

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

July 9, 2007

Those present at 7:30 pm:

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
City Solicitor Roger A. Akin
Planning Director Roy H. Lopata
Parks & Recreation Director Charlie Emerson
Acting Chief of Police John Potts

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 June 25, 2007

Mr. Athey corrected page 14, item #31, the name "Summers" should read "Somers."

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THE MINUTES OF JUNE 25, 2007 BE APPROVED AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

A. Public

Ivan Nusic, 26 Wakefield Drive, thanked the City for taking care of a sewer line problem in a quick and timely manner. He also thanked Council for running a nice town. He was very happy he moved recently to Newark from Pennsylvania and claimed he took his township to court 16 times and won every time. He assured Council he would speak his mind.

4. Victoria Owen, 719 Lehigh Road, said she recently learned from the Water Department that they did a slight adjustment to the chlorine in the water and now found it tasted much better. With the recent concern of plastic bottles in the landfills, she encouraged everyone to drink tap water instead of bottled water.

Ms. Owen distributed a photograph of the World War I monument located within the Old College Historic District. The Boulder, located behind Elliot Hall, marked the spot where the men of New Castle County were inducted into the military in 1918-19. Records revealed that flowers were placed there every Memorial Day. She encouraged the community to assist with the cleaning of the Boulder and to have it incorporated into the Memorial Day celebration. She also

noted that she could not find records of various monuments in the City, nor could she find who was responsible for taking care of them., even those located in front of the Academy Building. Mr. Funk said he would have Linda Burns contact Ms. Owen in January when the Newark Memorial Day Committee would begin planning next year's Memorial Day parade and celebration.

5. **3-B. UNIVERSITY**

1. Administration – There were no comments forthcoming.

6. **3-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

7. **3-C. COUNCIL MEMBERS**

Mr. Clifton complimented the over 55 communities article in today's ***News Journal***. He thought the Planning Director's comments were invaluable and raised awareness of what Newark had to offer in housing options and the reasons why someone would want to live in a university community.

8. Mr. Clifton congratulated the City on the 4th of July celebration. He suggested that the City's hotline could have more frequent updates due to the heavy rains that day. He thought when people called the hotline and heard the message, they were under the impression the message was there from the morning and/or early afternoon.

9. Mr. Clifton commented on Mayor and Council letterhead and relayed a situation that occurred several years ago involving letters sent to DeIDOT. There was a lot of confusion involving then Secretary of Transportation Canby as to some conflicting issues between the letters that were sent from members of Council and the direction Council (as a whole) had given to the City Manager. He claimed recently there were some issues and confusion with state legislators in what had and had not been endorsed by Council as a body.

Mr. Clifton suggested putting some controls on the Mayor and Council letterhead. For example, before a letter was sent out on the letterhead, if there was an implied endorsement, that it had to be truly endorsed by the Mayor and Council and reviewed through the City Secretary's Office.

Mr. Athey said a few months ago he got a phone call from a constituent who asked him why he endorsed a certain policy that was referred to on Mayor and Council letterhead. Mr. Athey did not endorse the policy in question and noted it had not been discussed at the table. He questioned whether the solution was general separate letterhead for each Council Member and the Mayor.

Mr. Clifton said he brought this up for Mayor and Council to be thinking about for a later discussion

Mr. Clifton thought it was the responsibility of the City Secretary's Office to send the letters from Mayor and Council. If there was any question about how a letter was phrased, the City Secretary could contact the individual who dictated the letter and ask if that was what they really wanted to say. He saw that arrangement as a second set of eyes, especially if a letter implied an endorsement. He thought all members of Council should use that office as a resource rather than having letters coming out of individual offices which was where he thought the issue started. He further claimed a recent letter to a state legislator resulted in him receiving a phone call from that person asking him what he knew about the letter. Mr. Clifton knew nothing about it other than a letter was sent.

Mr. Athey reiterated they could come up with two different types of stationery that would remove the implied endorsement. Mr. Markham suggested electronic letterhead for each member of Council.

Ms. Lamblack explained that similar conversations took place over the years depending upon the circumstances of the reason it was brought up. She further explained the specific reason why Mayor and Council letterhead was used versus individual letterhead. One was financial because it was expensive to keep changing letterhead every time there was a change in Council. Individual letterhead was done away with a number of years ago largely because of the cost, but reminded Council that more importantly the Mayor and Council acted as a body. The present letterhead was used individually and together because they were a group, a policy making body. When an individual Council member or the Mayor needed or wanted to write a letter about a particular topic, whether it was endorsed could be easily implied in the letter.

