

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

November 26, 2007

Those present at 7:30 pm:

Presiding: Vance A. Funk III, Mayor
District 1, Paul J. Pomeroy (7:35 pm)
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
Water & Waste Water Director Roy A. Simonson
Finance Director Dennis McFarland
Chief of Police Paul Tiernan
Assistant Electric Director Sam Sneeringer
Code Inspection Supervision Steve Wilson

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

2. MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THE AGENDA BE AMENDED BY REMOVING ITEM 5-A, RECOMMENDATION TO CHANGE DENTAL INSURANCE CARRIER AND ITEM BILL 07-39, AND ADDING 9-B, PLANNING COMMISSION MINUTES OF NOVEMBER 6, 2007.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Pomeroy (Arrv'd 7:35 pm)

3. **1-B. CANCELLATION OF DECEMBER 24, 2007 REGULAR COUNCIL MEETING**

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE DECEMBER 24, 2007 REGULAR COUNCIL MEETING BE CANCELLED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Pomeroy (Arrv'd 7:35 pm)

4. 2-A. PUBLIC HEARING FOR 2008 GENERAL OPERATING BUDGET

Mr. Luft provided a summary of the proposed budget that represented an increase of 4.8%. Wage and benefit costs represented 64% of the total budget and 76% of the operating budget. A net increase of one full-time position was recommended for next year. With the automated system now in use throughout the community, one refuse collector position was vacant and will no longer be necessary. A Community Affairs Officer position was added to perform media and public information duties and a maintenance position was added to the Parking Division to do meter maintenance and collection functions, which was now done in the Finance Department. The pension plan expenditures increased by 10% and the cost of current group health care benefits increased by about 7%. Other new programs included funding to support the 250th Anniversary celebration, Welcome to Newark signs, curbside recycling support (if needed), computer system and service upgrades, rental of mulch recycling equipment, and improved exterior handicapped access for City Hall.

The budget included a 1¢ property tax rate increase to help support the proposed information technology improvements as well as the public information and community affairs program. The total gross utility margins increased by 8%. Electric margins were up 12% and reflected the achievement of a 20% net operating margin.

The Operating Budget

Personnel Services increased by 6.7% and mainly covered the cost of wages, benefits and the addition of the Community Affairs Officer, cost adjustments to police overtime, and the increased pay for the Deputy Alderman.

Materials and Supplies increased by 9.3%, and most of the increase was due to the rising costs of fuel and vehicle maintenance parts. Supplies for recycling, small computers and CityView software, document imaging and traffic calming were also included.

Contractual Services decreased by 4.6% and the main reduction was the reclassification of bond bill street expenditures to the capital program. Other reductions included landfill disposal costs, consulting fees for the website redesign, and legal and consulting expenses in the legislative and sewer budgets. Contract increases included funding for the Unicity Bus service that was reimbursed by Delaware Transit, tree trimming, liability insurance premiums for City Hall, and the self-supporting recreation program contracts.

Equipment Depreciation decreased by 10.7%, which reflected the lower level of expenditures on vehicles, computers and machinery.

Other Expenses increased by 36.9% almost exclusively due to debt write-offs in the electric utility area.

The Capital Budget

This budget increased by 66.4% compared to 2007. Roughly 60% of the expenditures recommended included the following new projects:

- The replacement of the scale at the transfer station facility.
- The annual street improvement program.
- Investments to commence building the 138 kv substation and 34.5 kv circuit in the North College Avenue area.
- Upgrades and retrofitting of all treatment units in the Curtis water plant and funding to support the expansion of the Curtis plant.
- Sewer fund improvements to supplement a larger hazard mitigation grant to repair sewer line crossings over Christina Creek and to remove

and install two new submersible sewage pumps in the Silverbrook pump station.

Revenues – Almost all of the operating revenue increased for 2008 consisted of the rise in utility margins (8%). Property tax revenues increased by 3% and the transfer tax revenues increased by about 6% using a multi-year average adjusted for certain large transactions. Fees for service increased by 11.2%, which included the higher fees and fines recently instituted as well as income from building permits and licenses.

Primary decreases in revenues included intergovernmental revenue funds that decreased by 25.2% primarily due to the deletion of state bond bill funds that were now reflected as grant monies supporting the capital improvement program. There was also a decline in investment income.

Mr. Funk asked why the projected 2007 net surplus was different than what was reported by Mr. Luft (\$5,111,893 in the Summary of Revenue and Expenses). Mr. McFarland said that figure was the projected level for 2007 as of May of this year. That number will decrease significantly to about \$1-1/2 to \$2 million by the end of the year.

Mr. Clifton commented that the transfer tax revenues projected were a “moving target” and next year they could be much less than projected. Mr. McFarland agreed and said that he projected that estimate after reviewing what the City actually experienced over the last three to four years in transfer taxes, while taking out the large transactions such as the Christina Mill Apartments.

Mr. Clifton commented that he thought Council took action to hold the health care costs at 15% yet the budget showed a 19% increase for current employees and retirees. Mr. McFarland explained the reason for the 19% increase was because of the retiree health care issue where the City had to begin funding the unfunded liability. The cap on the increase on the health care was for active and retiree (current) premiums.

Mr. Clifton asked why contractual services were put into the capital program, specifically the bond bill fund. Mr. McFarland said after reviewing the activity of the bond bill fund, he thought it was truly capital work that benefited the City for multiple years in the future.

Mr. Clifton questioned the reason for the 10.7% decrease in equipment depreciation. He was fearful they were setting themselves up for a larger increase in the next two or three years. Mr. McFarland explained that the depreciation was tracked very closely with what was spent on vehicles. Because there was one year when all vehicle replacements were deferred, that drove that the depreciation down. If he recommended doubling the vehicle purchases in a future year, the depreciation would go back up. That being said, if they stayed on a normal pattern of equipment replacement, they should be in the same position as they have been historically.

Mr. Clifton asked if the person now responsible for the maintenance of the meters was a full-time employee. Mr. McFarland explained that that responsibility was currently shared between the IT Supervisor and two meter readers and because of their schedules they weren't able to make the necessary repairs. With the transfer of that function to the Parking Division, a person would be dedicated to keeping the meters in good working condition. Mr. Clifton recommended using electronic meters that cost about \$150.00 for just the guts of the meter to save money. Mr. Funk asked if there were meters in reserve because there were poles all over town without meters. Mr. McFarland answered yes and said the empty poles were the impetus behind moving the maintenance of the meters to the Parking Division.

Mr. Clifton asked which department was responsible for the funding for the 250th Anniversary and was told \$20,000 was in the legislative budget under contractual services. Also, the Police and Parks and Recreation Departments have budgeted overtime for that event.

Mr. Funk asked where in the budget was the money for the appeal bond, and was told that it was not in the budget. Mr. McFarland explained there was over \$600,000 earmarked for the appeal bond in the capital reserves from projects that could be deferred or eliminated. Mr. Luft reminded Council they got a memorandum that summarized the projects that were deferred or delayed. Mr. Funk questioned whether those projects were back in the budget and was told they were being held in abeyance until the City knew whether it needed the money.

Mr. Athey asked what exactly the \$29,000 in the legislative budget for special council events would be used for. Mr. Luft said \$20,000 was for the 250th Anniversary and the remaining \$9,000 was for other programs including the employee luncheon. Mr. Athey would like to see an accounting of how the money gets spent for the 250th Anniversary. Mr. Funk explained that a lot of the \$20,000 was for things that were done that you never see. He added that he put \$5,000 of his own money into the special events account in order to attract bands and re-enactors for the anniversary parade. Mr. Luft interjected that separate from the overtime and the personnel costs, he could set up a separate account to keep track of the \$20,000. Mr. Funk also advised that a meeting was held with the departments involved to discuss the various events associated with the anniversary. Other than paying for bands to get to and from Newark and the re-enactors he hoped to get from Valley Forge, Mr. Funk anticipated the total cost would be under \$5,000.

Mr. Athey asked if it was a valid assumption that the New Castle County sewer rates would not go up in 2008. Mr. McFarland explained that the County was not in a position to know whether the rates would go up, but they usually gave the City a 90-day notice. If they adjust the rates, that would occur in July and he would ask Council to adjust the rates at that time.

Mr. Athey applauded the City Manager for the Community Affairs Officer recommendation and asked whom that person would report to. Mr. Luft said the position would be in the City Manager's Office. The proposed salary was \$50,000 and the duties would include media relations, channel 22, the website, the City newsletter, etc. and it would be a proactive position to get information out to the public.

Mr. Markham was glad to see the IT included in the budget and asked what of the \$97,800 proposed was operating and what was capital expenses. Mr. McFarland said about 65% was capital and 35% was operating to upgrade equipment, new desktops, and a few minor things.

Mr. Markham asked for a discussion on the \$20,000 budgeted for the purchase of water, which he thought was very minimal. Mr. McFarland said the \$20,000 was budgeted in case something extraordinary would happen where the City would need water on a short-term basis. With the reservoir up and running, he did not anticipate any recurrent need for normal water purchases from United.

Mr. Markham asked what the 1¢ property tax increase would generate and was told it was about \$82,000. Mr. Markham felt the property tax increase fell mostly on the residents who lived in newly built houses and he represented a lot of residents living in newer homes. He asked what would change if the tax increase was not approved. Mr. Luft said the tax increase basically covered the cost for the public information program and some of the IT improvements.

Mr. McFarland commented that he wanted to make a financial pitch for the credit rating of the City and the magnitude of the surplus. He believed with the

review the City got earlier this year, the agencies were looking at the City to continually build the surplus and build the cash balance back up. He thought the \$700,000 operating surplus was minimal for what agencies were looking for and would like to see the surplus more in the range of \$1.5 to \$2 million. Mr. Luft added that one of the financial principles he tried to initiate was to take more pressure off of the utility area and put it into the general fund revenues.

Mr. Markham thought the tax increase was disproportionately as to who paid the tax. He then questioned if any money was available in Parks and Recreation and the Refuse Department to support cleanups like what was done by the DNP at the overpass on Chapel Street. Mr. Luft said the departments estimated their overtime for the next year based on historical data--projects and activities they were involved with in the past year or so. He further noted that Parks and Recreation Department had money built into its budget for overtime for the parades, creek cleanups, and similar activities. Mr. Markham said because the cleanup was such a success, he would like to encourage that kind of support if others from the community wanted to do a similar cleanup.

Mr. Pomeroy complimented Mr. Luft and staff for the tight budget. He thought some of the changes made to tighten up the annual audit reports and the monitoring of the contracts added to fiscal stability, and he appreciated that very much. Mr. Pomeroy referred to the summary under Other Revenue between Budget 2007 and Projected 2007 and asked what caused the 32% drop from about \$1.3 million to about \$800,000. Mr. McFarland said it was interest. Mr. Pomeroy questioned the projected surplus reflected on the summary sheet. Mr. McFarland advised that the Financial Statement for October (which Council would review later on the agenda) showed that the budget figures for both the expenditures and the revenues would be just about even for the year. He believed the Projected 2007 figure was a very good projection. He advised that much of both revenues and expenses were seasonal and asked that Council not focus too much on the Projected 2007 figure. The difference in the figures had more to do with the revenue side rather than the expense side.

Mr. Pomeroy asked how the consumers would be affected by electric rates in 2008. Mr. McFarland advised that DEMEC was able to set a budget price for power for 2008, which the City used in the development of the budget. DEMEC locked into about 70% of the power. Therefore, he felt good about the projection through 2008 and did not anticipate any rate increases for 2008.

Mr. Pomeroy commented on the fact that the legal/consulting services budget dropped in 2008 and questioned how that could be less than what was budgeted in 2007. He asked, from a budgetary standpoint, for a recap of the short-term plan as it related to what may be coming down the pike, whether it related to bond or legal expenditures, and how it related to this particular line item. Mr. Funk thought it was logic that the fees for 2008 would be less because the attorney already had the work done through the District Court and a lot of that would be re-used. Mr. Akin added that much of the research that would be applied in any appeal of the reservoir verdict was done although it would have to be fine-tuned for a Court of Appeals. The only thing that might drive the number back up would be if the City was successful on any or all of its claims and was awarded a new trial--legal expenses would be incurred to fund that. As a practical matter, depending on when the District Court issued its opinion and when the Court of Appeals got the case, the City may not be in that situation until late 2008 or early 2009.

Mr. Pomeroy asked Mr. Luft to summarize the steps taken to prepare for the upcoming year as it related to bonding issues and the reservoir case. Mr. Luft said roughly \$650,000 for the bond premium was set aside (from deferred projects). There was \$1.6 million in the reduction of the operating budget (2%) from deferrals in capital improvements. Mr. McFarland interjected that the contingency plan in 2007 did not persist into 2008. Mr. Pomeroy asked if staff was confident with the budgeted legal expenses for the 2008 calendar year. Mr.

McFarland was confident the City was covered for the ongoing legal fees and if they needed to get a bond.

Mr. Pomeroy was concerned to ask the public for a modest tax increase when the City was facing a degree of fiscal uncertainty in the years ahead. He thought they should defer adding the Community Affairs Officer until there was more clarity on the City's long-term financial situation. Although the position was warranted, he did not feel it should be added now. Mr. Markham said the position could always be reinstated later in the year.

