

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**December 10, 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  
Electric Director Rick Vitelli  
Finance Director Dennis McFarland  
Chief of Police Paul Tiernan

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

2. **1-B. ANNOUNCEMENT OF WINNER OF 250<sup>TH</sup> ANNIVERSARY POSTER**

Mr. Funk explained that the poster contest was chosen to begin the 250<sup>th</sup> Anniversary celebration. He contacted Wendy Lapham, Manager of Communications, Public Information, Christina School District, who embraced the idea of a poster contest for elementary students. He also contacted Peggy Strine, Senior Vice President, Public Affairs and Dawn Richardson, Public Relations Office with Citizens Bank, who agreed to sponsor the event and provide savings bonds to the winners.

Dr. Lillian Lowrey, District Superintendent, Christina School District, was present and recognized for her support of the contest.

Peggy Strine, Senior Vice President, Public Affairs, Citizens Bank, was introduced and commented on how fortunate it was to be one of the judges. Over 100 children participated in the contest and all entries were wonderful. The following winners were introduced and received their award:

**Honorable mention** - \$50.00 savings bond:

Matthew J. Lucatamo – Gallagher Elementary School (Grade 4)  
Jalen R. Bond – Gallagher Elementary School (Grade 4).

**1<sup>st</sup> Place winners** - \$250.00 savings bond:

1<sup>st</sup> Grade – Miguel Aquino – Bancroft Elementary School  
2<sup>nd</sup> Grade – Francis M. Paesano – West Park Place Elementary School

- 3<sup>rd</sup> Grade – Thomas McNeil-Allen – Downes Elementary School
- 4<sup>th</sup> Grade – John M. Layug – Gallagher Elementary School
- 5<sup>th</sup> Grade – Aimen Siddiqui – Bancroft Elementary School

**Grand Prize Winner** - \$500.00 savings bond:

Danielle R. Pierce, 5<sup>th</sup> Grade – Jones Elementary School

The posters will be displayed at the Citizens Bank branch on Main Street and at their branch in the Shoppes at Louviers.

**3. 2. CITY SECRETARY’S MINUTES FOR COUNCIL APPROVAL:**

A. Regular Council Meeting of November 26, 2007

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

**4. MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE AGENDA BE AMENDED BY ADDING THE FOLLOWING NEW ITEMS: 5-F, CONTRACT 07-19, PURCHASE OF ONE 2008 SEMI-TRUCK TRACTOR; 5-G, CONTRACT 07-18, PURCHASE OF ONE 2008 25 CUBIC YARD, HIGH COMPACTION REAR LOADER REFUSE TRUCK; AND 5-H, RECOMMENDATION TO CHANGE DENTAL INSURANCE CARRIER.**

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

A. Public

There were no comments forthcoming.

**6. 3-B. UNIVERSITY**

1. Administration

There were no comments forthcoming.

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

Mr. Clifton advised that he and Messrs. Markham, Tiernan, and Potts met with Mr. Tulley and Ms. Patriarco to discuss the student body’s objection to Bill 07-38, a bill that redefined a private social gathering and provided required fines. As a result of that meeting, he asked the students to address Council to place on the record their suggestions on how to address Council’s concern.

Dave Tulley, President of the University of Delaware Greek Council, stated that their meeting was a productive conversation where the students were able to express their concern about the bill’s language and determine a way to make it feasible for the City and students. They understood the City had to protect the interest of its citizens. While they did not condone the problems that occurred during Chapelfest this past year, they felt one event should not be the deciding factor for new legislation. During their discussion they talked about a compromise in which student organizations would go through an expedited permit process. Mr. Tulley did not believe that compromise addressed the concern of students, and he remained skeptical about the language and intentions of the bill.

Mr. Tulley claimed it was hard to calculate the number of people on a property during an event, such as Chapelfest, where adjoining residents shared a

common backyard area. If one resident was not participating in festivities and there was an overflow of people from one yard into another, he questioned if it was fair to penalize that resident because he shared a common backyard. He also questioned if a student hosted friends for a barbecue, and provided a monetary compensation for food or beverage purposes, would that be classified as a public event.

In addition, Mr. Tulley had concerns with the consequences for hosting an event that was not registered. He found it interesting there were no prior consequences on the books for not registering a public event, considering the definition of a public event already existed. He had three concerns with that section of the bill. First, with the potential violation of due process, he asked if a companion amendment was required to mandate landlords to add an eviction clause to their lease contract. Second, were records maintained by the Police up-to-date about renter changes from lease to lease. If not, the City would need to revamp its record keeping to maintain violations. Third, would a violation affect the whole house, or individuals.

Mr. Tulley recognized that compromise was an important part of the law making process, but did not feel the offer discussed addressed the greater issue. He also did not feel a new bill would solve the problem because residents would continue to find ways to avoid the permit process, and the City should consider taking more aggressive action educating residents on how to get a permit. In addition, Mr. Tulley suggested the City consider current legislation with stronger enforcement. In conclusion, he hoped the City would continue to work with University leaders to address this issue.

Casey Patriarco, President of the Student Government Association, stated that she held the peace, order, security and safety of the community in high regard, and respected Council's efforts to uphold them through appropriate legislation. She appreciated the willingness of Council and other stakeholders to meet over the last couple of weeks and found the conversations valuable and informative to her understanding of the bill; however, she remained concerned about how it would affect the student body and gave the reasons why, many of which reiterated Mr. Tulley's comments.