Ms. Lamblack continued by saying that over the past several years there has not been a problem with the letterhead because her office did most of the work and the Mayor and Council members have understood that policy. Ms. Lamblack believed the Mayor and Council letterhead worked very well and felt the letters needed to be done from one office, rather than from individual offices and that may be part of the problem Councilman Clifton was speaking about.

Mr. Funk said he thought he was the offender of some of the problems, but he had not been writing to any legislators. However, when he sends out invitations to 75 groups asking them to participate in the 250th Anniversary parade, he has his summer law clerk do that work.

Ms. Lamblack responded by saying her office could do those letters because her office was set up to do Mayor and Council's work. That puts a control over a letter and if there was a problem with the letter, more than two eyes would see it.

Mr. Clifton thought they needed to talk about this more because when the seven of them were no longer sitting at the table, the problem would not go away. He wanted to be sure, in the future, when individuals received letters on the Mayor and Council letterhead, they understood the intent of the letter and the implied or lack of endorsement behind it. He wanted to be sure they would best articulate their position individually and collectively.

10. Mr. Markham asked if the reservoir was in use since the White Clay Creek looked low. Mr. Luft said he thought it was being used.

11. Mr. Tuttle advised that on June 28th he attended the graduation ceremony for the Public Allies Class – a training program for young adults who wanted to give back to the community after finishing their bachelor's degree and were typically working toward a graduate education. He claimed it was fairly Wilmington-centric, but he was pleased to see that one of the allies had worked with the Newark Senior Center during the past year. He thought there were other organizations in Newark that would benefit from this relatively inexpensive, high quality work that the Public Allies provided and hoped other groups would take advantage of this class.

12. Mr. Pomeroy congratulated everyone involved with Liberty Day.

13. Mr. Pomeroy asked if he remembered talking about exploring the feasibility of televising Council meetings on Channel 22. Mr. Luft said it was discussed when Council discussed a Public Information Officer but it was too expensive to do. Mr. Athey added that a significant amount of training would also be needed. Ms. Lamblack added that this was discussed when the Comcast franchise agreement was extended. The total cost was very expensive.

14. Mr. Osborne had nothing to bring up at this time.

15. Mr. Athey asked about the status of the updated Emergency Operations Manual and was told by the City Manager that the Building Director was working on it and it was very close to being finished.

16. Mr. Athey referred to a memo Council received from the Mayor regarding the recycling program where he suggested subsidizing the \$6.00 fee paid by residents who participated in that program. Mr. Athey endorsed the idea and suggested doing what was done in the Town of New Castle. They did a pilot program where the Solid Waste Authority agreed to pick up recycling at every house for \$2.00 per house and one bill was sent to the Town of New Castle rather than to individual households which saved the Authority money. The town then collected the fee from the households.

Mr. Markham asked if Council was waiting for a recommendation on recycling from the Conservation Advisory Commission. Mr. Luft said that Mr. Lapointe and Ms. Houck were working on that. Mr. Funk thought the problem was the fact that the City's equipment was not conducive to the operation. Mr. Pomeroy remembered they were given to the end of the year to come up with a proposal. Mr. Luft thought it would be done at budget time.

17. Mr. Funk reported that the Alderman, Anthony Forcina, was retiring on September 1st. The position would normally be advertised in the *In Re* magazine, but because the next publication was September, the newspaper will be used. The Senate will be called back in session in September to vote on nominations.

18. **4. ITEMS NOT FINISHED AT PREVIOUS MEETING:** None

19. **5. RECOMMENDATIONS ON CONTRACTS & BIDS:** None

20. **6. ORDNANCES FOR SECOND READING & PUBLIC HEARING:**

- A. Bill 07-23 – An Ordinance Amending Ch. 32, Zoning, By Adding Center Street to the List of Exempt Streets in the Student Home Ordinance

Ms. Lamblack read Bill 07-23y title only.

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-23.

Mr. Lopata explained that in 1999 Council adopted the student home ordinance, one of the most effective tools in reducing the increase in off-campus student housing in single-family areas. A list of exempted streets was included in the ordinance that allowed single-family, detached dwellings to be rented to more than two students. It was discussed at that time that streets could be added over time. Mr. Lopata pointed out that streets have been added and some requests to add streets were denied.

