

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

August 13, 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
Assistant to the City Manager Carol S. Houck
Assistant to the City Manager Charles M. Zusag
Planning Director Roy H. Lopata
Parks & Recreation Director Charlie Emerson
Public Works Director Richard M. Lapointe
Acting Chief of Police John Potts
Finance Director Dennis McFarland
Clerk of the Court Barbara Wilkers
Building Director Tom Sciulli
Water Director Roy Simonson
Assistant Electric Director Sam Sneeringer

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

2. **1-B. PUBLIC HEARING FOR 2008-2012 CAPITAL IMPROVEMENT PROGRAM**

Mr. Luft reviewed the 2008-2012 Capital Improvement Program with a power point presentation. The program was close to \$20 million dollars and three primary reasons were given for the somewhat inflated program. First, the equipment replacement program in 2007 (heavy trucks and vehicles) was deferred to save money (a value of \$1.3 million dollars) and added back into this program. Second, an accounting change was made valued over five years for about \$2.25 million dollars. He explained that funds were taken out of prior years and allocated into those years when spending was expected to occur. Mr. Luft further explained that this was a better planning tool, particularly for the annual budget period. Third was funding of about \$3.1 million dollars for outside aid, grants, and mitigation funds. The above reasons caused the program to increase by about 25%.

The primary components for the 5-year program included the following: \$8.5 million dollars invested in Public Works; \$8.1 million dollars invested in utility infrastructure; the re-establishment of normal equipment/vehicle replacement program; and an increased investment in information technology.

A side-by-side comparison (2007-2011 vs. 2008-2012) was reviewed. It was noted that approximately \$2 million dollars was included in capital reserves compared to none in the 2007-2011 program. The equipment replacement program and grants rose significantly. Mr. Luft noted that the budget included bond bill projects, the restoration of the equipment replacement program, the inclusion of projects previously funded with reserves, and significant new projects

that included the Christina Creek sewer crossing, electric automatic switching, Parking Lot #3 improvements, and various water projects.

Mr. Luft reviewed the capital expenditures by each department: Public Works was about 42% of the program; Electric was 17%; and Water was 16% of the 5-year program. For 2008, Public Works was 23.5%, Electric was 29.3%; and new investments in the sanitary sewer program were 22%.

A side-by-side comparison of 2007 vs. 2008 was reviewed.

Mr. Funk asked what would be an example of the grants. Mr. Luft said one example was mitigation funds for the sanitary sewer crossing at the Christina Creek which was over \$1 million dollars. He hoped the City would get the funding, but it would not happen until the middle of next year.

The key components of the 2008 program included the Christina Creek sewer crossing, the Kershaw substation expansion, the police mobile command post, the annual street/curb/catch basin program, and water tank maintenance.

The capital expenditures for each department for 2008 were reviewed, and Mr. Luft pointed out that utilities and Public Works commanded a lot of the investments. It was also noted that through the years, many public safety investments were funded by grants and other program.

Mr. Clifton asked, hypothetically, if the municipal building's roof leaked into the City Manager's office who would pay for the cost of the roof repair. Mr. Luft said that would be a capital investment in the Public Works Department budget. Mr. Clifton noted that the Police Department roof was leaking and he was told the cost for repairs would come from their budget. Mr. Clifton questioned why the repairs would not be charged to the Public Works Department. Mr. Luft said that a decision was made several years ago to differentiate between the two buildings, but that could be changed in the future. He further explained that, in general, the municipal building has been under Public Works, and the Parks maintenance building has been under Parks and Recreation but that could also be changed in the future.

Mr. Markham applauded Messrs. Luft and McFarland for getting technology upgrades into the budget. He questioned whether they could afford to wait another year to do certain things such as the Network LAN Server Rack Mount Storage for 2009 because things that added stability and cleaned up the infrastructure were important. He preferred that it be moved closer into this year. Mr. Markham noted that he put John Herring in touch with the City of Wilmington about upgrading Munis Accounting Software and asked whether Mr. Herring got any feedback on that program. Mr. McFarland said Wilmington was using it for a broader range of functions, but they did get some useful advice in terms of how to take greater advantage of the functionality of the system. However, in terms of the base system and what Newark needed to do to maintain it, they were in the same situation as the City with a need to upgrade to the latest version because support for the existing version had ceased.

Mr. Markham suggested trying to come up with one single type of operating system platform across the city rather than mixing Munis, Windows, and other things. Mr. McFarland claimed that would be incorporated in the plan and was one of the reasons for the exchange server which was planned for 2008. Although Mr. Markham thought that could be moved up, Mr. McFarland explained that the timeframe was based on people resources because the updates to Munis and to Cityview software were major installation projects and they were trying to space out the work. Mr. Markham questioned if there were consulting funds in the budget for those projects and if the labor costs would be capitalized. Mr. McFarland said he did not include a lot of dollars for consulting fees.

Mr. Markham pointed out that there were no upgrades for computer equipment in the budget. Mr. McFarland said the plan was to go with a multi-year program which was included in the general operating budget. He hoped to get on a schedule of replacing 20-25% of the desktops per year.

Mr. Markham would like to see some high-tech upgrades for the Council Chamber without spending a lot of money. He noted that much of the technology was coming down in cost.

Mr. Tuttle questioned the timeline for the Christina Sewer Crossing project which should go out to bid by next February. He understood there would be a request for grant money but did not want to have to wait to know whether the grant was given before moving forward with the project. Mr. Luft explained that in order to apply for the grant money, the City needed the design data and estimates for the cost. Mr. Tuttle expressed the need for this project to get done.

Mr. Pomeroy asked for background on the new accounting practice and what prompted the change. Messrs. Luft and McFarland explained in prior years there were significant funds that were not spent during the time in which they were budgeted. Having an estimation of when the money would be spent was a good planning tool. Mr. Pomeroy asked if it was an accepted accounting practice. Mr. McFarland said it was not done for accounting reasons, rather for planning reasons.

Mr. Pomeroy asked if grant monies were not obtained, how projects included in the budget would be impacted. Mr. Luft explained that most other projects were outside mitigation or grant funded, unlike the sanitary sewer project. For example, the City could predict how much money it would get on an annual basis for streets. The rest of those projects were either land and water conservation trust funds, parks and recreation, or police public safety and law enforcement funds from the state, and the City had a good record of getting those funds. Mr. Pomeroy questioned if there was a variance or shortfall in the amount received, did it put a project in limbo or would the resources come from elsewhere. Mr. Luft explained that streets could be affected, and Mr. Pomeroy questioned how the public would be made aware of that. Mr. Luft said if there were changes, it would be reflected in the bids.

Mr. Pomeroy commented on the Chrysler site and questioned if the City had to provide electricity to that site, how that would be included in the capital improvement program. Mr. Luft said since the City never sold power to that site, the City would have to borrow the money to provide the service. Mr. Pomeroy thought it was important to keep that on the radar screen.

Mr. Athey questioned if the current resources were basically the surplus coming out of last year. Mr. Luft said it was surplus other than the equipment sinking fund, the equipment replacement fund, grants, bond issues, and any reserve money.

Mr. Athey asked how they were counting the capital reserves differently. Mr. Luft gave as an example the Kershaw project in the Electric Department. For years any reserve money allocated for a particular project would go under column that had the title "prior years." That has been taken out of this budget, and if there were reserves, they have been allocated in one of the five years down the road. It more accurately reflected the value of the project in the future.

Mr. Funk asked if the budget could fund work at Curtis Paper Mill next year. Mr. Luft advised they were in the process of firming up the specs and taking bids for the demolition and preservation of the stack. A funding plan was put together by Ms. Houck and Mr. McFarland. In addition to present funding, the plan was to use leftover funds a state grant program.

Mr. Funk asked if the \$20,000 allocated for the multi-use facility/gymnasium study was going to be spent. Mr. Luft said they would seriously look at making the George Wilson Center a multi-use facility. Decisions regarding that were being held off until final decisions were made on the Curtis Paper Mill site. Mr. Emerson advised that the \$20,000 was for the design and engineering of the facility.

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

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: THAT THE 2008-2012 CAPITAL IMPROVEMENT PROGRAM BE APPROVED AS PRESENTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Clifton questioned the increase in grant money that the City was receiving. Mr. Luft explained that \$1.250 million was mitigation funds for the sanitary sewer lines across the Christina Creek, and \$1.5 million dollars was the five-year value of the bond bill money. That money was not in the Capital Improvement Program before, but it was now included to give a truer value of the street program. A number of other small projects such as \$250,000 of SALLE money for the command post and monies from the Delaware Land and Water Conservation were included. Mr. Clifton asked if it would be worthwhile to have a grants person working for the City with the specific job of looking for grants and any other funds that the City might not currently be finding. Mr. Luft responded by saying that he thought our lobbyist worked on this and most of the programs were already in existence, but one advantage might be in getting FEMA money. He noted the Police Department did a good job using their administrative people to fill out the SALLE grant programs.

Mr. Clifton referred to the idea of burying the utility lines on Main Street, but that no funding was available. He suggested the possibility of using part of the electric revenue and committing it to a long-term capital program for burying the lines. Mr. Athey referred to a study that was done about 10 years ago regarding the same project. Mr. Luft thought perhaps it was time to update that study and re-evaluate the project. Mr. Markham suggested a long-term vision for areas outside of Main Street as well as possible investments in energy or alternate sources for the future.

There were no further comments.

3. **2. CITY SECRETARY'S MINUTES FOR COUNCIL APPROVAL:**
 - A. Regular Council Meeting of July 23, 2007

There being no additions or corrections, the minutes were approved as received.

4. **3. ITEMS NOT ON PUBLISHED AGENDA:**
 - A. Public

Victoria Owen, 719 Lehigh Road, and Nadine Slack, 717 Lehigh Road advised they were working in conjunction with the University of Delaware to recognize the men and women from our community who were serving in the military as well as local veterans in an annual Veteran's Day ceremony. Council members will be contacted to attend the event in support of the veterans, and Mr. Funk said he would be glad to help.

5. Steve Dentel, 69 Kells Avenue, Chair of the Conservation Advisory Commission, referenced a memo from the City Manager regarding LEED green building-related energy conservation issues. The memo referred to meetings between Mr. Dentel and Messrs. Sciulli, Lopata and Emerson about LEED incentives and adopting some of those for the City. Mr. Dentel said the three components in Mr. Luft's memo were quite distinct from the LEED incentive program recommended by the CAC. One component incorporated the 2006 International Energy Conservation Code into the City Code which he felt was an excellent idea. The second component would include a density bonus for LEED certified residential developments. Mr. Dentel noted no LEED certification program currently existed for residential developments and incorporating LEED into residential developments would have no immediate impact. The third component stated the City should seriously consider using LEED standards for City buildings in the future. While these were all positive contributions, Mr. Dentel indicated the five following recommendations made by CAC were more proactive and would make a significant difference:

1) Density allowances for commercial and industrial development projects designed for LEED certification. Incentives and education were needed to let developers know they would be rewarded in a number of ways, both through the City and indirectly.

2) Completion of the LEED score sheet for new development. This would be relatively easy for developers to accomplish and allowed them to check off what they could and could not do.

3) Use of an existing certification program (Green Home Choice) for residential construction. This program already existed.

4) Creation of a green building fund as a financial incentive for green building and a source of funds for public education.

5) Construction by the City with the stated goal of silver LEED certification and completion of the LEED scorecard for all projects. This would not be a requirement but would be stronger than saying "seriously consider." It would not be reasonable to ask developers to fill out a LEED scorecard if the City didn't do it as well.

In the next several months CAC will recommend a list of code changes to Council that go beyond what staff and the City Manager have recommended.

Mr. Pomeroy thanked Mr. Dentel for the work done by CAC in researching a green building program. He thought there were still details to be hammered out, and that developers could provide some valuable input. Mr. Dentel reported that the County was leaning toward making mandatory requirements rather than a voluntary incentive program. None of the CAC recommendations were mandatory, and Mr. Dentel felt philosophical differences still remained between the CAC and the Planning Department. Mr. Pomeroy recommended the CAC schedule another meeting with City staff before coming back to Council.

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**

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

9. Mr. Athey noted that the red light camera summonses were up. He also mentioned the visioning process started by the Downtown Newark Partnership. It appeared a sub-committee of the board was developing a survey for the “board, its committees and the stakeholders in the community”. Mr. Athey felt this would be a good representation of the Newark community.

10. Mr. Athey referenced HB 264 which instituted a 50% surcharge on all violations (moving violations) of Title 21 of the Delaware Code. His interpretation was there were now two different fine structures, one within Newark and one everywhere else. Mr. Athey asked the City Solicitor to review H B 264 in the context of Title 21 and make a recommendation as to whether our fine structure should be adjusted. Mr. Funk agreed the language was not very clear and said he spoke with a member of the General Assembly who thought the intent was to apply this to municipalities.

11. Mr. Athey discussed the infill development on Orchard Road near Ritter Lane. A new home was recently reviewed by the Board of Adjustment. Although it met code requirements, he was concerned that a three-car garage was planned for the front of the house, and he was not aware of another three-car garage in his district. According to the neighbors, the new owners have since agreed to move the garage to the back of the house. While he did not want to discourage infill development, Mr. Athey thought it should be looked at so as not to change community character, or streetscapes. He felt similar principles should be applied to residential areas as were for development on Main Street. Mr. Lopata will consider these issues. Mr. Clifton mentioned another example in his district on Chapel Street where a house was being reconstructed with a third story. No other three-story homes existed in the area. Mr. Clifton said while he also supported infill development, he wondered what mechanism in the code allowed owners to build a third floor. Mr. Funk stated that the new townhouses on Chapel Street were three-story. Mr. Lopata explained that the height limit in the City was three stories for almost all commercial and residential districts and has been in the code for generations.

12. Mr. Pomeroy met with representatives of Aetna who mentioned an issue about the future paving of Elkton Road. DeIDOT has a plan to close off Chrysler Avenue at Elkton Road, and this was verified with DeIDOT. Aetna had significant concerns about access to the area for their larger pieces of equipment and about increased traffic. Mr. Tuttle was a member of a steering committee that worked with DeIDOT when the project was originally being developed, and he said there was a proposal to eliminate left turn motions in and out of Chrysler Avenue. Messrs. Tuttle and Pomeroy suggested keeping this on the radar and working with Aetna to make sure their concerns were relayed to DeIDOT. Mr. Luft planned to contact DeIDOT to obtain more details about their plans.

13. Mr. Pomeroy heard there was rumor the Post Office on Main Street was closing. A number of older residents in his district enjoyed using this facility and because the City tries to encourage owner-occupants in the downtown area, Mr. Pomeroy recommended finding a way to keep Newark institutions. He requested Mr. Luft to investigate and thought it might be helpful for Council to issue a statement of support. Mr. Markham agreed the Post Office was an anchor for Main Street.

14. Mr. Funk discussed the proposal by the Board of Realtors to waive the transfer tax for a period of time in exchange for their agreement to feature Newark real estate. He asked Mr. Luft to look into the cost of doing this since it would apply only to owner-occupied homes. Mr. Markham agreed the cost should be researched and wanted to see the numbers by month. Mr. Tuttle thought it would be helpful to know what the impact would be, and Mr. Pomeroy agreed it would be worth exploring. Mr. Funk said October would be an ideal month to try this since it was a slow month for housing sales.

- 15.** Mr. Tuttle recognized Newark resident Pat Wisniewski's accomplishment in completing his cross-country bicycle trek.
- 16.** Mr. Tuttle announced that Newark would soon be home to two nationally accredited police agencies. The University of Delaware Police Department was in the accreditation process, and formal accreditation would be in the fall.
- 17.** Mr. Markham noted a new sidewalk sweeper was included in the budget, and asked whether it would have the capability of cleaning gum off the sidewalks on Main Street. Mr. Lapointe said it was really difficult for brushes to get through gum, and he was not sure if anything other than scraping it off would work.
- 18.** Mr. Markham had a safety concern about operating problems with traffic lights on Elkton Road, particularly since the City planned to do red light enforcement. He asked if there was a program for City staff to report those problems. Captain Potts said calls were phoned in to the Police Department from police officers and Public Works. Mr. Markham will convey his list of problems to Captain Potts.
- 19.** Mr. Markham noted in the Administrative Report that the Woods at Louviers has been in its second phase of acceptance for a long period of time. He was contacted by a resident regarding a storm drain which has been unpaved for almost a year. He asked if the only recourse was to pull the bond for Pulte Corporation. Mr. Lapointe spoke with the City Solicitor about pulling the bond. He was promised by Pulte that a crew would be there by next Monday to finish the punch list. Mr. Markham asked Mr. Akin if the City could be proactive on some of these things, and the City could do the work and withhold money from a bond, or force the developer to pay the bill. Mr. Akin explained that was the purpose of a bond. The City would arrange for the work to be done or instruct the surety to arrange for contractors to get the work done and those sums were then reduced from the total bonded sum. Mr. Akin said there were different bonding amounts for each of the phases, and there were different sureties for the various bonds as they have been purchased over the years. Mr. Markham asked what a reasonable amount of time was to get the developer to close out a phase. Generally, the subdivision was closed out within a year to a year and a half after the final CO was issued. Mr. Lapointe said this was the worst case scenario he has come across, but after a recent phone conversation, it appeared this situation may be resolved. Mr. Markham felt some time limitation should be put in the code.
- 20.** Mr. Clifton commented on a newspaper article by Attorney General Biden about a crackdown on nuisance properties under Section 71, Title 10 of the Delaware Code. This law was directed toward drug activity, gambling, items of a sexual nature, lewdness, abandoned buildings, and applied to businesses and private residences. Mr. Clifton requested Mr. Akin to look at this law to determine whether it should be codified in the City's Code.
- 21.** Mr. Clifton remarked about the incident at the Early Start Kids Kollege. He recalled Council approving a Special Use Permit for that organization. In light of the severity of the incident, he asked if there was cause to look at pulling the special use permit. Mr. Lopata explained the permit was for land use only, and the operation of the business was licensed and controlled by the state.
- 22.** Mr. Clifton asked Mr. Luft to provide a report on how much the City was owed in unpaid fines, property taxes, and utility bills.
- 23.** Mr. Clifton distributed a letter of complaint from Daniel Seamans of 405 Douglas D Alley Drive. (Secretary's Note: Mr. Seamans' letter was read into the record by Mr. Clifton, and this letter is attached to the minutes.) For at least one year Mr. Seamans has been fighting interference from a ham radio tower constructed behind his home. When this was originally reviewed, it was Mr. Clifton understanding the owner did not want a permanent foundation, and was

given a temporary permit. Mr. Clifton felt this clearly was not a ham radio tower since the operator was using a CB-type handle in his transmissions which ham radio operators do not use. He also did not think anyone questioned whether the operator had a valid ham radio license. Mr. Seamans was reviewing this with the FCC who controlled this. Mr. Clifton asked how many temporary permits would be issued before forcing it to become permanent. Mr. Sciulli reported that only one permit was issued in May, 2006 for a radio tower. A temporary certificate of completion was issued on July 2, 2007, which expired in six months. The Building Department can do nothing about interference. Mr. Sciulli said the foundation was temporary but was structurally sufficient to support the tower. According to code, there were no height limitations on antennas. Mr. Clifton thought it was unfortunate that the code allowed a 65-foot tower in an RD zoned neighborhood. Mr. Markham asked if height restrictions could be implemented, and Mr. Clifton agreed that needed to be addressed. Mr. Markham asked if there was anything in the code regarding interference with emergency channels and frequencies. Mr. Akin stated if the property owner was interfering with public transmissions in such a way that it was a threat to health and safety, then the City could insist that the operator change his practices, reduce power, or relocate the tower. In this instance, as long as the structural integrity satisfied Building Department requirements and the Zoning Code, it appeared to be a private issue between two property owners. If the offended property owner continued having interference with electronics, they had the right to go to Chancery Court to seek injunction against operating the tower.

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

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

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

- A. Bill 07-21 - An Ordinance Amending Various Chapters in the Code of the City of Newark, By Increasing Various Currently Assessed Fees/Fines

Ms. Lamblack read Bill 07-21 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-21.

Mr. Zusag explained that in February he was asked by the City Manager to coordinate an effort by City departments to review fees and fines to determine if any were in need of change. He compiled the recommendations from the various departments, and submitted 15 amendments and some 20 different changes to the code. It was estimated that if the new fees were adopted, they would generate an additional \$450,000 in revenue for the City. Item no. 4, dealing with overtime parking at meters and late fees for unpaid fines, counted for about 70% of the additional revenue.

Mr. Luft reported that Jean White recommended a continuance fee for Board of Adjustment appeals and establishing a mandatory fee for tax-exempt charitable organizations. This was outlined in Mr. Zusag's memo to Mr. Luft dated August 9th, and Mr. Zusag noted the staff had no problem with those recommendations. Mr. Tuttle stated this was consistent with how the County handled continuations for their Board of Adjustment.

AMENDMENT BY MR. TUTTLE, SECONDED BY MR. POMEROY: BY ADDING AMENDMENT 16 TO READ AS FOLLOWS: AMEND CHAPTER 32, ZONING, ARTICLE XIX, BOARD OF ADJUSTMENT, SECTION 32-63, FILING FEE, BY ADDING A NEW SENTENCE AT THE END OF THE FIRST PARAGRAPH WHICH SHALL READ AS FOLLOWS:

“A FEE OF \$100.00 SHALL ACCOMPANY EACH APPLICANT REQUEST FOR A CONTINUANCE OF AN APPEAL FOR A VARIANCE IN A

RESIDENTIAL DISTRICT, AND A FEE OF \$500.00 SHALL ACCOMPANY EACH APPLICANT REQUEST FOR A CONTINUANCE OF AN APPEAL FOR A VARIANCE IN ALL OTHER ZONING DISTRICTS; PROVIDED, HOWEVER, THE CONTINUANCE FEE MAY BE REFUNDED OR REDUCED AT THE BOARD OF ADJUSTMENT'S DISCRETION UNDER THE CONDITIONS CONTAINED IN SUBSECTIONS (A) AND (B) BELOW."

Mr. Markham asked how many continuances were approved by the Board of Adjustment. Mr. Akin said about 20%-30% of the cases were continued for a variety of reasons. A frequent reason continuances were requested by attorneys was when the full Board was not present for a hearing. This was to insure against a tie vote because if four Board members were present, a 2-2 vote failed for want of a majority. Mr. Markham asked if this fee would discourage continuances. Mr. Akin thought it would.

Question on the Amendment was called.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 TO 0.

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

Mr. Pomeroy said he felt all of the proposed amendments targeted appropriate fees and were not intended to impose a hardship, but intended to discourage unwanted behavior. However, he was not in agreement with Amendment 2 relating to utility fees. Mr. Pomeroy had received several calls from residents in his district where their electric has been disconnected for non-payment. He felt a reconnection fee and other related charges would create further hardship for residents with financial difficulties. He thought that Amendment 2 was counterproductive and suggested no increase in this fee. Mr. Zusag advised that recommended increases did not cover labor costs and noted the City went to great lengths to work with residents who were late on their payments to try to avoid disconnection.

AMENDMENT BY MR. POMEROY, SECONDED BY MR. MARKHAM:
TO REMOVE AMENDMENT 2 FROM THE ORDINANCE .

AMENDMENT FAILED. VOTE: 3 TO 4.

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

Mr. Osborne asked Mr. Zusag if a resident was unable to pay their bill and was notified their utilities would be disconnected, was there a provision for arranging partial payment of the bill. Mr. McFarland stated it was not the City's preference to disconnect utilities for non-payment, and the Customer Service Reps and their supervisor were authorized to extend payment plans. He agreed with Mr. Pomeroy that raising the fees was not a deterrent to someone failing to pay their electric bill, but it was a cost-based decision. Mr. Markham asked how many disconnects there were in a year for non-payment. Mr. McFarland said he would research that information.

The chair opened the discussion to the public.

Jean White, 103 Radcliffe Drive, thanked Council for passing the amendment on the Board of Adjustment continuances. Regarding Amendment 4, Mrs. White thought the proposed increase for expired parking meter violations was somewhat excessive and asked Council to consider doubling it from \$5.00 to \$10.00. She agreed they should increase the fine for parking tickets not paid within 30 days to \$30 because if it was not paid within that time, it showed a lack of good intent. Mr. Funk said he contacted other towns and was surprised to find

that many charged \$25 for parking fines. He noticed a number of people who don't put money in the meters because the \$5 fine is low and the vast majority of times, they felt they won't be ticketed. He thought \$15 was a reasonable compromise.

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

Question on the Amended Motion was called.

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

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

Mr. Pomeroy thanked Mr. Zusag for his efforts and mentioned the merits of the new fee for the collection of refuse from a residential structure of four or more units. Mr. Zusag said that fee was currently under review.

(ORDNANCE NO. 07-24)

- 27. 6-B. BILL 07-26 - AN ORDINANCE ANNEXING AND 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 RIGHT-OF-WAY AND 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**
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(Note: The Public Hearing on 6-B, 7-A and 7-B was held at the same time, but voted on separately.)

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

MOTION BY MR. MARKHAM SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-26.

Jeff Lang, 13 Spring Water Way, said he became involved with this project when the previous buyer decided not to move forward after going through a portion of the approval process. This will be an adult community project similar to the Village of Twin Lakes.

Mr. Lang explained the site was approximately 40 acres, with 14 acres in the high land area outside of the floodplain. In that area there would be three unit types, with a circular drive path. The different plans provide variety for potential buyers, and Mr. Lang felt they already had 30-40 interested buyers.

The Planning Commission unanimously approved the project in May. The biggest discussion at that meeting was the merits of the farmhouse, and part of their concern was saving the house and its structural stability. Mr. Lang planned to save the house and move it about 300 feet. Part of the approval process was to get together with the State Historical Preservation office that referred them to the Center for Historic Architectural Design at the University of Delaware. Mr. Lang met with representatives of the Center at the site and toured the house. They are very excited about the opportunity to survey and document the house and assist the developers in determining the piece of the house that should be relocated. A quote was received from an expert house moving organization that

was very comfortable with relocating the house. The exterior will then be restored.

Mr. Clifton asked about the adequacy of parking spaces. Mr. Lang stated some of the units have one car garages and some have two. Mr. Charma added there were 128 garage spaces and another 70 driveway spaces for a total of 198 spaces. In addition, there were 23 guest spaces, so there was more than ample parking in the community. Mr. Clifton asked if the 23 overflow spaces (which were at the minimum 9' x 18' size required by Code) could be widened to 10' x 18' in order to give extra door space. Mr. Charma, said they could do that because they had enough width to expand.

Mr. Markham asked to be shown the current and proposed locations of the house on the site plan. Since there was a trail loop open to the public, he asked if there was parking available on either end. Mr. Emerson remarked that the trail was primarily for the residents, although 25 acres would be maintained as public open space. There was no plan for a parking area, but that could be considered in the future. Mr. Markham referenced the agreement which states the condominium association would maintain the site. He thought the pattern was for the City to do that in new developments rather than private organizations. Mr. Lopata stated the City was responsible in single-family developments, but not in condos that were set up to have a maintenance association.

