

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**May 29, 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  
Public Works Director Richard Lapointe  
Electric Director Rick Vitelli  
Water & Wastewater Director Roy Simonson  
Acting Chief of Police John Potts  
Finance Director Dennis McFarland  
Assistant Planning Director Maureen Feeney Roser

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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 May 14, 2007

Mr. Athey corrected page 8, third line from the bottom of the second paragraph, the word "ordnance" should read "ordinance."

MOTION BY MR. CLIFTON SECONDED BY MR. ATHEY: THAT THE MINUTES OF MAY 14, 2007 BE APPROVED AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

3. MOTION BY MR. CLIFTON, SECONDED BY MR. POMEROY: THAT THE AGENDA BE AMENDED BY NOT LIFTING ITEMS 4-B AND 4-C FROM THE TABLE AND PLACING SAID ITEMS ON THE JUNE 11, 2007 MEETING.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

A. Public

Helen Gass, 120 Register Drive, Jenney's Run, expressed her problems with the new trashcan provided by the city for the automated system. The smallest trashcan did not fit into her garage because the garages on Register Drive were built slightly smaller than the majority of garages in her development. In order for her to get her car out of the garage, she must first remove the trashcan. Deed restrictions prohibit her from leaving the trashcan in the front of her garage except on days for trash removal. Mr. Lapointe has visited her home and agreed that the garage was not wide enough to accommodate the trashcan and her car at the same time. Mr. Markham has received similar complaints from other residents in Jenney's Run.

Robert Tabasko, 111 Register Drive, introduced himself as the incoming president of Jenney's Run Civic Association, and said he heard from several residents who were not happy with the new program, and others who were very happy or were "on the fence." Mr. Tabasko said he understood there were some exemptions to the program for the elderly and disabled people and asked for someone to comment on the exemptions.

Mr. Lapointe explained that there was a program for the elderly who were disabled whereby the refuse collector would pick up the trashcan at the garage. For example, White Chapel Village has a lot of elderly residents and an exception was made for their community.

Mr. Tabasko questioned how his community would enforce the deed restrictions to which Mr. Lapointe explained to him that it was the maintenance association's responsibility to enforce their own deed restrictions. He also noted that several months ago, before the program began in this neighborhood, he received calls from residents who were concerned about keeping the cans outside. It was his understanding that the maintenance association was not enforcing the deed restriction. Therefore, he felt comfortable that there would not be a problem with the new, uniformed carts being stored outside.

Mr. Luft suggested that Messrs. Lapointe and Tabasko meet to discuss the situation to resolve some of the problems.

It was Mr. Funk's opinion that if the deed restrictions have not been enforced, the maintenance association may have waived its right to enforce that deed restriction since it was ignored. It was his belief that the Court of Chancery could claim it was without authority to enforce the restriction now because it was not enforced when the violations started.

Mr. Markham said he would like a formal report, following a one-month trial, and not just a report that the City did not get any calls regarding the new cans. Mr. Lapointe said he would follow up with the officers of the maintenance association.

5. Victoria Owen, 719 Lehigh Road, advised that now there was a boulder marking the spot where the men of rural New Castle County and Newark had reported for duty in World War One. The boulder was placed out back of Elliot Hall. This year the Friends of Newark put flowers at the boulder, as was the custom at that time.

There were no further comments.

6. **3-B. UNIVERSITY**

1. Administration

There were no comments forthcoming.

7. **3-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

8. **3-C. COUNCIL MEMBERS**

Messrs. Athey, Osborne, Pomeroy, Markham, and Clifton complimented the great Memorial Day Parade and beautiful weather that afternoon.

9. Mr. Athey advised that he spoke with DeIDOT about traffic calming, and it was recommended to him that Council pass a resolution if there was interest to have S. College Avenue included in a traffic calming feasibility study. Mr. Athey will provide information to the City Secretary for a resolution to be presented to Council at a later date.

10. Mr. Athey commented on the summer concerts held at the Academy lawn and the request to open up Parking Lot #3 for free parking. He encouraged the City Manager to look into that because he felt it had some merit.

11. Mr. Athey was pleased that City staff was participating in NIMS training. He hoped the Emergency Operations Plan was still being reviewed and aggressively worked on by staff.

12. Mr. Athey thanked Messrs. Lapointe and Emerson for correcting a drainage problem at the foot of Apple Road where the Jim Hall Trail was located.

13. Mr. Athey thanked Cpt. Potts for taking care of what he thought was an abandoned vehicle on Kells Avenue, but was actually a stolen, abandoned vehicle.

14. Mr. Athey asked if the City could do anything about poison ivy along the sidewalk at various locations along S. College Avenue. The City Manager advised that the Code provided a provision that prohibited shrubs, trees, etc. from obstructing the sidewalk. He will have staff look at the areas in question to determine whether enforcement should occur.

15. Mr. Osborne referred to a recent article in the ***News Journal*** regarding the influx of business people coming into this area as a result of the proposed redevelopment of the Aberdeen Proving Ground. He did not know what the City could do to participate in that, but it seemed the City should try to do as much as possible to encourage people to come to Newark, particularly some of the high-tech industries looking for sites.

16. Mr. Pomeroy asked for a discussion on whistle blowing to be placed on a June agenda.

17. Mr. Funk commented on the current successful recycling project at Curtis Paper Mill. He believed almost 40% of the materials have been diverted from the landfill. Carol Houck and several volunteers have assisted to make this program work well.

18. Mr. Funk complimented the recent article in ***The Washington Post*** that spoke very positively about the City of Newark. It was pointed out that the ***News Journal*** reprinted the article.

19. Mr. Tuttle reminded everyone that next week Newark would be hosting the Delaware Special Olympics and encouraged everyone to attend the games. A lot of people would be visiting Newark and there would be great opportunities to participate in the opening ceremonies scheduled for next Friday night at the Bob Carpenter Center. Also noted was the Law Enforcement Torch Run that would hold a ceremony at City Hall around 4 pm Friday afternoon.

**20.** Mr. Markham reminded everyone that Newark Nite would be held Saturday, June 2<sup>nd</sup>.

**21.** Mr. Markham congratulated the 2007 University of Delaware graduating class.

**22.** Mr. Markham complimented the recycling project at Curtis Paper Mill and thought it would be nice if they could expand it to include the dumpsters behind Panera Bread, which were now overflowing. He hoped the apartments in that area could be encouraged to participate in the recycling project.

**23.** Mr. Markham was happy that the contract for the sidewalk project at the reservoir was scheduled for bid on June 5<sup>th</sup>.

**24.** Mr. Markham questioned if any estimates were received for the cost of demolition of the Curtis Paper Mill. Ms. Houck informed Council she would be meeting with the demolition company that gave her the preliminary cost and then she would be putting a contract out for bid. There were still questions regarding the smokestack before she could complete the contract. She thought the earliest a bid could go out was about three weeks.

There was a short discussion regarding the stability of the smokestack that has not been maintained for at least 20 years and should have been done every five years. Because of deterioration inside the smokestack there was concern that it may need to be cut after the letter "C". The cost may be prohibitive do save the smokestack.

**25.** Mr. Clifton thanked Ms. Houck for her letter to DeIDOT concerning the crosswalk at The Green on Main Street, and said he hoped DeIDOT would make some changes to the crosswalk when they redid Main Street.

**26.** Mr. Clifton referred to a letter Council received on an electric meter issue on Lehigh Road to which Mr. Funk said that was strictly a landlord/tenant problem.

**27.** Mr. Clifton noted that he did not serve on the Memorial Day Committee because he was a Council Member. However, at this year's parade, because of some issues between the Guard and the parade, he was asked by the Adjutant General to act as liaison between the National Guard and the parade committee to work out some issues to allow the Guard to give the parade more support next year.

**28.** Mr. Clifton advised that there were issues in Stafford with dogs barking and asked a resident from the neighborhood to relate his problem concerning that issue.

Todd Ruckle, 16 Adelene Avenue, said that after a recent home invasion, he purchased a German Shepard which sometimes barked. The dog was kept in the house from 8 pm to 8 am and was let outside to go to the bathroom and then brought back in immediately. His neighbor claimed the German Shepard attacked Mr. Ruckle's older dog and reported him to the Police Department claiming Mr. Ruckle was abusing his older dog. That report was investigated by Officer Vickers and was unfounded and that upset his neighbor. A second complaint was made that the dog was barking and that was unfounded by Officer Vickers. About six months later, a warrant was issued for Mr. Ruckle because his neighbor signed a warrant claiming the dog barked from 5:30 pm to 6:30 pm. but neighbors vouched for Mr. Ruckle that the dog was not outside during that time. Mr. Ruckle had to go to court twice because his neighbor did not show up the first time, and he had to subpoena his neighbors to testify that the dog was not barking.

Mr. Ruckle claimed his neighbor shined flashlights at his dog at night in order to get him to bark and then he would call the police to complain about the barking dog. He also let his cats provoke the German Shepard in order to get him barking so he could call the police. The one time the dog was left outside for any length of time, a police officer stood outside his house from 6:30 pm to 7:30 pm listening for the dog to bark.

Mr. Ruckle said that because of this complaint, he was finger printed, mug shot, and denied employment because it took six months to get the case through the court system and find him not guilty. He was very frustrated and ask if there was something that could be done about his frustration with his neighbor.

Mr. Clifton added that because the arrest was a criminal offense, it was reflected on an individual's record and must be disclosed when an employer asks if a person has ever been arrested. Mr. Akin agreed that it was a criminal offense and had to be reported if an employer asked whether someone was arrested.

Mr. Clifton said he believed everyone was entitled to peace and quiet in their neighborhood, especially after 9:00 pm, but he could not imagine having to tell an employer that he was arrested for a barking dog. He asked the City Solicitor to look at the ordinance to see if there was a way to de-criminalize the offense and to look at possible changes to protect the citizen whose dog barked when it saw a cat, or barked because children were playing in their backyards, etc. He also thought some reasonableness could be included in the ordinance to address a barking dog during daytime hours.

Mr. Funk questioned whether there has been a problem in the city with barking dogs because he did not remember a case in Alderman's Court when he was the Alderman. Cpt. Potts reported that to date for 2007 there were two arrests compared to 30 last year. Not all arrests involved a "barking" dog. Cpt. Potts will meet with Mr. Ruckle to discuss this further.

**29.** Mr. Clifton advised that he and Mr. Markham attended the most positive meeting last week he ever attended with the Newark Housing Authority. Residents from Cleveland Heights also attended. Everyone was candid about his or her personal concerns and fears. He reported that residents wanted a seamless transfer into acceptable housing. When Cleveland Heights gets sold, the proceeds must buy quality housing for the 42 residents and money must be used for maintenance on the new building as well as the existing buildings in George Read Village on Independence Circle. It was suggested that the meeting of the Board be changed from the second Wednesday of the month at 3 pm. Bylaws of the Board would need to be changed to be flexible with the time. Concern was expressed about the vouchers that have been given to some of the residents for finding other properties.

Residents also expressed concern about drug activity at McKees Park. They claimed that drug paraphernalia was found there often, but Messrs. Clifton and Markham saw no evidence of that when they visited the park. There was concern about the influx of cars with Maryland tags that loiter at the park and cul-de-sec. They also claimed they witnessed dogfights as recently as 2-1/2 weeks ago. They would like to see faster police response. There was still concern with employees from the local car dealerships who were parking on the streets going into Cleveland Heights. One dealership was using McKees Avenue as a road test site.

Mr. Markham added that the residents in Cleveland Heights felt isolated. In addition to the families represented at the meeting, three letters were provided from residents expressing their views. He claimed the Board's goal was to provide 42 new units within the City of Newark. He asked the Board to explain to Council how they planned to address issues brought to their attention. He also

noted they were concerned about the break-ins of the vacant houses in their development.

Amy Rowe, 19 Sunset Road, a member of the Newark Housing Authority, said she sat on the Board for three months and was excited to see some positive movement made toward getting Council's approval of their plan.

Mr. Osborne said that over the years the City has relied on the Newark Housing Authority to provide affordable housing and hasn't had much input into that because the NHA handled it. That being said, he thought the City should be more involved and kept informed so it could have some input on what was happening with housing, particularly for people who needed assistance.

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

A. Discussion Re Economic Development Report (Pomeroy)

Messrs. Lopata and McFarland provided, in a memorandum to the City Manager, dated April 3, 2007, a report describing the existing City Industrial Economic Development Incentive Program, as well as new or updated financial incentives intended to encourage high quality, low impact, light industrial projects in Newark.

Mr. Pomeroy believed this was an important and exciting time for economic development opportunities in and around the Newark area. There have been some changing dynamics (some positive and some negative). It has been well publicized about industry that was leaving Newark, and there has been positive development with what was happening in Aberdeen. Because of the overall importance of dealing with economic development issues on a municipal level, that led Mr. Pomeroy to want to get more involved with economic development and to form the Economic Development group that was a partnership with several folks in and around the greater Newark area.

Mr. Pomeroy thanked Mr. Lopata and staff for the time they invested in their report. He thought it was worth noting that one of the important things in their report was the quality of the location that an individual wanted to locate. He thought that was one of the greatest things Newark offered.

Mr. Pomeroy referred to the recommendation for a special electric rate structure for high tech industry. That kind of industry represented the huge consumers of electricity and often times that could be a make-or-break component as to whether a business stayed in Newark or came to Newark.

Mr. Lopata commented that no matter what Council decided to do with this proposal, it affected economic decisions at the margins. In his experience, the most important thing was the nature and feel businesses got from a community. The committee formed by Mr. Pomeroy, the SBA award the City recently received, and the recent article in the *Washington Post* were priceless examples that Newark was welcoming and willing to help a business through the process, and he believed that went a long way to getting high quality businesses in the community. He claimed their recommendations did not include substantial sums of money in terms of incentives; rather the City's attitude and approach to businesses was ultimately what mattered the most.

The two principal recommendations included some kind of special adjustment in the electric rates which staff would firm up and give much more detail at a later time that would provide some form of incentive rate to new industries or to industries that expanded. He noted that the City had an industrial incentive program that has been in existence since the mid- to early 80s that gave a tax break for new businesses or the expansion of industrial businesses. He believed they could improve that current system. Both recommendations could be accomplished by ordinance. If Council wanted staff to proceed, Mr. Lopata said he and Messrs. Luft and McFarland would provide a

much more detailed proposal. It was the consensus of Council that staff should move forward with their recommendations.

Mr. Funk pointed out that Chris Coons from the County has Karl Kalbacher on his staff whose primary job was to recruit businesses in New Castle County. He thought somebody from the City should be working with Mr. Kalbacher to recruit businesses.

Mr. Markham thought the electricity rate structure was a real good idea. His only concern was whether the City had capacity for a business that came in and used a lot of power. He was assured that the City had the capacity.

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

- A. Contract 07-02 – Purchase of Materials for 138,000 – 34,500 Volt 60/80/100 MVA Kershaw Substation Upgrade

Ms. Houck summarized her memorandum to the City Manager, dated May 19, 2007, wherein she explained the contract provided for the purchase of materials to perform an upgrade to the Kershaw Substation that would expand its capacity. It was recommended that Contract 07-02 be awarded as follows:

- Section 1: Hamby Young - \$362,544
- Section 2: Electricomm Inc. - \$16,385.80
- Section 3: Siemens C/O National Transformer Sales - \$55,400.
- Section 4: Siemens C/O National Transformer Sales - \$176,909.
- Section 5: Electricomm, Inc. - \$104,118.35.
- Section 6: PEPCO - \$1,560,000.

In order to hold the pricing for the transformer, the City would also commit to a payment plan for Section 6 as follows: 30% at order acknowledgment (2007); 30% at 15 weeks prior to shipping (2008); 30% at 35 days prior to shipping (2008) and 20% at shipment (2008). The total award would be \$2,275,357.15.

Mr. Markham pointed out that the City Manager expressed concerns a few months ago about the price of this contract, and asked Mr. Luft if his concerns were addressed. Mr. Luft said the total funding for the project was now in sync so he was a lot more comfortable with the cost at this time.

Mr. Vitelli said the transformer would last for the foreseeable future and in 20+ years, new lines may be needed out of the substation. He said the main substation was at 90% capacity, and he estimated it would be at full capacity in the summer of 2009. This transformer would be finished next June, just in time when he anticipated the main substation to be at full capacity.

Mr. Luft explained that \$2.8 million funding for the project had already been set aside in the reserves, but they were also supplementing it with an additional \$300,000 in the 2008 Capital Program. Mr. Clifton asked what happened to the excess money. Ms. Houck explained that there would be about \$550,000 left, but the cost for the labor and installation was estimated at \$770,000 and that was why there was \$300,000 in the 2008 Capital Program.

Mr. Vitelli added that there would be another contract in the next two months for the labor and installation of the materials. That was estimated at \$770,000, which would finish the project and would be about \$200,000 over the budget. That was the reason for asking for \$300,000 in 2008.

MOTION BY MR. TUTTLE, SECONDED BY MR. ATHEY: THAT CONTRACT 07-02, PURCHASE OF MATERIALS FOR 183,000 – 34,500 VOLT, 60/80/100MVA UPGRADE FOR THE KERSHAW SUBSTATION BE AWARDED AS RECOMMENDED FOR A TOTAL COST OF \$2,275,357.15.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**32. 5-B. CONTRACT 07-06 – ROOF REPLACEMENT – GEORGE WILSON CENTER**

Ms. Houck summarized her memorandum to the City Manager, dated May 19, 2007, wherein she explained that the contract was to provide services to rehabilitate the roof of the George Wilson Community Center. One sealed bid was received and exceeded the budget by \$23,224.00. Additional funds were not available at this time and it was therefore recommended that Council reject the sole bid received. Ms. Houck advised that a new contract for a different type of roof would be put together and put out to bid in the near future.

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: THAT THE SOLE BID BE REJECTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**33. 5-C. CONTRACT 07-08 – PURCHASE OF ELECTRICAL CONDUCTORS, TRANSFORMERS & MISCELLANEOUS MATERIALS**

Ms. Houck summarized her memorandum to the City Manager, dated May 19, 2007, wherein she recommended Contract 07-08 be awarded as follows:

Items 1,2,3,5,7,8,9&10 – Wesco Distribution - \$113,264.80 (Alternate bid for Item 5 accepted for a quantity of twenty instead of 15).

Item 6 – Ermco - \$16,699.

Item 4 – HD Supply - \$5,232.00.

The total amount for this contract was \$135,195.80.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT CONTRACT 07-08, PURCHASE OF ELECTRICAL CONDUCTORS, TRANSFORMERS & MISCELLANEOUS MATERIALS, BE AWARDED AS RECOMMENDED FOR A TOTAL COST OF \$135,195.80.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

- 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. TUTTLE, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-11.

Mr. Zusag summarized his memorandum to the City Manager, dated May 3, 2007, wherein he explained that this bill was tabled pending clarification of the position of the FOP. He explained that he originally proposed these changes at the request of an injured employee's attorney who asked about the taxable status

of the benefit the employee received while on a job-related injury leave. Mr. Zusag spoke to a tax attorney who advised that the City's benefit did not currently have the full force and effect of law because it was a product of the City's Personnel Manual and was not enacted by City Council, and it could be changed unilaterally by the City Manager. Therefore, the benefit was considered taxable. The benefit of the state law was nontaxable and the City has always tried to mirror the state worker's comp law whenever possible, while still maintaining its exemption from the state law and its exemption from having to go before the Industrial Accident Board to have settlements approved.

Mr. Zusag continued by saying he did not view this change as having any negative consequences for the City. It would give the work-related disability benefit the force of law and thereby make it a non-taxable benefit; and it placed a maximum time limit of 300 weeks on the receipt of the benefit. The state law has a 300-week maximum limit on receipt of those benefits, which was not originally included in the City's policy so it was added to this proposal.

Mr. Zusag further stated that the FOP raised an important point, which he had not previously considered. In their opinion, their work-related disability benefit already had the force of law because the policy language could not be unilaterally amended by the City Manager. The 300-week limit would not have applied to the FOP employees because they alone have a disability pension benefit for life, which exceeded the two-thirds benefit provided by this policy. Therefore, Mr. Zusag had no objection to excluding FOP employees from coverage under this ordinance.

Mr. Clifton asked how many employees were on disability to which Mr. Zusag answered four employees and if and when this ordinance became effective, the future benefits of those employees would become nontaxable. Of those four employees, the maximum number of days any have reached was just under 150 weeks.

Mr. Akin concurred with Mr. Zusag's conclusion.

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

**(ORDINANCE NO. 07-15).**

**35. 6-B. BILL 07-17 – AN ORDINANCE AMENDING CH. 2, ADMINISTRATION, ARTICLE IV, DOWNTOWN NEWARK PARTNERSHIP, BY EXPANDING BOUNDARIES OF DOWNTOWN NEWARK**

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

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-17.

Ms. Roser explained that the intent of Bill 07-17 was to expand the boundaries of the Downtown Newark Partnership down Elkton Road to Apple Road. The current boundaries were Library Avenue on the east, Elkton Road on the west, the CSX right-of-way on the north, and Delaware Avenue on the south. The DNP wanted to include properties fronting on Elkton Road to Apple Road for

several reasons. New developments recently proposed were more downtown in nature, i.e.. commercial use on the first floor with residential on the second and third floors. Also, DelDOT has long-range plans to improve the aesthetics and pedestrian appeal of Elkton Road, which the DNP thought would make it a natural extension of Main Street. In addition, from time to time the DNP got requests from businesses along Elkton Road to participate in DNP events and activities and to avail themselves of the services offered by the DNP.

Mr. Funk noted that the DNP unanimously approved this recommendation, which originated at the request of The Trap who wanted to be involved with all of the activities of the DNP and then Pat's Pizza requested the same.

The chair opened the discussion to the public.

Frances Hart, 257 W. Main Street, said she had no opposition to the extension, but thought several issues needed to be addressed—setbacks of buildings and greenery and the widening of sidewalks and bike paths. She was pleased with Madeline's Crossing and Pat's because of their setbacks and berms that looked very good. She thought The Trap development looked ugly compared to the Center for the Arts building, that the townhouses at Wilbur and North Streets were awful because the steps were too steep and there was no setback, and they did not fit in the neighborhood of Prospect Avenue. She believed developers wanted to maximize their investments and ignore aesthetic considerations. Therefore, it was the City Council and Planning Commission's responsibility to control the type of structure being built. If the City wanted to attract more people and businesses, it needed to make the City more attractive. She concluded by asking Council to make Newark a more beautiful place instead of allowing any "old kind of thing" to happen. She suggested developing and adhering to a Comprehensive Plan.

Jean White, 103 Radcliffe Drive, did not think the wording of the description of the DNP area was clear. Ms. White was advised that a revised bill was placed at the counter that more clearly described the area. Ms. White was still not happy with the description and recommended that it read "..... between the CSX Railroad right-of-way to the north and Delaware Avenue, and in addition shall include all properties fronting on both sides of Elkton Road to Apple Road."

Ms. White thought the rationale given that businesses on Elkton Road could benefit from the DNP could be used by businesses all around town. She pointed out that all of the properties that would be added on Elkton Road were zoned BL, BN, BC or BB. She claimed it would be possible for businesses on Elkton Road to benefit from the DNP without this change. She feared this change would encourage and allow rezonings to allow developers to add apartments to the second and third floors. She envisioned Elkton Road being lined with apartments, which would create problems with parking, extra people, and more traffic.

Ms. White thought BC zoning had different effects for setbacks and landscaping. However, she did not have time to compare the different zoning designations to further comment on that. She personally felt it was inappropriate to have residential units on the railroad side of Elkton Road. She noted that the CSX and railroads in general did not like to have residential along railroads for many different reasons. She also had an issue with parking. If this ordinance were to pass, she hoped Council would not allow additional developments to have parking in front. She also hoped Council would not approve any additional apartments with garages on the first floor along Elkton Road.

Joe Charma, 711 Harvard Lane, Chairman of the DNP Design Committee, assured everyone that the Design Committee would do everything in its power to maintain the design standards that have been established for Main Street. He believed the laws now in effect, along with good design practice, would fulfill that mission. He thought rezonings were usually sought to maximize the use of a

property to the best and highest use and that was a good thing. That being said, he did not think all the properties on Elkton Road would be rezoned to add apartments. He concluded by reiterating that the Design Committee was committed to the DNP, and with the Council and the Planning Commission's help they would fulfill the mission of extending Main Street down Elkton Road.

David Robertson, 15 Center Street, a member of the Design Committee, said he was not urging Council to vote one way or the other because he did not care because he felt regardless of the vote, they would not be extending Main Street down Elkton Road. He viewed Elkton Road as a place. It would not be done through zoning. It could be done with development planning to sustain it, help rebuild it, but Main Street was the heart of Newark and he would continue working to keep it the heart of Newark.

Patrick Hart, 257 W. Main Street, claimed he sold his office property to a computer company, which wanted to expand. They wanted to stay in the City but apparently had a problem finding property where they could build a larger facility. He thought when Council rezoned Twin Lakes from business to an adult community, it was against the general plan of the Planning Commission and the City needed areas where businesses could expand. Mr. Funk advised that there were a lot of places in Sandy Brae Industrial Park on Elkton Road for businesses as well as in the industrial center next to the Charter School.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(ORDINANCE NO. 07-16)**

- 36. 6-C. BILL 07-18 – AN ORDINANCE AMENDING CH. 20, MOTOR VEHICLES & 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**
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Ms. Lamblack read Bill 07-18 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. POMEROY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-18.