In reviewing the nature and language of the bill, she remained skeptical about how the implementation would effectively suppress out-of-control events such as Chapelfest. With an overflow of people from property to property, she did not think it was feasible or fair to designate a particular household responsible for a clustering of 150 people. She did not believe the definition in the ordinance matched the kinds of events the City was targeting. She thought it would be more reasonable for the definition of a "public event" to refer to gatherings that were not enclosed, and or had an overflow of people onto public property. The change in number (250 to 150), in her opinion, had no relevance in targeting situations like Chapelfest. Also, she thought the language in the bill left it open to interpretation. She believed it was not enough to say the intention of the bill would prevent it from being inappropriately enforced. In her mind, the exchange of money for food or beverage did not seem like a fundamental aspect of a public event. She pointed out that several events that should be private, i.e., a barbecue or church gathering where monetary donations or small fees were collected should not be within the realms of the definition in the bill.

Ms. Patriarco asked Council to consider how the definition matched the kinds of events they were targeting. She was curious of the fact that there were no consequences for not registering a public event with the City especially since the definition was in the books for several years. Regarding the eviction clause, Ms. Patriarco noted the following. With the potential violation of due process, she asked if the City considered the need for a companion amendment to mandate landlords to add an eviction clause to their leases. It was clear to her that all lease contracts were not the same. She questioned whether the City would be able to track renters as they moved from property to property, or would

the record keeping method of the City need to be updated before such an amendment could be enacted. She questioned if a violation for a public event affected the whole house or one individual, and was it fair for all residents to be penalized if they had no prior knowledge of such event. If the violation was on one individual, she believed tremendous pressure would be placed on the landlord to evict the resident and fill the occupancy. The pressure to fill the occupancy would also be on the students of the household as well.

Ms. Patriarco questioned whether the legislation would accomplish anything beyond what was already on the books through the noise and disorderly conduct clauses. She suggested stronger enforcement of current legislation before implementing new legislation. Ms. Patriarco looked forward to further conversations about the matter and believed a compromise may be possible.

Mr. Clifton said he was looking for suggestions from the students but did not hear any. He reminded them of Chapelfest when 2,000 to 3,000 people were behind the homes along Chapel Street. If a fight had broken out, he questioned how first responders from the Police Department would have been able to get there with enough manpower to stop a fight, protect themselves, and protect those around them. He did not hear anything as to how the City was suppose to address that kind of situation. He acknowledged that other parties may not be as big or dynamic as Chapelfest, although he remembered a party off of Church Street a few years ago where it was estimated 250 to 300 people had spilled out to the street, glass was broken on the street, the party was loud, and it took five to seven minutes to get officers there before they felt they had the manpower to address the large party. He also reminded everyone when 12 agencies responded to a party of over 1,000 people who moved onto Elkton Road several years ago. He pointed out that the students said they were concerned about safety, but he did not hear any suggestions from the students on how to handle that kind of situation.

Mr. Funk interjected that there were many ordinances on the books, and the problem would be solved if the City responded sooner than later to such incidents.

Mr. Clifton said he would like to see a permit system that provided the City with the date, time and location of the event and the responsible person in charge who would assure the City of adequate crowd control.

Mr. Tulley agreed with Mr. Clifton that when you have 1,000 people in a backyard, that rendered a problem for public safety. He thought it would be valuable if the City provided flyers to educate renters on a year-to-year basis on how to get a permit. However, he did not feel a permit was needed for every event. From the Greek perspective (because they host many events), the process of coordinating an event took longer than a week and occasionally they don't have the final information until three days before the event. Although he was told the City might be able to expedite the process, he did not think it would work and people would go around the process and not get a permit.

Mr. Tulley thought if the students living on Chapel Street knew they could get a permit, they probably would get one, but students would be turned off by the idea that it took a month to get a permit for an event. Mr. Clifton added that there were ways of expediting that process. He also reminded everyone that Skidfest always got a permit, had police officers present, maintained a controlled environment, and usually had no problems.

Ms. Patriarco interjected that Skidfest was a good example where a permit was obtained and therefore there was no need to change the current legislation.

Mr. Markham said it was his understanding that after the students found out what they had to do to get a permit for Chapelfest, they decided not to pursue it. Mr. Funk thought they applied for a permit but got turned down.

Ms. Patriarco added that she did not have a problem with the fine that would be imposed when a party was held without a permit. However, the idea of adding an exemption clause did not seem reasonable. She also reminded Council that registered student organizations, beyond Greek chapters, were not allowed to hold events off campus so the ordinance would not apply to most registered student organizations. If an event does not take place on campus, it cannot be designated as an official event. She thought there were other ways to compromise on the proposed changes where there would still be a consequence for not registering an event, such as an eviction.

Mr. Clifton said he wasn't "married" to the eviction issue, but he was "married" to accountability and responsibility for responsible behavior. There were no further comments.

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

Mr. Tuttle acknowledged that the trolley was in operation and thought its distinctive appearance would make it more noticeable. He hoped it was the first of many improvements in public transportation around the City.

9. Messrs. Tuttle, Pomeroy and Markham complimented Winterfest and the fact the weather cooperated for the good turnout. Mr. Markham heard some suggestions, including more children's games, and singers from the University who might want to do some caroling along Main Street. Mr. Funk thought this was the best Winterfest and felt the Reindeer Run that had over 400 participants brought a lot of people to the event and downtown.

10. Messrs. Osborne and Pomeroy congratulated all the elementary students who participated in the poster contest.

11. Messrs. Osborne and Pomeroy welcomed Senator Sorenson to the meeting.

12. Mr. Pomeroy thanked Mayor Funk for the history books that were completed in time for Winterfest. He thought the final product was quite impressive.

13. Mr. Pomeroy thanked staff for all the work they do to serve the residents of Newark, and he and Messrs. Athey, Markham, and Funk wished everyone Happy Holidays.

14. Mr. Clifton referred to a letter from the Planning Department to the developer of Fountainview that commented on the Federal law that allowed up to 20% in an adult (55+) community to be under 55. It was recently learned that some units in Fountainview were sold to people under 55. The Federal law says a municipality has the right to strengthen that law—make it that all units have to be 55+. Newark's Code requires that everyone must be 55+. Mr. Clifton thought the wording in the Code was vague and the developer of Fountainview may make an issue with that language.

Mr. Funk asked Mr. Lopata if the City should be looking at the City's language in the Code. Mr. Lopata answered that in his opinion the language in the Code was clear. Mr. Funk asked if the language was reasonable? Mr. Lopata responded by saying the Federal government believed it was reasonable. He claimed adult communities were suppose to be adult communities in Newark, and if Council wanted to change that in the future, that remained to be seen. There were other subdivisions coming up such as the Wilson Farm and the Villas of Twin Lakes that were adult communities, and it was his opinion when Council approved those developments, it was understood they would be exclusively for 55 and older. As for other existing 55 and older communities, he did not think there were any 25 year olds living in them. Mr. Lopata said he spoke with Mr.

Corrozi who didn't seem to be that concerned about it. Mr. Funk said the Village at White Chapel had at least one person living there that was 50 years old. Mr. Lopata did not think the City would be the age police, and it was his sense if someone was 50, 51, or 53, that should not be a problem. He was more concerned with an investor buying a unit and putting in 22 year olds. He added that this concern was triggered when someone came into his office for buyer's affidavit and said they were buying units as an investment in Fountainview.

15. Mr. Athey thanked the City Manager and departments heads who helped him with a construction issue on E. Park Place.

16. Mr. Athey thanked the Building Department for the Emergency Operations Plan that was completed a couple months ago. He was reviewing it and liked what he saw and thought he would have some comments on it after the first of the year.

17. Mr. Athey asked if Council could be advised as to when a draft Comprehensive Plan would be made available for their review.

18. Mr. Athey commented on the recent proposal made by Dorothy Miller that Council consider a bond for open space acquisition. Although he would not support such a bond at this time, he asked the City Manager to provide information on the past referendum and what the impact would be on the budget if Council decided to consider one in the future.

19. Mr. Markham congratulated the University of Delaware football team for making it into the playoffs. Also, their volleyball team was recognized for winning the CAA Conference championship and getting to the NCAA volleyball tournament where they lost in the second round.

20. Mr. Markham advised that he attended the Senate hearing where Newark's new Alderman, Lisa Hatfield, was confirmed.

21. Mr. Funk advised that he met with several people about the possibility of bonding money for open space. There were good comments and suggestions and they plan to meet again after the first of the year.

22. Mr. Funk thought the poster contest was a good way to start the 250<sup>th</sup> Anniversary celebration. It not only indoctrinated the elementary school children to the celebration, but it also brought the event to their parents' attention. He also advised that the print has been well received and the history book that was published has been successful with over 290 of the 300 books sold.

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

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

A. Recommendation to Life & Long-Term Disability Insurance Carriers

Mr. Zusag summarized his memorandum to the City Manager, dated November 28, 2007, where he recommended changing the City's life and long-term disability insurance carriers. After the carriers informed the City they were increasing the premiums for 2008, Mr. Zusag asked the City's broker to go back to the market to see if there was a better deal. Switching the City's life insurance from ING Reliastar to The Standard and switching the City's long-term disability insurance from UNUM Provident to The Standard as well could accomplish that and save the City approximately \$21,400 for 2008.

Mr. Pomeroy had not heard of The Standard and asked Mr. Zusag if he had any background he could provide. Mr. Zusag advised that The Standard had over 40 offices across the nation, more than 100 years of history, five decades of employee benefits experience, more than 28,000 group insurance policies in

force covering eight million employees, over \$1.7 billion in premiums, was recognized as one of the top four companies in the nation for long-term and short-term disability insurance, and their first group insurance customer was still with them after 55 years. Mr. Clifton asked if Mr. Zusag talked to anybody that used them, and Mr. Zusag said he relied on the broker, Mercer, to do that for him. He was sure The Standard would not have been recommended if they were not a qualified insurance company.

MOTION BY MR. POMEROY, SECONDED BY MR. TUTTLE: THAT COUNCIL APPROVE CHANGING THE CITY'S LIFE AND LONG-TERM DISABILITY INSURANCE CARRIER TO THE STANDARD INSURANCE COMPANY EFFECTIVE 2008 AT THE RATES PROPOSED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

**25. 5-H. RECOMMENDATION TO CHANGE DENTAL INSURANCE CARRIER**

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Mr. Zusag summarized his memorandum to the City Manager, dated December 4, 2007, wherein he explained that the City's current dental insurance carrier, Delta Dental, proposed a rate increase after previously promising the City there would be no rate increase the second year. After trying unsuccessfully to get Delta Dental to back off of their demand, Mr. Zusag instructed the City's broker to go to the market for dental insurance. Quotations were received from Delta Dental, Met Life and Ameritas, all of whom have provided dental coverage to the City in previous years. He recommended that Council approve Ameritas to provide dental insurance for a projected annual premium of \$179,406 (which reduced the current rate by about 2.4%).

Mr. Zusag advised that he discussed this change with the various unions since there were some specific requirements in their contracts. The differences in what the contracts (CWA and FOP) required and what the Ameritas plan provided were minor. The AFSCME contract was broader in that it stated the City would provide the dental insurance so that contract did not present any contractual issues. The CWA and FOP reviewed the changes and said that as long the City reimbursed any claims that were paid below what was required by the contract, then they had no problem with the change. Examples given were fluoride treatments under the contract were required to age 19 and under the new plan they were covered up to age 14; space maintainers were 100% covered under the contract with only 80% coverage in the new plan; periodontal scaling, periodontal surgeries, extractions may be paid at 50% and the contract required 80%. Both union reps and Mr. Zusag did not foresee a lot of requests for reimbursement, but the City would make up the difference.

Mr. Markham asked if there was a legal review of the current contract since Delta Dental was not suppose to increase premiums during the term of the agreement. Mr. Zusag said that it was not worth pursuing, and chose to go to the market rather than forcing Delta Dental's hand. He explained that shortly after the inception of coverage from Delta, the City began to notice errors in claims that resulted in many employees receiving a balance bill for services from their dentists. The City pointed out the problem and they corrected it, but then they claimed that was a change in the contract which voided their rate guarantee. Mr. Markham interjected that he thought it was a legal contract that Delta should have honored for two years. Mr. Zusag said by going to the market the City actually saved 2-1/2% over what Delta was charging the City and no legal bills had to be paid if the City pursued challenging the premium increase. If the City had no other insurance company to go to, Mr. Zusag said he would have pursued a legal remedy. Mr. Clifton asked if the employees would come back to the City claiming the City breached its contract with this change. Mr. Zusag answered no.

Mr. Tuttle pointed out that the City would be saving about \$19,000 minus the occasional reimbursement to the employee(s).

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT COUNCIL APPROVE AMERITAS AS THE CITY'S DENTAL INSURANCE CARRIER, EFFECTIVE JANUARY 1, 2008, AT THE RATES PROPOSED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**26. 5-B. RECOMMENDATION TO WAIVE BID/RFP REQUIREMENT TO HIRE TETRA TECH, INC. TO INITIATE WORK ASSOCIATED WITH THE FINAL WORK PLAN FOR MEDIATION OF THE CLEVELAND AVENUE LANDFILL SITE**

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Ms. Houck summarized her memorandum to the City Manager, dated November 29, 2007, wherein she recommended waiving the bid and RFP process in order to hire Tetra Tech, Inc. to complete the work plan for mediation of the Cleveland Avenue Landfill site. Tetra Tech, Inc was previously hired to perform engineering services as required by the Delaware Department of Natural Resources and Environmental Contract (DNREC) that ultimately provided a revised Remedial Investigation Work Plan for the former Cleveland Avenue landfill site. DNREC then approved the revised work plan prepared by Tetra Tech. Tetra Tech proposed to provide the necessary technical support for a remedial investigation of the Cleveland Avenue Landfill for the fixed price of \$64,736. Ms. Houck recommended that Council waive the requirement to bid or request proposals from additional firms and hire Tetra Tech to perform the remedial investigation and feasibility study at the fixed cost of \$64,736.

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT COUNCIL WAIVE THE REQUIREMENT TO BID OR REQUEST PROPOSALS FROM ADDITIONAL FIRMS AND HIRE TETRA TECH TO PERFORM THE REMEDIAL INVESTIGATION AND FEASIBILITY STUDY FOR THE CLEVELAND AVENUE LANDFILL AT THE FIXED COST OF \$64,736.

Mr. Osborne thought he remembered a discussion where the Newark Housing Authority was going to participate with the City and asked if that was still going to happen. Mr. Lapointe explained that about a year ago the Authority opted not to partner with the City which had to do with mixed funding that was available from the state. Because the City was the generator of the landfill, if the Authority partnered with the City in the clean up action, they would not be able to receive any type of funding. In other words, the Authority was paying for their portion and the City was paying for its portion. Mr. Markham asked if there were still outstanding issues once this part was completed. Ms. Houck said the City was done except for what might result from the investigation. Mr. Athey thought Tetra Tech was most qualified because of their history so he concurred with waiving the bid process.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**27. 5-C. CONTRACT 07-17, FURNISHING LABOR & EQUIPMENT FOR TREE PRUNING, REMOVAL & CREEK CLEARANCE OPTIONS**

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Ms. Houck summarized her memorandum to the City Manager, dated December 3, 2007, wherein she explained that that this was a two-year contract commencing on February 28, 2008 through February 27, 2010. The contract provided for a division of its award when it was in the best interest of the City. For the first time it was in the City's best interest to split the award in association with the requirement to have a certified arborist on staff for tree pruning and dead wooding work.

Ms. Houck recommended that Contract 07-17 be awarded as follows:

Tree Removal and Creek Clearance operations – Miller's Tree Service - \$50 per normal man-hour and \$100 per premium man-hour.

Tree Pruning and Dead wooding operations – Kern's Brothers - \$68 per normal man-hour and \$90 per premium man-hour.

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT CONTRACT 07-17, FURNISHING LABOR AND EQUIPMENT FOR TREE PRUNING, REMOVAL AND CREEK CLEARANCE OPERATIONS, BE AWARDED AS RECOMMENDED.

Mr. Clifton asked if there was any benefit in paralleling this contract with the contract that did the tree trimming around power lines, and Ms. Houck said that was considered, but it would not work out in the City's favor.

Mr. Markham asked if the estimated cost of \$47,390 was for one or two years, to which Ms. Houck said that estimated cost was for one year. In the past, Kern's Brothers held the contract. Ms. Houck said that Miller's Tree Service was new and both the Parks and Public Works Departments were happy with their references and their work. She reviewed the fact that Kern's Brothers were very familiar with the work that required an arborist and she felt that was reflected in their bid.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**28. 5-D. RECOMMENDATION ON REQUEST FOR PROPOSAL (RFP) NO. 07-04 PROVISION OF AUDIT SERVICES**

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Ms. Houck explained that the purpose for the RFP was to obtain auditing plans and fee proposals from qualified public accounting firms for the provision of auditing services for the fiscal year ending December 31, 2007. Following a review of the proposals and ranking from an in-house committee and a review of the costs, it was determined it was in the City's best interest to retain the services of Barbacane, Thornton & Company. In addition, the new Finance Director has not been through a full audit and it would give Mr. McFarland the opportunity to participate fully in the auditing process and to evaluate the services provided. Provisions were included in the RFP to allow the City to continue with the same company next year.

MOTION BY MR. POMEROY, SECONDED BY MR. OSBORNE: THAT COUNCIL APPROVE RETAINING THE SERVICES OF BARBACANE, THORNTON & CO. FOR THE COMPLETION OF AUDITING SERVICES FOR NEWARK'S FISCAL YEAR ENDING DECEMBER 31, 2007 AT A COST OF \$29,500.

Mr. Athey said it seemed to him that because it was essentially a "dead heat" on the ranking, the recommendation was based more on the fee and asked

if that threw a curve ball into the whole process. Ms. Houck explained that once the firms were ranked, especially with it being so close and the City's experience with Barbacane, the City could negotiate the price.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**29. 5-E. RECOMMENDATION TO WAIVE BIDDING REQUIREMENT & EXTEND ELECTRIC LINE TREE TRIMMING CONTRACT 06-01 FOR ADDITIONAL YEAR**

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Ms. Houck summarized her memorandum to the City Manager, dated December 3, 2007, wherein she recommended waiving bidding requirements and extending electric line tree trimming Contract 06-01 for an additional year. The contract provided for a fixed hourly rate for labor and equipment to carry out the necessary tree trimming along the electrical distribution lines. Asplundh Tree Expert Company has held this contract for many years and in 2006 they were the only bid received. Ms. Houck believed the reason for that was because Asplundh has a crew and truck designated for trimming around the electric lines and other companies have not been able to providing equipment and employees for just the City. Asplundh has offered to maintain their labor prices as awarded in the 2006 contract. They have requested that the fuel escalator be increased from \$2.20 per gallon to \$3.00 per gallon. Ms Houck recommended that Council waive the requirement to accept bids for these services and extend the conditions of Contract 06-01 while maintaining the labor prices awarded in January of 2006 to the Asplundh Tree Expert Company; and approve the fuel escalator increase from \$2.20 per gallon to \$3.00 per gallon.

Mr. Pomeroy said he has seen some trees "butchered" around electric lines and has received phone calls complaining about how the trees were trimmed. Ms. Houck said any complaints should be given to her office and she would have Tom Zaleski from the Parks Department follow up on the complaint. Mr. Zaleski is a trained arborist and will explain why the tree was trimmed in the manner it was trimmed. Mr. Pomeroy asked if there was anything a resident could do before the tree was trimmed. Ms. Houck said that any resident who has a tree that interfered with the electric lines could call the Electric Department who would follow up with a phone call from Mr. Zaleski. Mr. Athey said he had someone complain to him that they weren't told in advance that the trees were going to be trimmed. Mr. Vitelli advised that residents were advised in advance of the tree trimming with flyers placed at their residence.

MOTION BY MR. OSBORNE, SECONDED BY MR. TUTTLE: THAT COUNCIL WAIVE THE BIDDING REQUIREMENT AND EXTEND CONTRACT 06-01, ELECTRIC LINE TREE TRIMMING, WITH ASPLUNDH TREE EXPERT COMPANY FOR AN ADDITIONAL YEAR AS RECOMMENDED WITH THE FUEL ESCALATOR INCREASE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**30. 5-F. CONTRACT 07-19, PURCHASE OF ONE 2008 SEMI-TRUCK TRACTOR**

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Ms. Houck summarized her memorandum to the City Manager, dated December 5, 2007, wherein she explained that Contract 07-19 provided for the

purchase of one 2008 semi-tractor to replace tractor number 497, which was used to haul refuse to the landfill from the City's transfer station.

Ms. Houck recommended that Contract 07-19, Purchase of one 2008 semi-truck tractor, be awarded to Bayshore Ford Truck Sales, for a final cost, after trade in, of \$94,500.

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT CONTRACT 07-19, PURCHASE OF ONE 2008 SEMI-TRUCK TRACTOR, BE AWARDED TO BAYSHORE FORD TRUCK SALES, INC. FOR A FINAL COST OF \$94,500.

Mr. Osborne asked if it was diesel truck and was told it was.

Mr. Clifton asked what criteria was used to determine replacement of this truck. Ms. Houck explained that at the beginning of the year an evaluation of all vehicles up for consideration of replacement the following year was done. The Maintenance Division did the evaluation and identified the vehicles that needed to be replaced based on the history of the repairs, miles, whether parts were still available, etc. This vehicle was identified for replacement in 2008. Mr. Clifton asked if the City ever considered purchasing through GSA because it has national capability and goes out to bid nationally to companies. Most of the vendors for trucks such as this one weren't just the local vendors. Ms. Houck said she would be glad to look into it, but a lot of the City's contracts require a facility within a certain number of miles of the City.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**31. 5-G. CONTRACT 07-18, PURCHASE OF ONE 2008 25 CUBIC YARD, HIGH COMPACTION REAR LOADER REFUSE TRUCK**

Ms. Houck summarized her memorandum to the City Manager, dated December 5, 2007, wherein she recommended that Contract 07-18 be awarded to Northeast International for a final cost, after trade-in, of \$117,075.

MOTION BY MR. CLIFTON, SECONDED BY MR. OSBORNE: THAT CONTRACT 07-18, PURCHASE OF ONE 2008 25 CUBIC YARD, HIGH COMPACTION REAR LOADER REFUSE TRUCK, BE AWARDED TO NORTHEAST INTERNATIONAL FOR A FINAL COST, AFTER TRADE-IN, OF \$117,075.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

None

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

- A. Request of Blackstone's Restaurant & Pub, Located in the Shoppes at Louviers on Paper Mill Road to Amend Four of the Restrictions Placed on the Original Special Use Permit Dealing with the Use of Shot Glasses, Serving Alcohol Past 10 PM, 11 PM, and 12 Midnight, Allowing Amplified Indoor Music, & By Adding Additional Seats in the Restaurant Bar

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

Greg Pease, owner of Blackstones Restaurant, referred to the letter he wrote to Mayor and Council that detailed his request for relief from some of the rules that were a part of the Special Use Permit that was granted in September of 2006. Specifically, they were as follows:

**1. Bar must not be larger than 14 seats (including high-top tables).**

Mr. Pease explained that the owner of the shopping center originally opposed additional seats at the bar and the high-top tables. Now that he has seen the restaurant, he supports the new request of the owners of Blackstones. They did not intend to increase the number of seats at the bar beyond the City's limit of 15% of the seating capacity. They would also like to remove the language that excluded high top tables.

**2. Music must not be amplified beyond the decibel level normally associated with dinner music. No temporary amplification equipment may be brought into or used within the premises.**

Mr. Pease explained that because of their theme, they wanted to continue to have live music of a traditional nature. A few times they had folks in over the last few months and it was difficult for the singers to be heard over the sounds and din of normal restaurant activities, thereby straining their voices to be heard.

**3. Blackstones must not serve alcohol past 10 pm on Sunday, Monday, Tuesday & Wednesday, Thursday nights past 11:00 pm, and not past midnight on Friday and Saturday evenings.**

Mr. Pease said he was not seeking to be open to 1 am every night, but would like to have the same freedom and privileges as every other restaurant in the state and set their own hours. He stressed that they have been good members of the community and have kept their promises. They have also exceeded the state ratio requirement with food sales at 73% and 27% beverage sales. On Sundays and Mondays they have found it difficult to make good money because people do not want to come in and eat and stay to watch football because they close in the middle of the games. Numerous people have left the restaurant because they want to watch the whole game. With them closing at 10 pm, people miss the second half of the game.

**4. No use of shot glasses for the sale or distribution of alcoholic drinks.**

Mr. Pease said he did not intend to become a shot and drink restaurant, but one which would better be able to accommodate the needs and desires of their patrons. He was not interested in attracting the wrong crowd. Overall, he believed if Council relaxed these restrictions, they would be more inline with the rules and policies that govern the restaurant community as a whole. He reminded Council that if they behaved badly, Council had the right to remove the Special Use Permit that would prohibit their ability to sell alcohol for a period of time. He did not expect that to ever happen as his restaurant was aimed toward the adult community. He concluded by asking Council to vote favorably on his application.

The chair opened the discussion to the public.

Sheila Nagy, 9 Fenwick Ct., would like to see the owners of Blackstones be able to provide for their business and for it to succeed. Because of where her house was located next to the shopping center, she had a lot of concern about the traffic on Paper Mill Road, and she did not like the location of the entrance/exit to the shopping center because of the traffic and noise

generated from the shopping center. She did not support having a restaurant open to 1 am even though she understood patrons wanting to stay throughout an entire football game on Sunday and Monday nights.

Mr. Markham interjected that the restaurant was permitted to stay open to 1 am. Council was dictating the hours of operation for serving alcohol. Mr. Pease added that it was not his intent to be open to 1 am every night in light of the fact that he has a day job as well. Rather, he would like to have the flexibility to sell alcohol up to 1 am for situations such as when a couple comes into the restaurant close to 10 pm and wanted to have dinner with a glass of wine.

Cherie McCoy, 8 Fenwick Court, said that originally she did not support Blackstones opening in the shopping center. Since that time she has patronized their business and have friends who were regular customers. She believed the owners have established a very good business. Her main concern was the location of the shopping center and the noise it generated. Specifically, she had a problem with Dunkin Donuts that opened at 5 am and the owner dumping his trash in the dumpster at that time everyday. Dunkin Donuts also receives deliveries that early in the morning. She would like to see the dumpster moved further down and the early deliveries stopped. She acknowledged that the owner of the shopping center addressed a previous concern with the shrubbery along the hill between the shopping center and her property.

Ms. McCoy also did not like the fact that people drove in the back of the shopping center, generating more noise that disturbed her on a daily basis and much of the time in the middle of the night. Although she was aware of the shopping center's location when she bought her house, she would like a good quality of life to enjoy her home. Ms. McCoy will continue to support Blackstones, but would like some relief from the constant noise from the shopping center that disturbed her quality of life.

Mr. Lopata added that when the Woods at Louviers was approved, staff did not support the shopping center because of previous experience with the 896 Shoppes on S. College Avenue. The original plan had the shopping center in the middle of the development and eventually that was moved to the north end, but staff continued to have tremendous reservations about it. This development was considered "neo-traditional" planning—the theory that you put the shopping near the homes and people would walk to the shops. Although it was a nice theory, it did not work in reality. He reminded Council that everybody goes through the buyer information process and they see the location of the shopping center, but evidently fall in love with their house. From a land use standpoint, Mr. Lopata thought it did not work and will do everything possible to make sure it doesn't happen again.

Mr. Markham asked that a phone call be made to Mr. Rammuno about traffic patterns around the back of the shopping center and about Dunkin Donuts dumping trash at 5 am. Mr. Lopata said there have been previous complaints and typically the Building Department has dealt with Mr. Rammuno and would do that again.

Jean White, 103 Radcliffe Drive, pointed out that a municipality had the right to limit the time of alcohol sales and there were a number of examples of that in Newark such as Santa Fe Grill, La Tolteca, and by Code (because of their location) can't sell alcohol after midnight such as Ali Baba and Caffè Gelato.

Ms. White commented on the concern that a customer at Blackstones' could not watch the second half of a football game. She pointed out they could watch the football game, but they would not be able to buy more liquor after 10 pm. Ms. White was concerned that the success of the restaurant would depend on whether or not it had shot glasses. She suggested that staff be asked to research whether special use permits for alcohol establishments and daycare homes could be given just to the applicant and not run with the land.

Patrick Hart, 257 W. Main Street, pointed out that Cpt. Potts in a memorandum to Chief Tiernan dated November 15, 2007, stated “if this request is granted, the relaxed restriction would then apply to any subsequent business on the site, whether the community finds the business desirable or not.” He also pointed out that the original Special Use Permit was granted September 25, 2006 and now just over a year, they were asking to lift restrictions. He thought that was a repetitive event—people got things approved and while the ink was hardly dry they were asking for variances to improve the viability of their business. He thought they should stick with their business plan a little longer than a one year and two months.

Frances Hart, 257 W. Main Street, stated that these type of requests have to stop or all of the restaurants in Newark would become bars. She also referred to Cpt. Potts memorandum where he claimed Blackstones’ website featured alcohol as opposed to food.

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

Mr. Markham reminded Ms. White that Council could take away a Special Use Permit. He thought Blackstones was a good neighbor and was sorry about the problems with the Shoppes at Louviers in general. He did not support the request for shot glasses. He could support allowing alcohol sales until midnight, and he would support allowing them to stay open to 1 am for special occasions such as New Year’s Eve and/or other special holidays. He had no problem with allowing high top tables and increasing the number of seats at the bar by three. With regard to the music request, he asked what would be done to make sure the music was not heard outside of the establishment.

Mr. Pease said when he proposed the self-imposed restrictions he thought once they established themselves they could relax them. He would like to have the flexibility to stay open later for special occasions. Mr. Markham asked if there were any police calls to Blackstones and Mr. Pease said not to his knowledge.

Mr. Athey wanted to be sure he understood correctly if Blackstones would close, that the Council could rescind the Special Use Permit if a less desired client came forth. Mr. Akin said that was correct because in his opinion the Special Use Permit did not run with the land because it was freely revocable by Council if they deemed one or more of the conditions in the Code were being violated. Mr. Lopata interjected that the Special Use Permit did not run with the land for alcohol but all other Special Use Permits run with the land. A Special Use Permit for alcohol could be revoked at any time.

Mr. Markham asked if Council felt Blackstones was not following the spirit of this discussion, could they be required to go back to Council and the restrictions be changed. Mr. Akin felt under the terms of the Special Use Permit ordinance that at any time Council deemed the primary criteria for the permit were being violated by the holder of the permit, then the permit could be suspended for up to one year depending on the seriousness of the violations.

Mr. Athey said he was not a fan of people coming back to Council asking for changes after getting approval. However, that being said, he did not have a problem with increasing the size of the bar. With regard to the music, he asked if Blackstones had an amplification system and was told they had a speaker system that was not compatible with a microphone system. If Council approved this change, musicians would bring their own amplification. Mr. Athey had no problem with temporary amplification so long as you could not hear the music outside. Mr. Pease pointed out that there were regulations regarding noise that he would certainly follow. Mr. Funk said the important thing was that the noise not be heard outside of the building. Mr. Athey thought they could require that it not be audible at the property line.

With regard to hours of operation to sell alcohol, Mr. Athey thought Mr. Pease was contradicting himself when he said he was not seeking to stay open every night to 1 am, but wanted the flexibility to do so. Mr. Pease assured Council he did not intend to stay open until 1 am every night and wanted the flexibility for special events. Mr. Athey said he would not support 1 am, but would support altering the times. He would not support the shot glasses.

Mr. Clifton did not think it was Council's job to hinder responsible businesses in the neighborhood. However, he had some problems with the requested changes. He reminded Mr. Pease of conversations they had when he claimed he didn't want to become a bar. Mr. Pease told him in 2006 that he was very comfortable with the parameters that were set. Mr. Pease agreed that was what he said. Mr. Clifton liked the restaurant because of the clientele it drew as well as the establishment itself. He felt the parameters that were put in place with the Special Use Permit stopped the business from becoming a bar. Mr. Pease added that many of the things he agreed to were things that he and the landowner agreed to because Mr. Rammuno did not want a bar in the shopping center.

Mr. Clifton reiterated that he was concerned about the noise that would be generated from the music and it would be heard every time the door opened. He was convinced if they allowed more seats at the bar and permitted shot glasses, the restaurant was on its way to becoming a bar. He could not support the changes requested.

Mr. Pomeroy urged the residents from the Woods at Louviers to work with their Councilman to arrange a meeting with the owner of the shopping center to work out items not related to this request that need to be addressed. Mr. Pomeroy viewed what was happening as the pitfall of government opening up a restaurant. He found it odd that a governmental body was talking about what kind of glasses were allowed or what time the restaurant could be opened. He was bothered that Council was making judgment calls on things that were not in their professional purview to know. He really did not know when they should be open, what they should serve, or what size the barstools should be. He thought that Blackstones has proven to be a good establishment. On the other hand he understood Mr. Clifton's concern with it turning into a bar, but he did not see that happening with Blackstones.