Mr. Athey thought the 1¢ rate increase was consistent with the past couple of years. Mr. Pomeroy felt if it wasn't for the extenuating circumstances, he would likely feel differently and that was not a reflection on the quality of the budget presented or what was warranted internally. This was a policy-oriented position that he felt strongly about.

Mr. Osborne expressed his appreciation for all the work and effort that went into putting together the proposed budget. He thought the City has done very well holding the tax rate at its present level and the 1¢ increase in light of what was happening with the economy was rather insignificant.

Mr. Tuttle complimented Mr. Luft on his thorough presentation. However, the one item he thought Mr. Luft undersold was the revenue enhancement of acquiring the extra position when there was a proposal to move parking meters into the parking operation. He reminded everyone when a parking meter was broken, you not only don't get coins in the meter, but you can't do enforcement at the meter. Doing something that increased the productivity of the meters merited an increase in both of those accounts. He thought Mr. Luft didn't say they would pay for that on the backs of the users of the parking system. He noted if someone was looking for a meter to park at, there was nothing more frustrating than finding a broken meter that was being occupied.

Mr. Tuttle said he interpreted the figures to read that the City was about a million behind in utility revenue where the budget assumed the City would move ahead by \$2.2 million. In terms of next year's budget, he asked how confident was staff with the assumption that the City's net utility revenue would in fact increase by 8% over the 2007 budget when it didn't look like the City would make this year's budget. Mr. McFarland explained that the single biggest swing in the net utility revenues were the volumes which were weather dependent. The volumes for 2007 were projected to be higher based on previous years. He claimed they went to great pains in doing the 2008 projection to come up with an estimate of what "normal" weather was for Newark. He felt they went through a fairly disciplined procedure to come up with the revenue estimates and they should detect early in the year if they made any assumption mistakes.

Mr. Tuttle said he agreed with Mr. Markham's concern about the inequities that existed in the way properties were assessed, but given the City has no control over that unless it was willing to undertake a significant expenditure to its own assessment, that was something the City had to live with. He questioned whether the 1¢ tax increase was adequate because it left a projected \$700,000 surplus for next year while the City was still coming off a \$9 million loss only two years ago. When you look at the fact that property taxes supply only 13% of the revenue stream, the City was still incredibly independent on utility revenue. Given the volatility of that and the lack of volatility in the property tax revenue, he did not know if in the long run it would make sense to adopt a policy that says maybe they ought to be at 15%.

Mr. Funk thought the appeal bond funding should be in the budget. He was concerned about relying more and more on electricity revenue after the City took steps this past year to reduce that reliance. He questioned why the City had to write off utility bills because under state law the City had special privilege to lien utility bills. Mr. McFarland said they had to research that more because he

understood the problem was whether or not a landlord was responsible for their tenant's bills if the tenant skipped town. Mr. Funk advised that the lien would be attached to the real estate, not on the tenant and it didn't matter if the electric bill was in the name of the tenant according to the law. Taxes, water, sewer, electric, if supplied by a municipality, can become a lien on the property—not the person who owned the land. The Finance Department and the City Solicitor will research this further.

The chair opened the discussion to the public.

Dorothy Miller, 430 Orchard Road, suggested it was time to consider a referendum to purchase open space. She referred to a recent article in *The Newark Post* by Jerry Kaufman in reference to the golf course property. She believed if money was available, the City might be able to enter into a partnership to buy that site or similar lands that have controversial developments planned. She reminded Council that the residents have always responded positively to referendums for open space funding.

Ivan Nusic, 26 Wakefield Drive, had no comments regarding the budget and spoke out of order to address his concern that the minutes from previous meetings did not include his verbatim comments. Mr. Nusic believed it was his right to have all of his comments, including comments about his personal life, entered into the minutes, and he thought the public had the right to correct the minutes before Council approved them. He also believed he had the right to ask for a point of order at any meeting and will present Council with material to justify that right after he researched the Sunshine Law.

Jean White, 103 Radcliffe Drive, commented on the \$204,000 subvention received from the University and asked what the amount was for the past 10 years. Mr. Luft advised that it was \$120,000 for many years and then \$60,000 was added (equivalent of a police officer's salary) in 2002, and another \$24,000 was added to support the DNP. Ms. White suggested that the City approach President Harker to discuss increasing the subvention. Mr. Funk said he would prefer the University add more police officers to their police department.

Ms. White commented that she was impressed with how efficient and well the new trash collection program has worked and commended the Public Works Department for the planning and management of the program.

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

MOTION BY MR. CLIFTON, SECONDED BY MR. OSBORNE: THAT THE 2008 GENERAL OPERATING BUDGET BE APPROVED AS PRESENTED.

Mr. Clifton stated that it was important for the public to know that the Council did not review a proposed budget or a tax increase lightly. Even though it was only a 1¢ tax increase, that increase will impact many of his constituents. He believed most people understood that the cost of doing business went up every year because of union contracts, well deserved increases to employees, and things like the cost of fuel rising 25% to 30% that operated the equipment used to take care of the City. He has been a proponent of a small tax increase each year to keep the City from getting into a position where it had to ask for a large tax increase.

Mr. Clifton referred to the surplus and how it related to the bond bill as referred to by Mr. McFarland earlier in the discussion. It reminded him that when the City had the referendum and ultimately the bond to buy the property for the reservoir, the rate of the bond was based on the fact that the City's bond rating was so good. It has worked to the City's benefit to maintain that bond rating. In conclusion, he said he had no problem with a small tax increase.

Mr. Pomeroy felt the City has been in certain situations since he has been on Council where he saw a critical reason for a tax increase, i.e., when they increased taxes for additional police they trimmed back on items they did not feel at that time were critical to the operation of the City. He thought the City did a phenomenal job accomplishing the goals it wished to achieve in the upcoming year and did it within acceptable budget parameters, including budgeting for the increases that were a part of doing business. He saw the proposed tax increase tied directly to a public relations position that he did not feel was essential at this time. Mr. Markham thought the budget could be done without the tax increase and Council could revisit the budget if something changed later in the year. In his mind, he could separate the budget from the tax increase.

Question on the Motion was called.

MOTION PASSED. VOTE: 6 to 1.

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

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THE TAX RATE BE INCREASED BY 1¢.

MOTION PASSED. VOTE: 5 to 2.

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

5. **2. CITY SECRETARY'S MINUTES FOR COUNCIL APPROVAL:**

A. Regular Council Meeting of November 12, 2007

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

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

A. Public

There were no comments forthcoming.

7. **3-B. UNIVERSITY**

1. Administration

There were no comments forthcoming.

8. **3-B-2. STUDENT BODY REPRESENTATIVE**

Dan Greenland, 34 Prospect Avenue, representing the student body, said he looked forward to working with Council on Bill 07-38 regarding redefining a private social gathering.

9. **3-C. COUNCIL MEMBERS**

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

10. Mr. Osborne welcomed Representative Kowalko to the meeting. Senator Kowalko commented on the SEED program, a scholarship program available to high school students who maintain a 2.5 cumulative average throughout high school and don't commit any felonies. He has been promoting this successful program beginning at the 8th grade level.

11. Mr. Osborne advised that the Senate would be returning to session tomorrow to confirm the appointment of the Alderman.

12. Mr. Pomeroy complimented the lights on Main Street that have been placed on the trees for the holiday season. He reminded everyone that Winterfest would be held Friday, December 7th.

13. Mr. Pomeroy commented on the legal issues surrounding the golf course project and said he thought it might be beneficial to consider supplementing the City's legal advice with some outside opinions. He claimed his suggestion was not a reflection on the City Solicitor. However, Council may want to compliment Mr. Akin's opinion with an outside review and he wanted to know how they would go about doing that and what it would cost.

Mr. Athey clarified that when he talked about the tone of the Planning Commission meeting during the golf course project, he did not have an issue with the City staff or the Planning Commission. It was obvious to him that the applicant was being aggressive and "confrontational." Because of that he thought it might be advantageous to get a second opinion on some of the legalities, but stressed they needed to be sensitive to the cost as well. He suggested that Mr. Akin could provide an opinion on the process of obtaining a second opinion.

Mr. Clifton reminded Council that they did something similar when they hired Rich Abbott when they purchased the reservoir property. He believed the Charter allowed Council to get a subject matter expert and because of what happened at the Planning Commission meeting it was incumbent upon Council to make sure the petitioner's rights were protected as well as the rights of the citizens of Newark who would be affected by the project.

Mr. Markham felt that no matter what development was built on the golf course property, it was important to get the best development possible.

Mr. Pomeroy believed it was important for Council to have a very comprehensive understanding of the breadth of legal issues surrounding this project. He suggested that Mr. Akin make a recommendation that included when it would be appropriate to bring another attorney into the process and what the cost would be. Mr. Funk thought they had to do something as soon as possible.

Mr. Lopata advised that he did not know when the Country Club project would be before Council because he was still waiting for the engineer to make some changes and submit revised plans. After that, a subdivision agreement will have to be drafted. In the meantime, a tentative meeting was being planned with DelDOT to try and resolve some issues regarding DelDOT's traffic impact study review. He concluded by saying he did not know what the issues were for additional legal clarification so it may be a bit premature to get another opinion. If Council wanted to talk to another land use attorney to discuss the general issues of subdivision in the State of Delaware, that could be done at any time.

Mr. Akin said he would provide a report to Council for the December 10th meeting regarding an outside land use attorney and a cost estimate for their services.

14. Mr. Clifton commended Mr. Pomeroy on the Greater Newark Network meeting held at the Embassy Suites.

15. Mr. Clifton commended Chief Tierney on his street crimes initiative.

16. Mr. Athey asked Rick Armitage if he planned on making a presentation to Council on the University's strategic master plan for their facilities. Mr. Armitage said there was a strategic planning process ongoing right now and that should be finished in March. He planned to make a presentation in January or February depending on the length of the agendas. He added that the two largest projects the University would like to do were a parking garage behind Pearson on

Academy Street and a new undergraduate teaching laboratory off of Academy Street beside the Geology building. However, there was no funding identified for those projects at this time.

Mr. Armitage also advised that University officials have been discussing with City departments whether the infrastructure was in place for the University to grow. The question has been raised as to whether electricity, water, and sewer would continue to be available. A major issue on the table of the Board of Trustees is whether or not there will be a law school, and if there is, whether it would be located in Newark.

17. Mr. Markham noted that the sidewalk was almost completed at the reservoir and thanked Parks and Recreation for the landscaping that has been added in that area.

18. Mr. Markham commented that the Curtis Paper Mill demolition has made good progress. He advised that he asked about the cost to seed that area if no plans are finalized for that site in the near future.

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

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

A. Recommendation to Change Dental Insurance Carrier

This item was removed from the agenda.

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

A. Bill 07-39 - An Ordinance Amending Ch. 31, Weapons, Code of the City of Newark, By Revising the Code Dealing with Carrying Weapons

This item was removed from the agenda.

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

A. Request of Amstel Associates for a Revision to the Approved Subdivision Agreement for the Development Known as Amstel Square Located on the Corner of Elkton Road & Amstel Avenue, In Order to Increase the Height of the Commercial/Residential Building on Parcel #3 from Two to Three Stories; Increase the Footprint of the Building from 8,250 to 10,711.48 Square Feet; & By Adding Two Apartments to the Eight Previously Approved
(ADDENDUM TO THE AGREEMENT PRESENTED)

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT THE ADDENDUM TO THE AGREEMENT FOR AMSTEL SQUARE BE APPROVED AS PRESENTED.

Lisa Goodman, Esquire, representing Amstel Associates, LLP, advised that in February 2006 Council approved the plan for Amstel Square and now they would like to revise that plan. The site has been cleared and the townhouses have been built and were occupied. A second building, located on the corner, was approved with commercial on the first floor and apartments on the second floor. Ms. Goodman reminded Council that during that approval process, Council Members Pomeroy and Clifton specifically noted that the site was a gateway for Elkton Road and would serve as an anchor to the re-development of Elkton Road.

Ms. Goodman explained that when the project was approved, Tim Thompson was to be the sole owner of the commercial building. Subsequent to the approval, and fairly recently, Kevin Heitzenroder was asked to participate in this part of the project. He quickly discovered there were some issues with the design of the building—the commercial space wasn't deep enough and the

apartments wouldn't fit on the second floor. That was confirmed by the architect and confirmed by discussions with perspective tenants. Those items were the driving force for their request to redesign the building. Once the applicant realized there was an issue with the design of the ground floor and not being able to fit the apartments in, the height of the building went to three stories. The building would not be any taller than the 35' height required by Code and approved by Council.

Ms. Goodman said that nobody liked coming back through the process once they have an approved plan because it took time and money, two things that represented the enemy of any economic development or redevelopment. Ms. Goodman believed everyone wanted Elkton Road to be redeveloped and good economics made redevelopment happen. The building was redesigned to keep the same look and feel of the original building. They were committed to having the same or better commitments regarding trees, landscaping and hard scaping, and were committed to keeping it the same height and making it economically viable. Ms. Goodman believed they accomplished all of the above.

