

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**February 25, 2008**

Those present at 7:30 pm:

Presiding: Vance A. Funk, Mayor  
District 1, Paul J. Pomeroy  
District 2, Jerry Clifton  
District 3, Doug Tuttle  
District 4, David J. Athey  
District 5, Frank J. Osborne  
District 6, A. Stuart Markham

Staff Members: City Manager Carl F. Luft  
City Secretary Susan A. Lamblack  
City Solicitor Roger A. Akin  
Assistant to the City Manager Carol S. Houck  
Planning Director Roy H. Lopata  
Public Works Director Richard Lapointe  
Electric Director Rick Vitelli  
Parks & Recreation Director Charlie Emerson  
Building Director Thomas Sciulli  
Water & Wastewater Director Roy Simonson  
Finance Director Dennis McFarland  
Assistant Planning Director Maureen Feeney Roser

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

2. MOTION BY MR. CLIFTON, SECONDED BY MR. POMEROY: THAT ITEM 9-A-1 BE HEARD AS ITEM 1-A AND THAT ITEM 7-A BE HEARD AS ITEM 5-C.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

3. **1-A (9-A-1) RESOLUTION NO. 08- RETIREMENT OF SUSAN A. LAMBLACK, MMC, CITY SECRETARY/CITY TREASURER**

Mr. Clifton recognized Susan Lamblack, who will be retiring on March 7, 2008, after more than 40 years of service to the City of Newark. He recognized, among other things, her institutional knowledge and her ability to handle things which will be missed by everyone.

Mr. Clifton read the resolution which was endorsed unanimously by Council.

**(RESOLUTION 08-D)**

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

A. Special Council Meeting of February 11, 2008

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

5. **2-B. REGULAR COUNCIL MEETING OF FEBRUARY 11, 2008**

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

Rick Armitage advised, as part of the University's strategic planning process, they have hired a consulting firm to look at the strategic strengths and weaknesses of the University, including its impact in the City of Newark and the surrounding community. A Town Hall meeting was planned for March 11<sup>th</sup> at 5:30 pm in Room 115 Purnell Hall. Additional advertising will be done by the University regarding that meeting.

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

There were no comments forthcoming.

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

Mr. Osborne recognized the recent death of Elmer Saxton, a well-known Newark citizen who was very active in various veterans' organizations. Mr. Saxton was very instrumental in the Newark Memorial Day Parade, was faithful in putting flags at gravesites on Memorial Day, and was always willing to help people in need of food, clothing, and anything else that was needed. Mr. Funk added that he recently named Mr. Saxton "Honorary Mayor of the Day."

10. Mr. Pomeroy advised that the Greater Newark Network made its report public which included several recommendations that involved the City of Newark and City Council, two of which focused on the Comprehensive Development Plan, specifically, creating an opportunity site of Chrysler. There was also a recommendation about the permitting process, changing the name of the Planning Department to the Office of Planning and Development, traffic issues, and getting the DNP more actively involved with the Greater Newark Network. With regard to the Comprehensive Development Plan, they would like to see parkland in the City zoned as parkland rather than various zoning codes. He believed the City would be stepping forward to create a special designation for parkland.

11. Mr. Pomeroy noted the passing of Laird Stabler, a great public servant for the State of Delaware, and recognized Newark resident Joe Hogan who recently returned home safely from a tour in Iraq.

12. Mr. Athey hoped the "You Don't Need It" program would continue again this year because it was a successful and beneficial program. Mr. Funk was confident the program would continue, but the question was where to hold it this year. The City was able to reduce the tonnage that went to Pigeon Point in 2007 by at least 40%. Several nonprofit agencies also benefited from the program.

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

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

A. Contract 07-20, Modifications to a 138,000, 34,500 Volt Substation

Ms. Houck summarized her memorandum to the City Manager, dated February 14, 2008, wherein she explained that this contract provided for the

hiring of a qualified electrical construction contractor to perform the upgrade to the Kershaw substation. Two bids were received and the Tri-M Group, LLC, bid, which met contract specifications, for a base bid of \$607,525, was recommended.

Mr. Funk asked if the contractor was used before to which Mr. Vitale advised they were used to do some line work about 20 years ago.

MOTION BY MR. TUTTLE, SECONDED BY MR. ATHEY: THAT CONTRACT 07-20 BE AWARDED TO THE TRI-M GROUP FOR ITS BASE BID OF \$607,525.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**15. 5-B. RECOMMENDATION TO WAIVE THE BID PROCESS FOR SEWER LINE CHEMICAL ROOT CONTROL MAINTENANCE SERVICES BASED ON NEW CASTLE COUNTY CONTRACT NO. 07A-069**

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Ms. Houck summarized her memorandum to the City Manager, dated February 15, 2008, wherein she explained that Dukes Root Control extended its pricing and services through the end of 2008 in accordance with its original 2006 response to New Castle County. Per Code, the City was allowed to piggy-back off of the County contract. Dukes Root Control, Inc., agreed to provide the City the same service and pricing for this year. The City has identified about 19,500 feet of sewer lines that needed root control maintenance at an anticipated cost of \$32,000. Ms. Houck recommended waiving the bid process and award the contract to Dukes Root Control, Inc.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT COUNCIL WAIVE THE BID PROCESS AND HIRE THE SERVICES OF DUKES ROOT CONTROL, INC. AT AN ESTIMATED COST OF \$32,000.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**16. (5-C). 7. RECOMMENDATIONS FROM THE PLANNING COMMISSION/DEPT.**