Mr. Lopata advised that the Planning Commission reviewed the request and recommended adding Center Street to the list of exempt streets. Notification was sent to property owners within 300' of Center Street prior to both the Planning Commission and Council meetings.

Mr. Markham asked how many homes were involved. Mr. Lopata referred to the map that was included and said four of the parcels not indicated were single-family dwellings that were either owner-occupied or had two renters. The remaining houses were rentals. He pointed out that 10 Center Square were apartments and 24 Center Street was a small apartment building. By and large Center Street was a rental area and has been for some time. He thought it was

not included in the original list of exempt streets because there were more owner occupants living there when the ordinance was adopted than there were today.

Mr. Markham asked how many additional renters could be added. In theory, Mr. Lopata said each lot could have three. He reiterated that all of the rectangles were now rentals – 11 17, 45, 10, 24, 28, 32, 44 and 50. He assumed most of them had more than two renters because they were probably grandfathered units.

The chair opened the discussion to the public.

Niles Norton, 27 Center Street, said he owned rentals on Center Street and also lived there. His rentals have three unrelated people (two students). He had two homes that he rented to families, but they moved out after the University was allowed to erect stadium lighting in their backyards. He claimed it was a hardship finding people who were not students who wanted to live on a street that was basically occupied by students. He concluded by stating that he supported the request to add Center Street to the list of exempted streets.

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

Mr. Clifton believed the student rental ordinance was an effective tool. He saw Center Street as being located in the core of the City and a very high traffic area for people visiting the community. He pointed out such events as Chapelfest, Wilburfest, and Skidfest which he believed were brought about because of the lack of fulltime residents living in those areas. He believed fulltime residents brought stability to a neighborhood and once Center Street became entirely rental, he could see the same thing happening there. He acknowledged that it was good that Mr. Norton who lived on Center Street controlled his properties, but if and when he would move and his house potentially became another rental property, he could see the same thing happening that occurred on Chapel Street. The backyards of all the houses on Chapel Street were dirt and used for parking. In fact, he did not think there was a house on Chapel Street that did not violate the lot coverage and off-street parking requirements. For those reasons, he could not support adding Center Street to the list of exempt streets.

Mr. Pomeroy agreed with Mr. Clifton and added that he thought Center Street was begging to be saved. In order to enhance the overall dynamic of the downtown area, he thought they needed to keep working to promote a mix of constituencies in the core downtown. He thought Center Street was representative of the core downtown area and still ripe for current and future owner occupancy even though there were now many rental properties. If they would approve this request, he claimed it was not unrealistic to see it go all rentals. He would like to see this street, which was almost historic in nature, to be a core part of the downtown area that could entice owner occupants. Therefore, he would not support the request.

Mr. Athey agreed with Messrs. Pomeroy and Clifton. He questioned what the public notice read that was sent to the nearby residents. Mr. Lopata said his letter to the residents explained the student home ordinance and what the import of the change would be. The City Secretary's office sends a notice of the ordinance. Mr. Athey was concerned that he did not know the position of the people who would be affected by the change. Mr. Lopata said the only person he heard from was Mr. Niles. Ms. Lamblack added that her office received two phone calls regarding the change. Mr. Athey felt he had to guess how people felt about the change since they were not at the meeting.

Mr. Lopata added that when the same request came for Linden Street, there were several people who spoke and that was a smaller street. Also, at that time, the City was only required to notify residents within 100'. He added that

when Gibby Young requested this change, Mr. Lopata was very pessimistic about getting approval and expected people from the community to be opposed. That did not happen.

Mr. Lopata further added that he had been fighting student rentals longer than everyone on Council, but the problem with this street was the noise from the University's field which generated the request. The long-term residents moved away once the University started using the field for evening sports, added lights on the field, and generated a lot of noise. The City has met with the University about that, but the City has not been successful in getting them to tone down the evening activities.

Mr. Athey referred to Mr. Young's letter where he made the request and claimed it was questionable as to the sale ability of homes. Mr. Athey felt that was conjecture on the part of Mr. Young, and Mr. Funk interjected that everything was salable and it was just a matter of price. Mr. Athey said if he had some evidence that showed Mr. Young could not sell his property, then he would be more willing to consider making the change based on a hardship. Otherwise, he concurred with Messrs. Clifton and Pomeroy.

