

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

January 28, 2008

Those present at 7:30 pm:

Presiding: Vance A. Funk, Mayor
District 1, Paul J. Pomeroy
District 3, Doug Tuttle
District 4, David J. Athey
District 5, Frank J. Osborne
District 6, A. Stuart Markham

Absent: District 2, Jerry Clifton

Staff Members: City Manager Carl F. Luft
City Secretary Susan A. Lamblack
Assistant to the City Manager Carol S. Houck
Planning Director Roy H. Lopata
Water & Waste Water Director Roy A. Simonson
Finance Director Dennis McFarland
Chief of Police Paul Tiernan

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

2. MOTION BY MR. OSBORNE, SECONDED BY MR. ATHEY: THAT THE AGENDA BE AMENDED BY ADDING THE FOLLOWING NEW ITEMS: 4-A, BLACKSTONE'S RESTAURANT'S SPECIAL USE PERMIT AMENDMENTS; 9-A-1, RESOLUTION NO. 08-__: FINAL APPROVAL OF THE DEVELOPMENT KNOWN AS YORKSHIRE WOODS, SECTION II, ACCEPTANCE OF STREETS AND OPEN SPACE, INCORPORATING THE STREETS AND OPEN SPACE ON TO THE OFFICIAL MAP OF THE CITY, AND RELEASE OF THE SURETY BOND; 9-B-1, APPOINTMENTS (2) TO DNP PARKING COMMITTEE; 9-B-3, APPOINTMENT TO DOWNTOWN NEWARK PARTNERSHIP; 9-B-4, PLANNING COMMISSION MINUTES 1/8/08; AND 10-A-2, PENSION PLAN PERFORMANCE REPORT 2007 & 4TH QUARTER 2007.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

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

A. Regular Council Meeting of January 14, 2008

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

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

A. Public

There were no comments forthcoming.

5. **3-B. UNIVERSITY**

1. Administration

There were no comments forthcoming.

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

There were no comments forthcoming.

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

Mr. Tuttle noted that the new position, Community Affairs Officer, in the City Manager's Office was posted, and he hoped aggressive recruiting was being done to get a good pool of candidates.

8. Messrs. Osborne and Markham advised they spoke with Mr. Clifton who was doing well after his recent surgery.

9. Mr. Pomeroy complimented Restaurant Week and thought it brought a lot of energy to downtown. He also noted that he saw many people take the opportunity to visit the temporary office of the Historical Society's office, located on Main Street, during Restaurant Week.

10. Mr. Funk advised that the 250th Anniversary history book on Newark was selling very well and less than 40 books were still available.

11. Mr. Athey referred to a recent article in *The Newark Post* regarding the mentoring program that City employees have volunteered to participate in. The article included a photograph of Roy Simonson during his mentoring at McVey Elementary School.

12. Mr. Athey thanked Mr. Simonson for his help with the discoloration of a water problem in certain areas of District 4.

13. Mr. Athey referred to a recent article in the newspaper regarding programs recommended for funding by WILMAPCO, and said he was pleased that the Pomeroy Trail was a prominent project and moving forward.

14. Mr. Athey advised that he attended the January Delaware League meeting where George Wright presented the legislative agenda. There were a lot of interesting things that Mr. Athey assumed City lobbyist, Bob Maxwell, would be keeping the City well informed of as the bills moved through the General Assembly.

15. Mr. Markham complimented Restaurant Week and the fact that there was much better advertising done this year – more ads, a billboard on Rt. 273, and free radio ads that were shared with NuCar ads.

16. Mr. Markham commented that alarm companies were sending notices to their customers advising them they were required to register their systems with New Castle County. He thought it was important that Newark residents be made aware that they did not have to register with the County if they had registered with the City.

17. Mr. Markham supported the Conservation Advisory Commission's recommendation that the City move forward with recycling. He asked that special attention be given to town homes that may have a problem with storing carts, similar to the situation that occurred in Jenny's Run with the City's new trashcans. He would like to see some flexibility and suggested consideration could be given to residents sharing the carts, which might make it easier to store them.

18. 4. ITEMS NOT FINISHED AT PREVIOUS MEETING:

- A. Blackstone's Restaurant's Special Use Permit Amendments
(TABLED 12/10/07)

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THIS ITEM BE LIFTED FROM THE TABLE.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Mr. Markham advised that he discussed with the petitioner the different issues Council raised at their December meeting in regard to amending the conditions on the Special Use Permit for Blackstones. They were now proposing the following amendments:

- The bar shall be limited in size, in terms of seats, to no more than 15% of the total number of seats in the restaurant. That would result in a maximum of 17 seats at the bar.
- Live electronically amplified entertainment would be limited to a maximum of two performers using a single electronically amplified system. Such live electronically amplified entertainment shall conform to all the applicable standards and specifications of Chapter 20A, Noise.
- Alcoholic beverage sales closing time shall be 12:00 midnight.

Mr. Markham noted that the shot glass restriction would remain in place.

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

Mr. Athey was originally a little uncomfortable with the midnight closing time and asked Mr. Markham if he addressed that with the neighbors. Mr. Markham advised that he talked to the closest neighbor (Sheila Nagy who spoke at the last meeting) and she did not object to the midnight restriction. He also pointed out that Bank of America, located across the street, did shift work and extending the hours to midnight opened up the opportunity for the restaurant to serve those ready for a meal late in the evening at the end of their shift.

Mr. Pomeroy asked if the applicant was comfortable with the proposal, and Greg Pease, owner of Blackstones, answered yes.

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THE SPECIAL USE PERMIT FOR THE BLACKSTONE'S RESTAURANT BE AMENDED AS PROPOSED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

19. 5. RECOMMENDATIONS ON CONTRACTS & BIDS:

- A. Recommendation on Phase II Services as Associated with RFP No. 06-05, Engineering services for the Development of Repair Alternatives for Two Sanitary Sewer Creek Crossings

Ms. Houck summarized her memorandum to the City Manager, dated January 18, 2008, wherein she reminded Council that in November of 2006, they approved entering into an agreement with Whitman, Requardt & Associates (WRA) for Phase I services outlined in RFP No. 06-05 for the sanitary sewer

creek crossing They performed the Phase I work well and without any change orders.

In June of 2007, WRA provided a report detailing four alternatives to repairing the misaligned sanitary sewer lines over the creek. It was determined that Alternatives 2 and 4 would be in the best interest of the project and the environment, as they would result in fewer permits and limited disturbance to the creek. The original RFP noted that the same engineering firm could do the continuation of Phase II. The Water Department has been very satisfied with the level of effort and responsiveness of the WRA team and asked them to submit a cost estimate for Phase II. An estimate not to exceed \$71,775 was submitted.

Ms. Houck also noted that the City requested under the Scope of Services, to have WRA work on the City's behalf to obtain a Federal Emergency Management Agency Hazardous Mitigation grant for the completion of this project. The funds sought would total an estimated construction cost of \$1,100,000. WRA's estimated fee for that effort would be \$5,214. A determination regarding WRA's involvement would be made at a later date.

Ms. Houck recommended that Council extend Phase II design services to WRA for its continued work on this project including development of the preliminary design alternative at the cost of \$71,775.

MOTION BY MR. OSBORNE, SECONDED BY MR. TUTTLE: THAT COUNCIL EXTEND PHASE II DESIGN SERVICES TO WHITMAN, REQUARDT & ASSOCIATES FOR ITS CONTINUED WORK ON THIS PROJECT INCLUDING DEVELOPMENT OF THE PRELIMINARY DESIGN ALTERNATIVE AT A COST OF \$71,775.

Mr. Markham questioned if this was the first time the City, as part of the proposal, had the engineering group go out and find additional grant money. Ms. Houck answered that the City usually did it internally, and she could not remember any engineering firm assisting the City with FEMA grants. Mr. Markham liked the fact that WRA was assisting because they were skilled at finding the money. Mr. Tuttle thought this would be a good return on the City's investment, assuming we were able to get the grant.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

20. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING:

None

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

- A. Request of Ryan German for a Special Use Permit for Caffè Gelato, Located at 90 E. Main Street, In Order to Extend the Closing Time for the Sale of Alcoholic Beverages from Midnight to 1:00 am.

MOTION BY MR. POMEROY, SECONDED BY MR. ATHEY: THAT THE SPECIAL USE PERMIT FOR CAFFÈ GELATO BE AMENDED TO EXTEND THE CLOSING TIME FOR THE SALE OF ALCOHOLIC BEVERAGES FROM MIDNIGHT TO 1:00 AM.

Ryan German, 101 Tyre Avenue, owner of Caffè Gelato, said he would be happy to answer questions regarding his proposal to amend the special use permit at his restaurant.

Mr. Markham asked if the request was for the sale of wine only. Mr. German answered no and advised he had a full liquor license. He always offered after dinner drinks, cognacs, liqueurs, dessert wine, fortified wine, port wine, and would now include mixed drinks. He said that the focus of the restaurant was food and his food ratio was 90%. Mr. Athey pointed out that Mr. German's letter to Council referred to only wine. Mr. German acknowledged that and said the focus was food and most people ordered wine.

The chair opened the discussion to the public.

Jean White, 103 Radcliffe Drive, asked Mr. German if a wine service counter was where the wait staff got the drinks to take to the tables or was it a place where the customer went to get a drink.

Mr. German said it was similar to a service bar that would include a system that extracted the air from the bottles so the wine doesn't go bad after it was opened. In the industry, a wine service counter was defined as where wait staff would serve. Ms. White questioned if a wait staff would be behind the counter. Mr. German said his plan was to accommodate his customers in the best fashion as possible. All of his guests eat seated at a table so most of the wine would be served to those seated at a table. The server would get the wine from the wine cellar and present it at the table. Ms. White asked if that would also be true for drinks other than wine. Mr. German responded by saying when folks were waiting for a table, they could order before they sat down to eat.

Ms. White asked if there were any future plans to request a variance to permit a bar. Mr. German thought eventually he would like to ask for a variance to have seats at the bar Ms. White was referring to. He emphasized that he has been open since April 2000 and the business has gotten measurably better each quarter. In the past three years he realized he did not have enough space in the front of the restaurant especially for guests who came in and did not have a reservation. The area was uncomfortable for people to wait. With the expansion, he hoped to accommodate his guests a little bit better. He will now have a space for families with small children to sit and eat gelato and not feel they were intruding upon guests that were also dining. Currently he had tables with white tablecloths close to the front door that would be removed and replaced with tables to eat gelato. Beyond that area would be the new wine cellar and new service counter.

Mr. German also related that Newark High School's booster club always went out to dinner after a football game at the Crab Trap, which has been torn down. He would like to accommodate those folks at his restaurant (12-13 Fridays of the year) and with the football games over at 10:00 or 10:30, extending his closing time until 1 a.m. would allow him to cater to that group of people.

Ms. White felt that Caffè Gelato was an asset to the City and noted that she originally opposed allowing restaurants that sold alcohol within a certain distance of protected uses. Now that Council has addressed that situation with the special use permit, she felt Mr. German has proven for seven years that he had a responsible business and therefore should receive Council's approval. When future restaurants come before Council with the same request, she hoped they would also have a good track record of operating responsibly. That being said, she was disappointed there were plans in the future to apply for a variance to allow a bar at this location especially because many people use Caffè Gelato as a good example of a restaurant that operates responsibly without a bar.

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

Mr. Pomeroy felt the City was very fortunate to have Caffè Gelato, and in a lot of ways thought it was the cornerstone for the renaissance of what has happened on Main Street. He believed it went beyond the scope of reason to think at some point Caffè Gelato would turn into a bar. Given the way the restaurant operated, he thought the request was reasonable and had no problem supporting it.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

22. 8. ORDINANCE FOR FIRST READING:

A. Bill 08-01 – An Ordinance Amending Ch. 27, Subdivisions, By Clarifying the Time Limits for the Completion of Construction Improvements & the City’s Authority to Utilize the Developer’s Bond for Said Completion

Ms. Lamblack read Bill 08-01 by title only.

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT THIS BE THE FIRST READING OF BILL 08-01.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

(2ND READING 2/25/08)

23. 8-B. BILL 08-02 – AN ORDINANCE AMENDING CH. 32, ZONING, BY ESTABLISHING A LEED (LEADERSHIP IN ENERGY & ENVIRONMENTAL DESIGN) ENERGY CONSERVATION PROGRAM FOR THE CITY OF NEWARK

Ms. Lamblack read Bill 08-02 by title only.