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- A. Request of Aston Development Group, Inc. for the Major Subdivision of the 120.391 Acre Newark Country Club at 300 West Main Street, in Order to Construct a 270-Unit Single-Family Detached Home Development to be Known as Country Club Estates

Wendi Stabler, Esquire, hired by Council to serve as special counsel with regard to this application, thanked Council for the privilege to work with Council on this project. She assured everyone that Council was working hard for their constituency to try and address all concerns with respect to such a major application.

Ms. Stabler noted that the property has been zoned RS (a residential single-family zoning) since 1949. The proposal was for an approximately 270-unit subdivision, which received a recommendation for approval from the Planning Commission with conditions. The Council asked Ms. Stabler whether, under Delaware Law, they had the authority to 1) deny the application or 2)

approve the application with conditions, and to what extent may they impose those conditions.

Ms. Stabler said, without going into great detail, that she advised Council that there was Delaware case law in this area that jurisdictions like the City of Newark were reviewing. Subdivision applications presented to cities in accordance with their zoning that have met the technical requirements under the Zoning Code, could not be denied based upon general safety, health, and welfare reasons, notwithstanding general language to that effect within zoning codes throughout the state. The reasons the courts have stated so was because they felt people who own property have a right to rely upon that zoning classification and to be assured if they met all of the technical requirements, that they can receive approval for their application.

Ms. Stabler continued by saying that Mr. Lopata and his staff have spent many hours reviewing this application in an effort to determine whether it met the technical requirements of the Code, and it was her understanding the application has met those requirements.

Ms. Stabler added that she had thorough discussions with Council and discussed many issues including everything from environmental issues to stormwater, to traffic, to offsite traffic measures, and she advised them that although there was not extensive Delaware law in this area, many jurisdictions have found that councils in these circumstances (although they may not explicatively expressly deny something outright) had significant authority to impose conditions consistent with their regulations that would protect the public. Therefore, a lot of time was spent working through those conditions in an effort to put them into an agreement that would bind the developer, run with the land, and assure that a lot of those issues were addressed. That was based on Delaware case law and the fact that Council was in a quasi-judicial ministerial function and there was authority in these circumstances, based upon the zoning and technical compliance, assumptions were fairly limited.

A case law in Kent County was recently reported in *The News Journal* that involved a Superior Court case (Ashburn case), which has been appealed to the Supreme Court. The judge ruled that even though the developer met the classification, the application was consistent with the classification, and it met the technical requirements of the code, he believed in this case that the Kent County Commission was authorized, and it was not arbitrarily capricious for them, to deny the application. She assured the public that she fully explored that decision and talked about it with Council. Those who have followed this law for many years could probably argue that that decision might have been an aberration and were interested to see what the Supreme Court does with that case on appeal. Others will also say that regardless, there were a couple of factors in that case which the judge relied upon in order to reach his decision, and the things the judge relied upon were not things that applied in the City of Newark. The major thing was that the property in question was outside of the state's growth zone, was zoned an agricultural classification (even though it allowed residential development), and there was no infrastructure.

Ms. Stabler pointed out that the City of Newark was an incorporated municipality that had infrastructure. It was the state policy to try to direct development in the City, and Newark needed to consider whether it would fall into the same classification if a Court were to consider that case and consider whether it felt it could reach a decision that there was infrastructure in the City or that there were no conditions being imposed that would address that.

Shawn Tucker, attorney for the developer introduced the consulting team for the project: the developer, Aston Development Group, Inc., William Stritzinger; legal counsel, Shawn Tucker; Land Planner, Parley Hess, Jr. from McBride & Ziegler; Landscape Architect and Planner, Gary Burcham from Burcham & Associates; Environmental Consult, James C. McCulley, IV, from

JCM Environmental; and Traffic Consultant, Susan Best, PE, from Urban Engineers, Inc.

Mr. Tucker presented a power point on the proposed Country Club Estates development which began with a satellite image of the site. The acreage of the property was 120+ acres, currently zoned RS. The water and sewer supply would be public. The minimum lot size would be 9,000 sq.ft. as required by the Code. Under the comprehensive development plan for the City, the maximum density permitted on the site was three homes per acre, yielding a maximum of 360 homes. Mr. Tucker's client proposed about 2.2 dwelling units per acre which represented a 25% reduction from what could have been requested under the Comprehensive Development Plan for the City. The applicant proposed 270 units.

### **Open Space/Landscaping**

Mr. Tucker noted that since the 1970's, jurisdictions have required much more open space as a condition of subdivision approval. The Code required 8.427 acres of open space. This application proposed four times the amount of space of 37.30 acres. Mr. Tucker reviewed the character of the surrounding area, in particular, