERPRISES, T/A 896 DINER, FOR A SPECIAL USE PERMIT TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES AT THE 896 DINER LOCATED AT 1108 SOUTH COLLEGE AVENUE.

02:03

Mark Sisk, Esq. represented Gumba Enterprises. He said the business operators were the Castelli's (father and son) who took over the 896 Diner about a year ago. The business had been failing and was in a problem location. They invested approximately \$150,000 in the diner and made a number of improvements.

To make this a competitive restaurant the owners believed they needed to offer alcohol service. Mr. Sisk pointed out that the Police Department's recommendation was to impose downtown restrictions which were applied to facilities serving alcohol within 300 feet of residentially zoned properties. He said those regulations were not applicable to this location. He believed imposing those regulations when there was no history of any problem at this location would unfairly hamstring the owners. He emphasized that Special Use Permits were issued at Council's discretion and were revocable if the permit was violated. Mr. Sisk further stated that during the time the Castelli's operated a successful restaurant in Wilmington, there were no issues with the ABCC. He asked Council to approve the service of alcohol as requested in the application.

Mr. Athey asked about carry-out liquor service. Mr. Sisk reported the applicants did not plan to have carry-out service and this restriction could remain.

Mr. Clifton asked the owners to describe their vision for the restaurant. Mario Castelli said he was planning to operate a family restaurant, not a diner, and wanted to entice families to come out for an enjoyable evening while being able to get a cocktail at the table. Music would also be offered.

Mr. Clifton asked for clarification on the applicable restrictions from Code Section 32-56.4. Mr. Herron advised that those restrictions did not apply. He said Council was not being asked to waive them, but was being asked by the Police Department to impose them.

Mr. Chapman believed in giving entrepreneurs the opportunity to be competitive and did not like the idea of carving out unnecessary restrictions. He referred to systems in place to control abuses such as the strict 60/40 food-to-alcohol sales ratio rule in place by the ABC Commission and Council's ability to rescind the Special Use Permit.

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT THE SPECIAL USE PERMIT BE APPROVED TO SELL ALCOHOLIC BEVERAGES WITH THE FOLLOWING CONDITION:

(1) THERE SHALL BE NO ALCOHOLIC BEVERAGE PROMOTIONAL ACTIVITIES THAT ENCOURAGE EXCESSIVE CONSUMPTION ON THE PREMISES. HAPPY HOURS, REDUCED PRICE ALCOHOLIC BEVERAGE SPECIALS OR SIMILAR ALCOHOLIC BEVERAGE PROMOTIONAL ACTIVITIES SHALL ONLY BE PERMITTED WHERE THE SERVICE OF SUCH SPECIALS IS RESTRICTED SOLELY TO SEATED PATRONS WHO SHALL ALSO BE REQUIRED TO ORDER FOOD IS FURTHER DEFINED AS FULL RESTAURANT SERVICE IN THIS SECTION. SUCH ALCOHOLIC BEVERAGE SPECIALS, IN ADDITION, SHALL BE RESTRICTED TO HOURS OF 4:00 PM TO 9:00 PM.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

23. 7-D. REQUEST OF NANCY TURNER FOR A SPECIAL USE PERMIT FOR A CUSTOMARY HOME OCCUPATION AT THE RESIDENCE LOCATED AT 176 WEST MAIN STREET, NEWARK, DELAWARE

02:29

Ms. Fogg noted that a letter was received from Dr. Scott G. Stephens, Director of the English Language Institute, recommending that Council approve the Special Use Permit.

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

Ms. Roser reported that Ms. Turner requested the Special Use Permit to tutor English Language Institute students in American culture, etiquette, table manners, vocabulary, etc. Each class was limited to six students, and the only signage was a 2' x 3' posting on an easel that was displayed when class was in session. Ms. Turner said her classes were held Monday through Thursday for 90 minutes and included recipe demonstrations in her kitchen as well as discussions about many aspects of everyday American life. As far as the neighbors were concerned, she did not think she was disturbing anyone. The students walked to the class from the ELI main building, so there was no traffic. Ms. Turner offered to reduce the size of her sign to 2' x 2' to conform to Code, but Council members expressed no objection to her sign.

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, Chapman, Clifton, Funk, Markham, Morehead, Tuttle.
Nay – 0.

24. 8. ITEMS SUBMITTED FOR PUBLISHED AGENDA

A. Council Members:

1. Resolution No. 12-___: Authorizing the Delaware Municipal Electric Corporation to Execute a Memorandum of Understanding with Governor Jack Markell Regarding Municipal Electric Utility Rates; Economic Development Rate; and Transfers to General Fund from the Electric Fund

02:36

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

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

(RESOLUTION NO. 12-L)

25. 8-B. OTHERS: None

26. 9. SPECIAL DEPARTMENTAL REPORTS:

A. Special Reports from Manager & Staff: None

27. Meeting adjourned at 9:35 p.m.

Patricia M. Fogg, CMC
City Secretary

PMF:av