Mr. Pomeroy asked Mr. Lopata if the land being dedicated to the City would have dual or split zoning. Mr. Lopata said in addition to open floodway district zoning, the City also required that some developable land be turned over to the City. Mr. Pomeroy asked if that would be zoned so it could not be developed in the future. Mr. Lopata answered that the City was taking it as park land, and it would not be developed. He noted that there has been discussion about a zoning district for open space, and that was probably something that should be pursued. Mr. Pomeroy questioned if the least impact zoning classification was given to the property. Mr. Lopata said it was zoned RD based on the adjoining zoning. Mr. Pomeroy would like to see a more appropriate designation for this type of land, and Mr. Lopata said a PL zone would be something like that.

Mr. Pomeroy asked what advantage there was to moving the house. Chris Locke, 604 Cambridge Drive, said there were several advantages. The house cannot be seen from its current location, and by moving the house, the public would have more access to it. The house was situated in an extremely wet area, which has caused damage to the basement.

Mr. Pomeroy said he met with Aetna and there was concern that the name Saw Mill Place could potentially cause confusion and slower response times because there was another similarly named development or road in the area. Captain Potts said Saw Mill Court was near the intersection of Barksdale & Casho Mill Roads. Mr. Lang said they would work with the Police Department to make sure the final name was acceptable. Mr. Pomeroy also asked Mr. Lang to check with Aetna.

Mr. Athey asked why a traffic study was not required for this project. He understood the impact was less with an Adult Community, but he had several concerns. The one-way access under the railroad bridge caused traffic to back up, so this development could make a bad situation worse. Mr. Athey also assumed residents would go straight through Thorn Lane to make a left-hand turn on Elkton Road since left turns were prohibited from Casho Mill onto Elkton Road. Mr. Lopata reported a traffic impact study was done for 120 townhouses on this site when the original plan was reviewed. It was accepted, and DelDOT indicated that development would not have a negative traffic impact. He also noted there was considerable discussion on the subject by the Planning Commission. When the new plan was presented, a traffic impact study was not required based on fewer units. Mr. Lopata felt the amount of traffic coming out of

this development would have very little impact. In terms of getting to Main Street, he agreed people would either cut through Thorn Lane or go around to Barksdale Road. At some point, when the Elkton Road repaving project was completed, the traffic signal situation at Casho Mill/Elkton Road may be revisited. Mr. Athey felt it was a less-than-great situation to have people crossing Casho Mill Road to get to Thorn Lane. He felt some safety improvement such as a flashing light was warranted.

Mr. Pomeroy said because of the Casho Mill/Elkton Road intersection, people would take less than ideal routes through residential areas which was disruptive to those communities. He thought this would be a good time to push DeIDOT to get the intersection changed. Mr. Lopata agreed that intersection needed to be re-examined.

The chair opened the discussion to the public.

Jean Williams, 500 Stamford Drive, was pleased the Wilson Farm would become an adult community. She felt having an over-55 population in Newark would positively benefit the community. She especially appreciated the housing choices offered by the developer and felt they would be very attractive to the baby boomer generation. She questioned whether the townhouses were age restricted, and Mr. Lang said the entire project was AC. Ms. Williams commented that some planners were doing mixed-age communities, and she thought that might be interesting for the Planning Department to consider in the future. Ms. Williams also wanted to see a left turn option at the intersection of Casho Mill & Barksdale Roads.

Nancy Willing, 5 Francis Circle, lived in close proximity to the location, and traffic was her main concern. She felt the traffic signal at the Casho Mill & Elkton Road intersection had to change before this community was built. Although it was an adult community, Ms. Willing said 20% of the housing could not be age restricted, and the development would have a greater impact on rush hour traffic than anticipated. Ms. Willing was concerned there was no potential for a traffic light at the entrance to the development and hoped the Unicity bus would be routed through the area. Another future traffic impact was the proposed Aston Pointe community in Maryland.

Ms. Willing advised that she worked with heritage in the county. She was disturbed the Caldera study was not presented to the Planning Commission. Only one criteria of the 14 presented was needed to make this a vital heritage issue, and the property met four. While she understood why the structure was being moved, she felt the farmhouse would be stripped not only of its exterior siding but of most of its meaning. Ms. Willing appreciated the project's design factors and the open space.

David Ames, 1300 Casho Mill Road, Director for the Center for Historic Architecture and Design at the University of Delaware, spoke primarily as a home owner. Although he regretted losing his view of the red barn, he supported the project and thought it was an example of excellent planning. As Director of the Center, he congratulated the Planning Commission on making a recommendation to preserve the house. He will work with the developer to document the properties which was a very important part of preservation. Ideally, he preferred that the house not be moved as it would lose some of its context. However, the 1810-1820 house was one of Newark's oldest buildings and moving it would make it visible to the public. He felt it was good that it would be preserved and that the move could be seen in a positive way, and looked forward to evaluating the building and making further recommendations.

Jean White, 103 Radcliffe Drive, said she complained at the Planning Commission meeting on May 1st, that the Commission was not given an existing site plan detailing the location of the farmhouse and other existing buildings. It was her understanding that Council did not get a copy of the existing site plan,

and she felt that was a considerable oversight which diminished the importance of the buildings in the context of their location. She would like a future requirement in the code for all complex development projects to be required to present an existing site plan. Ms. White preferred that the house remain in its present location to preserve its historical integrity. Her argument was the City had a clean slate, and before annexing the property, Council had the prerogative to turn the developer down or to insist on changes. She requested Council to ask the developer to save the Wilson Farmhouse at its present site and revise that part of the plan to allow the farmhouse to stay where it was. Mrs. White stated the documentation was important and would like to see the barns documented as well.