Mr. Markham added that he talked to the University about problems with noise and the University offered to make a commitment of landscaping but nothing has happened in that regard. He was torn on this request because he was aware of the issues of the lighting and the noise. If Council wanted to say no to expanding student rentals in this area, then he wanted a commitment that the City would try to solve the existing problems. That being said, he was also worried about it becoming another Chapel Street.

Jean White, 103 Radcliffe Drive, commented that there was a misconception that this street could not have rentals. She explained that the student home ordinance read if there was already a student rental, there could not be another student rental within 10 properties. However, there could be a rental to a family or to three unrelated people who were not students.

Question on the Motion was called.

MOTION FAILED. VOTE: 1 to 6.

Aye – Markham.

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

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

A. Request of Liborio Louviers, LLC, for a Revision to the Approval Subdivision Agreement for the Development Known as The Shoppes at Louviers, Parcel A, Located on the East Side of Paper Mill Road, to Modify the Deed Restrictions (Subject to ABCC Approval) to Allow the Operation of a Wine-Only, Off-Premises-Consumption-Only Package Store **(ADDENDUM TO SUBDIVISION AGREEMENT PRESENTED)**

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT THE ADDENDUM TO THE APPROVED SUBDIVISION AGREEMENT FOR THE SHOPPES AT LOUVIERS BE APPROVED AS PRESENTED.

Lou Ramunno, Lenape Properties Management, Inc., 903 N. French Street, advised that his family owned The Shoppes at Louviers and would like to have a "wine only" store similar to Moore Brothers, located in Wilmington.

Joseph Petro, New Castle, Delaware, said he currently operated two stores, a health food store and liquor store. He preferred turning liquor stores into wine shops. Mr. Petro would be operating the wine shop in the Shoppes at Louviers.

Mr. Funk pointed out that under the DABCC rules, the operator was required to offer all products. Mr. Ramunno said he talked to Mr. Cordrey, the DABCC Commissioner, about that and was told as long as he filled the needs of the community, the wine shop would be okay.

Mr. Athey referred to Mr. Ramunno's letter dated February 28, 2007, where it read "...which stocks only those quantities of liquor and beer as required per ABCC licensing rules....." He noted that a few months back, Council was told by Jim Baeurle that it was a requirement of the license to stock a variety of products. He asked if it would be wine only or other products as well. Mr. Athey thought other products had the tendency to morph and that was what Council would be concerned about.

Mr. Athey asked if there was any concern about the proximity of the liquor store in the Milford Crossroad Shopping Center that was less than ½ mile away. Mr. Funk said there were different rules of the DABCC for city versus outside the city. Mr. Clifton raised the question as to how the ½ mile was measured to which Mr. Funk explained it was walking from the door of one establishment to the door of another establishment.

Mr. Clifton asked if they approved "sale of wine only" would the Commissioner say the City was not allowed to restrict it that way. Mr. Funk thought that was correct and said the City had nothing to lose if they approved "wine only." He thought the petitioner would have to come back to Council if he was required to sell other products.

Mr. Markham pointed out that the goal was to have a "wine only" store.

Mr. Athey asked if they could put a restriction on the gross receipts that required a certain percentage of the sales for the wine. Mr. Funk thought that was feasible, but felt if they wanted wine only, the applicant researched it and was confident about wine only sales.

Mr. Tuttle thought it fair to react to the presentation that was made and if they found out they could not have wine only, they would be back before Council.

The chair opened the discussion to the public.

Pamela Roman, 4999 Old Capitol Trail, owner of Pamela's Gourmet located at the Shoppes at Louviers, said the shopping center was run very well and believed this business would be a real asset to the community. She believed the homes in the area warranted a nice bottle of wine for dinner.

Jean White, 103 Radcliffe Drive, thought a "wine only" store sounded fine. It was her impression Council had the right to limit it to wine just like they have the right to limit the hours of operation.