MOTION BY MR. POMEROY, SECONDED BY MR. OSBORNE: THAT THIS BE THE FIRST READING OF BILL 08-02.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

(2ND READING 2/25/08)

24. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:

A. Council Members:
1. Resolution No. 08-___: Final Approval of the Development Known as Yorkshire Woods, Section II, Acceptance of Streets & Open Space, Incorporating the Streets & Open Space on the Official Map of the City, & Release of the Surety Bond

MOTION BY MR. OSBORNE, SECONDED BY MR. POMEROY: THAT THE RESOLUTION BE APPROVED AS SUBMITTED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

(RESOLUTION 08-C)

Mr. Osborne questioned if there was a resolution with the radio antenna problem in Yorkshire Woods. Mr. Funk advised that it was ruled illegal by the FCC. Mr. Sciulli advised that the FCC issued a letter to the resident for not having the correct licenses, but that was a separate issue from whether the structure was legal. Mr. Sciulli said it was legal and permanent and did not violate any of the City's building or zoning codes. Mr. Osborne asked if the signal interfered with any residents in the area, and Mr. Sciulli thought it had interfered with at least one person who contacted Mr. Clifton in August. That complaint prompted a complaint to the FCC because interference was their jurisdiction.

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

1. Resignation & Appointments (2) to DNP Parking Committee

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THE RESIGNATION OF JOSEPH VANHORN BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

MOTION BY MR. OSBORNE, SECONDED BY MR. TUTTLE: THAT SUE POLEY FROM THE NEWARK POLICE DEPARTMENT BE APPOINTED TO THE NEWARK DOWNTOWN PARTNERSHIP PARKING COMMITTEE.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

The second appointment to the Parking Committee was held over to a future meeting.

26. 9-B-2. RESIGNATION & APPOINTMENT TO PLANNING COMMISSION (DISTRICT 4)

MOTION BY MR. ATHEY, SECONDED BY MR. POMEROY: THAT THE RESIGNATION OF CHRIS HAMILTON BE RECEIVED; AND THAT KATHERINE SHEEDY, 356 S. COLLEGE AVENUE, BE APPOINTED TO THE CONSERVATION ADVISORY COMMISSION TO FILL THE UNEXPIRED TERM; SAID TERM TO EXPIRE SEPTEMBER 15, 2009.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

27. 9-B-3. APPOINTMENT TO DOWNTOWN NEWARK PARTNERSHIP

MOTION BY MR. POMEROY, SECONDED BY MR. ATHEY: THAT TERRY FOREMAN BE APPOINTED TO FILL A VACANCY ON THE DOWNTOWN NEWARK PARTNERSHIP; SAID TERM TO EXPIRE JULY 27, 2008.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

28. 9-B-4. PLANNING COMMISSION MINUTES JANUARY 8, 2008

MOTION BY MR. ATHEY, SECONDED BY MR. TUTTLE: THAT THE PLANNING COMMISSION MINUTES OF JANUARY 8, 2008 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

29. 9-C. OTHERS: None

30. 10. SPECIAL DEPARTMENTAL REPORTS:

A. Special Reports from Manager & Staff:

1. Real Estate Tax Assessment Quarterly Supplemental Roll

MOTION BY MR. MARKHAM, SECONDED BY MR. ATHEY: THAT THE REAL ESTATE TAX ASSESSMENT QUARTERLY SUPPLEMENTAL ROLL BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

31. 10A-2. PENSION PLAN PERFORMANCE REPORT 2007 & 4TH QUARTER 2007

Mr. Pomeroy questioned at what point should they do something proactively regarding the funding status of the plan being 78.26%, a much less figure than the desirable range of 90% to 110%.

Mr. McFarland reminded Council that this number was calculated once a year and last calculated about six months ago before the market declined. He claimed the funding status has been around 80% for the last couple of years and the point of his memo was to keep it “in front” of Council as an issue. When this was discussed previously, he reminded them that they discussed the different things that could be done to affect that ratio. At the present time, staff was working on a revised asset allocation that would hopefully help that ratio. Other action that could be taken included increasing contributions which would have to come from either the City or the employees and that would have to be negotiated through union contracts. Another option would be to adjust the benefits, and that would also have to be negotiated through union contracts.

MOTION BY MR. TUTTLE, SECONDED BY MR. ATHEY: THAT THE PENSION PLAN PERFORMANCE REPORT 2007 & 4TH QUARTER 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

32. 10-B. ALDERMAN'S REPORT

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT THE ALDERMAN'S REPORT DATED JANUARY 17, 2008 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

33. Meeting adjourned at 8:10 pm.

Susan A. Lamblack, MMC
City Secretary

/pmf