Barbara Kerner, 5 Casho Mill Road, said she moved to Casho Mill Road in the 60's and she met Mr. and Mrs. Wilson at their farmhouse. Mrs. Wilson told the Kerners there had been a huge mill wheel 40 feet in diameter on the property. Half of it was underground, and half was above-ground. It was demolished because it was dangerous, but remained somewhere underground on the property. The property had actually been an industrial site where metal-lined wheels and possibly train wheels were made. Ms. Kerner thought the property should be recognized as an industrial mill site where people came to live, work, and play.

Mr. Funk said the Historical Society identified the site as being where the Casho Machine Company was located.

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

Mr. Clifton asked about item number 19 on the site plan which talked about the City having the right of ingress and egress and questioned if the roads were public or private. The developer informed him they were private roads.

Mr. Clifton asked how the street name Portman was chosen. Mr. Charma said the Portmans (and the McCrearys) were families who lived on the property and ran manufacturing facilities. The names were from the historic documentation.

Mr. Clifton mentioned that, according to Mr. Lopata, 1.27% of land mass in the City was dedicated to over-55 population housing communities, and he was not sure if that included the old Edwards' farm. He saw value in the design and layout of this community as it applied to that population. He did not feel they were starting with an empty canvas, but with a petitioner who came forward with a plan, and Council had to decide if it was the best option for the City. His opinion was that AC zoning would have the least impact of any housing community, and he wholeheartedly supported the plan and felt it would be a very positive aspect for the west side of Newark.

Mr. Markham had concerns about the parking. He thought there should be public access to the trail since there were 25 acres of parkland, and he felt it would be an attraction. Mr. Lopata said in an adult community, parking requirements were lower than what was typical for single-family homes, and there was adequate parking on site for the occupants. In terms of access and future use of the parkland, most of this area was wetlands. In his view, public access to the site would be from Casho Mill Road. At some point in the future, parking will be provided if it was deemed necessary. He noted that most of the City's stream valley land along the Christina had no public access, and this site would be much more open than many of those areas. Mr. Lopata did not feel the community should become the parking area for the public. Mr. Markham thought the site would become a great wildlife attraction area for people doing birding and other activities.

Mr. Markham walked the property, and said he would like to see documentation on the barn properties. Mr. Lopata noted that Professor Ames

planned to document the barns. Mr. Markham did not have any objection to moving the house, but would like it restored.

Mr. Markham was concerned about the traffic impact and asked if the City was going to request a flashing light at the entrance. Mr. Charma said DeIDOT would make that decision since Casho Mill Road was a state-maintained roadway. Mr. Charma added they would have to send a formal entrance submission to DeIDOT for entrance approval, and at that time they could make the request. Mr. Markham supported the annexation and would like to see more redevelopment of areas that were already in use. He thought the traffic impact would be minor since it was an adult community and felt this was a good project for keeping people in Newark.

Mr. Tuttle had some concern about the creation of private streets, but this was tempered by the fact that unlike the previous plan, there was only one way in and out of the complex. In reality, he did not think the project's roads would be perceived as streets and that this was more of a private enclave. In terms of the traffic, he said the City should work with DeIDOT for a better utilization of the signalized intersection at Elkton Road. In regard to the historic farmhouse, he agreed with Dr. Ames' comment about being on the fence, as Mr. Tuttle's undergraduate training was as a historian. He felt Mrs. White's comment about context was a critical point. He favored the plan because he thought the context would be provided by the documentation from the Center for Historic Architecture and Design. Mr. Tuttle remarked that once the buildings were constructed, the context of the farm as it now existed was obliterated, and it was no longer an agricultural site. If the site was documented for future generations, he felt the City met their responsibility, and he favored the plan.

Mr. Pomeroy was impressed with how far this project has traveled since the original plan, and he felt the developer took the time to do it right. He thought the plan was aesthetically pleasing and that played a role in its meaning to the values of surrounding properties. His biggest concern was the future traffic volume that would be coming in from Maryland and Pennsylvania and the dramatic impact on the traffic situation in Newark. He agreed the Casho Mill/Elkton Road intersection had to be addressed with DeIDOT. He believed strongly in preserving the history and approved of the steps being taken. The plan maximized open space and that was a great bonus. Mr. Pomeroy would like to see the land designation changed to move it from a building zone to one that preserved the open space. The impact on the tax base was another positive factor. When it comes to an annexation, he wanted it to be a project everyone was proud to assume into the City's boundaries, and he favored the plan.

Mr. Osborne said he has been an advocate for bringing retirees to Newark. He felt the City had many things to offer senior citizens and said seniors would make a great contribution to the community. He thought the plan was attractive and was one that would induce people to move to Newark. He thought it was a good project to support.