Kevin Heitzenroder provided Council with copies of the original rendering and the revised rendering, which were on display for the public's review. Ms. Goodman pointed out the differences in the two renderings. The original building was brick with stucco accents, was 35' tall with a pitched roof, dormers and a tower. The new building will have a slightly increased footprint to allow more viable commercial use (the depth issue) and the air space would be reconfigured into three stories rather than two stories. That will be done by utilizing a flat roof in the new building compared to the gable roof on the original building, which represented lots of dead air space. The flat roof design, with parapets (a more urban design), will allow the developer to utilize the space for a third story without increasing the height of the building. The tower design and the stucco accents will remain.

Ms. Goodman continued by saying when the plan was originally approved, it proposed relatively narrow sidewalks and grass along the front. The developer has decided to put in a more expensive, wider brick sidewalk, rather than the approved narrow sidewalk with grass and shrubs. The wider sidewalk worked better with the foot traffic and complimented the University's sidewalks. The new building would have store openings onto the sidewalk in addition to entering through a lobby. Six more street trees would be added to what was already committed to, including the preservation of one Sycamore tree.

In summary, the new proposal changed the footprint, the number of stories and the number of apartments. The footprint would increase by a little more than 2400 sq. ft. to allow the depth necessary for the standard commercial usage. The number of apartments increased by two to a total of 10. She also reminded Council that Tim Thompson and his family have a long history with the City with their business and Kevin Heitzenroder has a great track record of good projects in the City. Ms. Goodman pointed out that Council might be asked if allowing this change was a good idea or if it set a precedent. She felt it did set a precedent—it said to others who might be considering investing in Newark or in the state of Delaware that the Newark City Council and hopefully other councils were realistic and helpful to honest redevelopment and that has made Newark one of the few municipalities in the state with a vibrant downtown. Ms. Goodman provided a letter from the adjoining residents in support of the project.

Mr. Clifton asked how many parking spaces would be provided and was told they met the Code with 57 spaces.

Mr. Markham asked if the setback changed with the new plan and was told by Mark Ziegler that the building would be about 5' closer to the right-of-way line on Elkton Road. On Amstel Avenue, the setback was roughly the same location. Mr. Markham asked if there would still be utility poles in front of the building and was told they would remain. The impervious surface would increase

by roughly 4-5%. Mr. Ziegler explained that on the original plan there was landscaping along the street side of Elkton Road and Amstel Avenue. The consensus was that putting the pavers in with the street trees would be more conducive to pedestrian traffic. Most of the runoff on the site would be directed into a catch basin system. The runoff that came off the roof would go directly into a storm sewer located on Elkton Road and on Amstel Avenue.

Mr. Osborne asked if that was a public storm sewer or part of the Amstel Square facility. Mr. Ziegler explained that ultimately it would tie into a public storm sewer. There is no stormwater management treatment; rather they would be treating about 90% of the site with storm interceptors and he used the rendering on display to show the flow. While they will have less open space than what was originally approved, there would be much more open area than what existed there today. From that standpoint they were decreasing the runoff generated from the site.

The chair opened the discussion to the public.

Jean White, 103 Radcliffe Drive, asked how tall the tower would be and was told it was about 10' higher than the 35' height of the building. Ms. White questioned why that was allowed. She had a problem with the setback being closer to the road. She thought the original plan with a pitched roof was a better looking plan because it broke up the building on two long sides. She claimed a number of people have commented on the eight townhouses being okay but they don't like the "cavern" of macadam between the two buildings.

Ms. White thought the flat roof appeared to be as high or higher than the peak of the pitched roof so it didn't have a nice look. She had no problem with the general idea of redesigning the plan. But she had problems with making it a three-story building when a two-building story was approved, and increasing the footprint and adding two apartments. She believed it gave the impression the developer was trying to keep up with the Jones. Ms. White pointed out that the footprint increased by 2400 sq. ft., or 30%. The apartments increased from 8 to 10, or 25%, and the height increased from two stories to three with an increased total cubical amount.