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

**(ORDINANCE NO. 07-17)**

- 37. 6-D. 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. TUTTLE, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-20.

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(ORDINANCE NO. 07-18)**

**38. 6-E. 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**

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

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-16.

Jeff Lang, 13 Spring Water Way, said he wanted to install a pool in his backyard and discovered when he looked at the property line and the buffer strip along the back of the property, that he could not install the pool because of the buffer strip. The Planning Commission recommended approval of the annexation of .15 acre property adjacent to Mr. Lang's property. Since that time, Mr. Lang decided to reduce the size of the annexation to .10 acre. The property owner of this .10-acre has agreed to sell the property to Mr. Lang.

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

AMENDMENT BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THE TOTAL ACREAGE BE CHANGED TO .10 ACRE.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Question on the Motion as Amended was called.

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

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

**(ORDINANCE NO. 07-19)**

**39. 7. RECOMMENDATIONS FROM THE PLANNING COMMISSION/DEPT.**

A. Request of Tracks, Inc. for an Extension of the Grandfathering for the Sale of Alcoholic Beverages for Consumption on the Premises at the Location of the Now Closed Tracks Restaurant, Located in the Multi-story Commercial Building at 60 North College Avenue

Mr. Luft explained that this was a request of Tracks, Inc. for an extension of the grandfathering for the sale of alcoholic beverages for consumption on the premises at the location of the now closed Tracks Restaurant.

The chair opened the discussion to the public.

Jean White, 103 Radcliffe Drive, provided a history of the site and provided her opinions of the various businesses at that site. It originated as the Down Under and she claimed degenerated into all sorts of problems. The license was then bought by Maxwell T's in 1998 and began with good intentions. Maxwell T's became a drinking establishment with huge numbers of calls for service by the police. When that closed, within a year the Ground Floor took over and it, too, degenerated into a huge problem with many calls for service by the police. It closed in July of 2005 and Tracks was established and became a more upscale restaurant and agreed to close at 11 pm. However, it was not able to maintain a viable business, closed in April of 2006, and the site has remained closed. Under the Zoning Code, this property would not be allowed to sell alcohol because it was next to residentially zoned property. However, it continues to be grandfathered with each new establishment. Now that it has been closed for over a year, Ms. White urged Council not to grant the extension.

Ms. White said she first became interested in alcohol issues about 12 years ago when she became aware of certain initiatives in the City and chose to serve on a number of committees related to alcohol in the City. A few years ago, through the Freedom of Information Act, with the assistance of the Police Department, she obtained from their database every call for service from January 1, 1998 to July 31, 2005. It included 880 calls for service for this property, but not every call could be proven to be caused by the establishment. Maxwell T's actually had to surrender their license to the DABBC because of the problems that occurred.

Ms. White pointed out that the Code established that alcohol not be sold or consumed next to residential and that was good and had positive consequences. This site was very problematic for alcohol—three different establishments had major problems and she was appalled at the amount of time the Police Department has spent on the property. She felt that Tracks failed because of the location of the restaurant. In her opinion, this was the time to revert back to the Code and not allow alcohol at this location. She pointed out that Cpt. Potts strongly urged Council to reject the application and support Cpt. Potts recommendation to reject the request to extending the grandfathering.

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

Mr. Funk added that Ms. Lamblack brought to his attention that it was possible the attorney for the applicant was not notified that this item would be placed on this agenda. Therefore, Council should consider whether or not they wanted to table the item until the next meeting.

Mr. Athey said he was unclear about when the grandfathering expired since Mr. Lopata's memorandum gave a date of April 8, 2007 and Mr. Sisk's letter said it expired June 30, 2007. Mr. Akin thought if Mr. Sisk was present he would argue that his request got in on time and therefore was a timely request even though there was no Council meeting between April 4 and April 8. His point was the extension was requested before the one year since closure had expired. He acknowledged that the request could have been made in February or March and that would have given Council time to put it on the agenda before April 8. He thought since there was the possibility that Mr. Sisk was notified of the meeting and since Council was being asked to act in a quasi judicial capacity, it may be wise to table the matter until Mr. Sisk or his client were able to appear before Council and argue their case.

Mr. Funk suggested a legal opinion from Mr. Akin as to whether the license expired. Mr. Akin said action by Council was not affecting the liquor license but rather the use—whether the use expired as a matter of law. He reminded Council there were other cases where Council acted even though an

expiration date had come and past or an extension had come and past. Mr. Lopata interjected that Council did the same thing with Shaggy's.

Mr. Clifton referred to Cpt. Potts' memorandum regarding the number of service calls at this site and the fact that it reflected 7 police responses from January 1 2007 through the present while the business was closed. He thought it was important to clarify the incidents to determine whether they had anything to do with the business.

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THIS ITEM BE TABLED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**40. 8. ORDINANCE FOR FIRST READING:**

A. Bill 07-22 - An Ordinance Amending the Zoning Map of the City of Newark By Rezoning from BC (General Commercial) to BB (Central Business District) Property Located at 209 East Main Street

Ms. Lamblack read Bill 07-22 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE FIRST READING OF BILL 07-22.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(2<sup>ND</sup> READING 6/25/07)**

**41. 8-B. BILL 07-19 – AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK BY REZONING FROM BL (BUSINESS LIMITED) TO RR (ROW HOUSE, TOWNHOUSES) 1.16 ACRES LOCATED AT 711 BARKSDALE ROAD**

Ms. Lamblack read Bill 07-19 by title only.

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT THIS BE THE FIRST READING OF BILL 07-19.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(2<sup>ND</sup> READING 6/25/07)**

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

A. Council Members: None

**43. 9-B. COMMITTEES, BOARDS & COMMISSIONS:**

1. Planning Commission Minutes of May 1, 2007

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: THAT THE PLANNING COMMISSION MINUTES OF MAY 1, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

44. **9-C. OTHERS:** None

45. **10. SPECIAL DEPARTMENTAL REPORTS:**

A. Special Reports from Manager & Staff:

1. Approval of Proposed Updated Unicity Bus Service Agreement

Mr. Luft recommended authorization to enter into the Unicity Bus Service agreement between the Delaware Transit Corporation and the City of Newark and the companion agreement between the City and the University of Delaware for the continuation of the Unicity bus service. The amount of funding allocated in the Delaware Transit Corporation budget was set at \$135,135 and was subject to approval by the State General Assembly through the state budgetary process that would be concluded on June 30<sup>th</sup>.

Mr. Funk advised that he recently learned the trolley schedule had been modified that would take the trolley out S. College Avenue, across Chestnut Hill Road, down Marrow's Road, and down Main Street. He thought that would duplicate one of the Unicity routes. Mr. Lopata said he was not aware of the change, but thought if the trolley duplicated any of the Unicity routes, the Unicity route would be dropped and the two systems would have to be integrated rather than providing a duplicate service. Mr. Funk also noted that the trolleys would be brought to the City sometime in June for officials to ride the route.

Mr. Athey asked what would happen if the state did not approve the money budgeted, and Mr. Lopata said the City would stop running the service because Unicity was fully funded by the state. He further explained that Unicity replaced DART service so the state has been committed to funding the service.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT COUNCIL AUTHORIZE THE CITY MANAGER TO ENTER INTO THE UNICITY BUS SERVICE AGREEMENT BETWEEN THE DELAWARE TRANSIT CORPORATION AND THE UNIVERSITY OF DELAWARE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

46. **10-A-2. 2008-2012 CAPITAL IMPROVEMENT PROGRAM (FOR SUBMISSION TO PLANNING COMMISSION)**

MOTION BY MR. OSBORNE, SECONDED BY MR. ATHEY: THAT THE 2008-2012 CAPITAL IMPROVEMENT PROGRAM BE REFERRED TO THE PLANNING COMMISSION.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

47. **10-B. ALDERMAN'S REPORT**

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: THAT THE ALDERMAN'S REPORT, DATED MAY 17, 2007, BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**48. 10-C. FINANCIAL STATEMENT**

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT THE FINANCIAL STATEMENT ENDING APRIL 30, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**49. 10-D. REQUEST FOR EXECUTIVE SESSION RE PENDING LITIGATION (DURKIN V. NEWARK)**

Mr. Akin advised that an Executive Session was not required at this time.

**50. Meeting adjourned at 9:47 pm.**

Susan A. Lamblack, MMC  
City Secretary

/pmf