Mr. Pomeroy believed that a patron who leaves Blackstones at 10 pm, would opt to go somewhere else or they would opt not to go to Blackstones in the first place. That made him support, in general, the direction they now wanted to go. His concern was not what Blackstones was now but what the restaurant could become if Blackstones left. He asked if Blackstones left, and Hooters wanted to move in, could Council say no to a Special Use Permit. Mr. Lopata said when the Zoning Code was changed a few years ago, the Special Use Permit process for restaurants selling alcohol was changed so that any new restaurant would need a permit. In this case, if Blackstones sold their business to another operator, another Special Use Permit would not be needed, but if problems were reported regarding the new business, Council could revoke the permit for up to one year.

Mr. Pomeroy asked if a new restaurant came in, and after a week the City did not like the general tone they saw, would it be within the City's legal right to alter the Special Use Permit to say alcohol could only be served until 7 pm. Mr. Akin believed the City could impose different conditions with regard to alcohol use, or if the new owner was totally ignoring the terms agreed to, the Council could revoke the Special Use Permit for up to one year. Mr. Lopata added that there was a procedure in Section 32-56 that Council would follow.

Mr. Pomeroy thought it would be easier dealing with these kinds of Special Use Permits if they did not transfer from one business to another business. He also shared the concern raised by Dr. Hart about businesses getting approval

and coming back for additional privileges. He said it goes back to the absurdity of the City trying to dictate on the front end so it would almost be better on the front end for the City to acknowledge it as a restaurant and restaurants stayed open to 1 am rather than getting into a game where Council was arbitrarily setting timelines and then shortly thereafter changing the rules midstream. This happened several times before with other businesses, so he thought it would be better for an applicant with a restaurant to say they want to stay open to 1 am rather than agreeing to special rules.

Regarding the music and shot glasses, Mr. Pomeroy thought they could be real issues. He had no real problem with the time, but if others thought it was a real issue, they should negotiate that and give them something consistent to work out, i.e., midnight, as opposed to 10 pm one night, 11 pm another night, etc. He had no problem with the number of seats at the bar.

Mr. Osborne thought things were becoming verbose over things that were not that important. His concern was the fact that they made an agreement just a year ago and now the applicant was asking to change that. He thought some flexibility would be acceptable under certain conditions, such as during football games. As for the noise in the community, he had sympathy for the people who lived in the area but viewed it as a separate issue. He thought he would vote against the request in principal.

Mr. Tuttle said he was not on Council when this was originally approved, but was in the audience and heard the deliberations when the Special Use Permit was granted. Mr. Tuttle asked if the restaurant actually closed in the middle of a football game or did they just not sell patrons alcohol after 10 pm. Mr. Pease said he did both, but most people want to have a beer while they watched a football game. Mr. Tuttle noted that Blackstones' website indicated that during football games on Sundays and Mondays they extended their Happy Hour through the post game wrap up. Mr. Pease said they offer \$5.00 appetizer specials until 10 pm. and offer reduced priced alcohol until 10 pm. Mr. Pease was advised that all Happy Hours must end at 9 pm.

Mr. Tuttle said he had no particular issue with the high-top tables. He noted that his experience working on the alcohol culture issues in Newark when he was in Public Safety at the University led to some of the restrictions the City had put in place on new alcohol businesses. He could not support the shot glasses. He believed if Mr. Pease came back with a more finely tailored request—high-top tables, closing at midnight and amplification for the performers that was clearly defined, he could support the request.

Mr. Pease was asked if he wanted to withdraw his request or agree to have it tabled to give him time to review the comments that have been made. Mr. Pease had no problem with his request being tabled.

Mr. Pomeroy asked if there was any way to keep this from getting tabled. He felt there was agreement with the bar area, that no noise should be audible outside of the building, no shot glasses, and perhaps midnight might be a compromise.

Mr. Clifton preferred that it to be tabled because he did not think they were close to agreeing to modifications. He was convinced the music would be a problem every time the door opened. He also believed a critical issue was Council being able to control the hours of operation and keeping the restaurant from becoming a bar. He reiterated that Mr. Pease set the parameters the first time around and now he wanted to become something different. Mr. Pease disagreed that he did not want to become something different and thought everyone who has been to his restaurant was pleased with what they saw and surprised. He thought he was not have been articulate when he first explained his proposal in 2006. Mr. Clifton assured him that he was trying to make sure the restaurant did not become a bar.

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THE REQUEST TO MODIFY THE SPECIAL USE PERMIT BE TABLED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

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

A. Council Members:

1. Appointment of City Secretary/Treasurer, Effective March 8, 2008 & Setting Salary

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT PATRICIA FOGG BE APPOINTED CITY SECRETARY/TREASURER, EFFECTIVE MARCH 8, 2008, AT A BASE SALARY OF \$65,000.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**36. 9-B. COMMITTEES, BOARDS & COMMISSIONS:**

1. Appointment to Property Maintenance Appeals Board

MOTION BY MR. POMEROY, SECONDED BY MR. OSBORNE: THAT O. EUGENE TRIVITTS BE REAPPOINTED TO THE PROPERTY MAINTENANCE APPEALS BOARD FOR ANOTHER FIVE-YEAR TERM; SAID TERM TO EXPIRE DECEMBER 13, 2012.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**37. 9-C. OTHERS: None**

**38. 10. SPECIAL DEPARTMENTAL REPORTS:**

A. Special Reports from Manager & Staff: None

**39. 10-B. ALDERMAN'S REPORT**

MOTION BY MR. OSBORNE, SECONDED BY MR. ATHEY: THAT THE ALDERMAN'S REPORT DATED DECEMBER 5, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**40. Meeting adjourned at 10:08 pm.**

Susan A. Lamblack, MMC  
City Secretary

/pmf