Ms. White said she respected the developers, but was disappointed because the comments made at the meeting when the project was approved were taken into consideration, and now those comments were not being considered because most people in the community did not know these changes were planned. She believed it gave the impression of a "bait and switch" and compared it to the situation surrounding the Washington House. As for the brick sidewalks, Ms. White did not like them because they collected cigarette butts in the grooves and ladies' high heels got caught in the grooves. Regarding the landscaping, she claimed it went from .1539 acres to .1192 acres, a 22.5% decrease in the open space. She acknowledged it was not a lot of open space, but the open space helped make the building not look out of scale and softened the whole picture. She was also concerned that the first plan showed a larger island around the remaining Sycamore tree and the new plan had a much smaller island. As for the new landscaping plan, Ms. White was disappointed that Council did not have a copy of it and it was not available in the City Secretary's Office. However, she did review it in the Parks and Recreation Department. In the future, she would like a copy available for the public to study.

Mr. Lopata commented on the height of the building and the tower. He explained that decorative towers were exempt from the height limitations and indicated that the 35' height of the building met the Code..

Jim Dardon, 1 Nethy Drive, supported the revised project. He saw this site as a trophy gateway property and believed the track record of Messrs. Heitzenroder and Thompson spoke for itself. Elkton Road would benefit from the

project, and he complimented Council for the decisions they have made regarding recent developments in Newark.

Ed Lafranca, 5 Pagoda Lane, said he thought this looked like a good project and would improve the appearance of that area. He did not like the fact that the Sycamore trees were taken down (except for one) but pointed out there would be a net gain of about 10 trees for future generations.

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

Mr. Pomeroy said he appreciated Ms. White's comments and pointed out that redevelopment wasn't an exact science. He did not want to stop responsible builders from doing projects in the City, or for the City not to support redevelopment projects. He was sure the developer did not want to come back, and he did not see it as a "bait and switch" situation. Rather, he suspected the developer got into the project and discovered nuisances he did not anticipate that resulted in retrofitting the plan. He believed that was done well and would support the change.

Mr. Clifton saw this project as the nexus to the beginning of a Main Street extension and, therefore, it was important to get this property developed in a sensible way. Although he preferred the original roof and did not like a flat roof, he would support the changes. He had no problem with the three stories. He did not see this change as a "bait and switch" and he appreciated the developer's track record in the City. He asked if instead of three trees per side that four trees be planted per side.

Mr. Athey said he did not disagree with any of the statements that were made. Both developers were known for their ethical work and good quality. That being said, he still could not support the changes. He used the Washington House as an example of a fairly substantial design change that got approved, and he was worried about setting that precedent a second time around. He did not want to send the message to developers that they could bring a product to Council, get it approved, and then change it later. Purely on principle alone, he would vote no.

Mr. Markham asked if the lighting on the side of the building as shown on the original design could be carried over to the new design. Mr. Heitzenroder said that lighting would be on the new building, but because awnings were added on the commercial floor, the lighting was not visible on the rendering. Mr. Markham said his concern was about security and Mr. Heitzenroder said as owner of the building, he would be more concerned about security as well and was committed to having sufficient lighting.

Question on the Motion was called.

MOTION PASSED. VOTE: 6 to 1.

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

23. **8. ORDINANCE FOR FIRST READING:** None

24. **9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:**
A. Council Members: None

25. **9-B. COMMITTEES, BOARDS & COMMISSIONS:**
1. Planning Commission Minutes of November 6, 2007

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THE PLANNING COMMISSION MINUTES OF NOVEMBER 6, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.
Aye – Tuttle, Osborne, Pomeroy, Funk, Clifton, Markham, Athey.
Nay – 0.

26. **9-C. OTHERS:** None

27. **10. SPECIAL DEPARTMENTAL REPORTS:**
A. Special Reports from Manager & Staff: None

28. **10-B. ALDERMAN'S REPORT**

MOTION BY MR. OSBORNE, SECONDED BY MR. MARKHAM: THAT THE ALDERMAN'S REPORT DATED NOVEMBER 19, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Clifton pointed out that there was an overpayment of the Victim's Compensation Fund, yet it showed a positive cash flow. Mr. Luft said he would get an explanation from the Alderman's Court.

29. **10-C. FINANCIAL STATEMENT**

MOTION BY MR. TUTTLE, SECONDED BY MR. POMEROY: THAT THE FINANCIAL STATEMENT ENDING OCTOBER 31, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

30. **10-D. REQUEST FOR EXECUTIVE SESSION RE PERSONNEL**

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT COUNCIL ENTER INTO EXECUTIVE SESSION WITHOUT THE PRESS TO DISCUSS PERSONNEL.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Council entered into Executive Session at 10:05 pm and returned to the table at 10:33 pm. Mr. Funk announced that no action was required at this time.

31. **Meeting adjourned at 10:34 pm.**

Susan A. Lamblack, MMC
City Secretary

/pmf