Mr. Athey felt positive about the project based on Mr. Lang's track record. In trying to maintain the farmhouse at its current location, he knew there were water issues, and he accepted that as presented. The traffic situation concerned him, and he asked whether the developer would propose a flashing light to DeIDOT. He supported the project with or without the light but felt if no light was installed, the residents would approach Council or DeIDOT within a year or so complaining about access in and out of the development. He asked Mr. Lang to clarify that he intended to approach DeIDOT about the light or some other type of traffic device. Mr. Lang said he would send a letter to DeIDOT explaining Council's concerns about this issue and the concerns with Casho Mill & Elkton Roads, and he would copy Mayor and Council on the letter. Mr. Lang emphasized he did not want to build an unsafe project and would take steps to make sure it was safe for the residents and the community. Mr. Lang felt he should only have to pay a proportionate amount of the installation charge for a

flashing light. Mr. Athey was satisfied with Mr. Lang's statement and the level of effort.

Mr. Funk supported the project and was pleased to see suitable housing being offered to older residents.

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. 07-23)

- 28. 7. RECOMMENDATIONS FROM THE PLANNING COMMISSION/DEPT.**
A. Request of the Lang Development Group, LLC, for the Major Subdivision of the 39.10 Acre "Wilson Farm" Property on the West Side of Casho Mill Road, South of the CSX Railroad Right-of-Way, & East of the Christina Creek In order to Construct 86 Adult Community Condominiums to be Known as Saw Mill Place (RESOLUTION & AGREEMENT PRESENTED)

(Note: The Public Hearing for 7-A was held under Item #26.)

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

MOTION PASSED UNANIMOUSLY. Vote: 7 to 0.

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

(RESOLUTION NO. 07-R)

- 29. 7-B. REQUEST OF THE LANG DEVELOPMENT GROUP, LLC FOR A SPECIAL USE PERMIT AT THE PROPERTY LOCATED ON THE WEST SIDE OF CASHO MILL ROAD, SOUTH OF THE CSX RAILROAD RIGHT-OF-WAY, & EAST OF THE CHRISTINA CREEK, IN ORDER TO PERMIT UTILITY CONNECTIONS IN AN OFD ZONING DISTRICT**

(Note: The Public Hearing for 7-B was held under Item #26.)

MOTION BY MR. TUTTLE, SECONDED BY MR. POMEROY: THAT THE SPECIAL USE PERMIT BE APPROVED TO PERMIT UTILITY CONNECTIONS IN AN OFD ZONING DISTRICT

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

- 30. 8. ORDINANCE FOR FIRST READING:**
A. Bill 07-27 – An Ordinance Amending Chapter 20, MV&T, By Establishing Enforcement Authority in Private Parking Lots of Areas in the City of Newark

Ms. Lamblack read Bill 07-27 by title only.

MOTION BY MR. OSBORNE, SECONDED BY MR. MARKHAM: THAT THIS BE THE FIRST READING OF BILL 07-27.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 8/27/07)

31. **8-B. Bill 07-28 – AN ORDINANCE AMENDING CH. 20, MV&T BY BRINGING THE CODE INTO CONFORMITY WITH THE STATE CODE PERTAINING TO THE CRITERIA FOR ENTRY INTO THE FIRST OFFENDER’S PROGRAM & THE LENGTH OF LICENSE REVOCATION FOR INDIVIDUALS WITH HIGH BLOOD ALCOHOL LEVELS**
-

Ms. Lamblack read Bill 07-28 by title only.

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT THIS BE THE FIRST READING OF BILL 07-28.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 8/27/07)

32. **9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:**
A. Council Members: None
33. **9-B. COMMITTEES, BOARDS & COMMISSIONS:** None
34. **9-C. OTHERS:** None
35. **10. SPECIAL DEPARTMENTAL REPORTS:**
A. Special Reports from Manager & Staff: None
36. **10-B. ALDERMAN’S REPORT**

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: THAT THE ALDERMAN’S REPORT DATED AUGUST 2, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

37. **10-C. REQUEST FOR EXECUTIVE SESSION RE PENDING LITIGATION (DURKIN v. NEWARK)**
-

Mr. Funk announced that an Executive Session was not required at this time.

38. **Meeting adjourned at 11:00 pm.**

Susan A. Lamblack, MMC
City Secretary

/av

W. Daniel Seamans
405 Douglas D. Alley Drive
Newark, DE 19713
302.894.9448 H

August 13, 2007

Jerry Clifton, City Council Member
Newark Municipal Building
220 Elkton Road, Newark, DE 19711

Mr. Clifton.

I wish to file a formal complaint relating to "short wave" radio interference from 443 Douglas D. Alley. Short wave radio emissions from 443 Douglas D. Alley Drive interferes with my stereo, television, satellite reception and computer speakers. The interference comes in the form of audio transmissions over my electrical equipment. Additionally, the power emissions from the short wave system, interferes with my satellite television reception, freezing transmissions on screen.

In early 2007 the City of Newark issued a temporary permit to the occupant of 443 Douglas D. Alley, for the construction of a radio tower. Since the tower has become operational my electrical equipment has been interfered with.

For your review I have attached a copy of a log that my family has kept of interference we have observed (Appendix B). Please note that every single interference is not logged, as many times we are engaged and do not cease what we are doing to log it. Interference has come at every imaginable hour, including several times after 11pm night, waking us from sleep.

In addition to being a visual blight in the neighborhood, and a safety hazard (the antenna partially collapsed on 443 Douglas D. Alley during the 2/14/07 ice storm), the transmission interference has created a nuisance to my family, which any sensible person would deem a nuisance. (*Newark Municipal Code: Chapter 20-A (14)*).

It is my desire that all transmissions from this tower cease immediately, and that the tower be removed.

I have attached a CD disk that has several videos showing the interference. See Appendix A for details related to the interference.

Thank you for your time in reviewing this letter, as I realize you are very busy. Please feel free to contact me for any further clarification.

Most Respectfully,

Dan Seamans