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

Mr. Markham commented that this was in his district and he would like to see more shops in the shopping center. He thought the owner was trying to be creative in finding niche stores.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

22. 8. ORDINANCE FOR FIRST READING:

A, Bill 07-25 - An Ordinance Amending Ch. 20, Motor Vehicles & Traffic, By Providing for a Stop Sign on Witherspoon Lane & Aylesboro Road

Ms. Lamblack read Bill 07-25 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE FIRST READING OF BILL 07-25.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 7/23/07)

23. 8-B. 8-B. BILL 07-26 -AN ORDINANCE ANNEXING & ZONING 13.69 ACRES TO AC (ADULT COMMUNITY), 2.69 ACRES TO RD (SINGLE-FAMILY, SEMI-DETACHED), 22.72 ACRES TO OFD (OPEN FLOODWAY DISTRICT), 1.96 ACRES OF CASHO MILL ROAD RIGHT-OF-WAY 3.34 ACRES OF CSX RAILROAD RIGHT-OF-WAY, LOCATED ON THE WEST SIDE OF CASHO MILL ROAD SOUTH OF THE CSX RAILROAD, EAST OF, AND IN PART, STRADDLING THE CHRISTINA CREEK

Ms. Lamblack read Bill 07-26 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. OSBORNE: THAT THIS BE THE FIRST READING OF BILL 07-26.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 8/13/07)

24. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:

A. Council Members: None

25. 9-B. COMMITTEES, BOARDS & COMMISSIONS:

1. Appointment to Planning Commission – District 1

MOTION BY MR. POMEROY, SECONDED BY MR. OSBORNE: THAT ROB OSBORNE, 304 KINROSS DRIVE, BE APPOINTED TO THE PLANNING COMMISSION TO FILL THE UNEXPIRED TERM OF DR. JAMES SOLES; SAID TERM TO EXPIRE SEPTEMBER 2, 2008.

Mr. Pomeroy believed Mr. Osborne would bring a very high level of objectivity to the position, and was confident he would do a great job. Mr. Osborne said he has known Rob for a long time and knew Rob was very active in the community. He also noted there was no relation between them. Mr. Funk said he also knew Mr. Osborne and thought he was an outstanding person.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

26. 9-C. OTHERS:

1. Request of Commerce Bank for an Extension for the Completion of the Widening of Chapel Street Between Delaware Avenue & East Main Street

William Manning, Esquire, with Buchanan, Ingersoll & Rooney, representing Commerce Bank, explained that Council approved in September or October the site plan for the construction of the Commerce Bank at Delaware Avenue and Chapel Street. The bank was completed shortly after the first of the year. In December, Commerce Bank asked for an amendment to the subdivision agreement because the street widening hadn't occurred and would not occur in time for the bank to open. Council approved the amendment with the condition that the widening of Chapel Street be completed by June 30th.

Commerce Bank was not able to do the widening of the road during the University spring bank (as requested by Council) and waited until June to begin the widening. The DelDOT permit was not given until the middle of June and work began immediately. During a conversation with the City Solicitor, Mr. Manning realized the project had to be completed, rather than commenced by June 30th.

Mr. Manning requested an extension to the June 30th deadline and apologized for his tardy request. His client told him the road should be completed by the end of next week, and therefore, he requested an extension until July 30th even though he expected the project to be completed before that time.

Mr. Manning also advised that the owner of the Seasons Pizza property, Gus Tsionas, commenced litigation because he claimed that insufficient right-of-way existed for the proposed widening of Chapel Street. Commerce Bank disagreed based on a plan Mr. Tsionas filed with the City several years ago which revealed there was a 50' right-of-way at the intersection of Main and Chapel Street. Mr. Tsionas was now claiming his engineer was wrong with the plan, but his engineer could not remember why. On Monday, the Court of Chancery refused to issue a Temporary Restraining Order and set the matter for a further hearing toward the end of August, ensuring that there would be no judicial interference with the completion of the project.

Mr. Pomeroy asked if July 30th was enough time with the possibility of weather delays. Mr. Manning said his client would probably like the extension to August 15th or September 1st because you don't know what delays could be caused by the weather. Mr. Manning advised that widening has occurred up to Mr. Tsionas property so it was almost completed. That being said, he would have no problem with an August 15th deadline.

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THE WIDENING OF S. CHAPEL STREET BE COMPLETED BY AUGUST 15, 2007.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

27. 10. SPECIAL DEPARTMENTAL REPORTS:

A. Special Reports from Manager & Staff: None

28. 10-B. ALDERMAN'S REPORT

MOTION BY MR. POMEROY, SECONDED BY MR. ATHEY: THAT THE ALDERMAN'S REPORT DATED JULY 3, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**29. 10-C. REQUEST FOR EXECUTIVE SESSION RE PENDING
LITIGATION (DURKIN V. NEWARK)**

An Executive Session was not required at this time. Mr. Akin advised that outside Council would be at the July 23rd meeting.

30. Meeting adjourned at 8:45 pm.

Susan A. Lamblack, MMC
City Secretary

/pmf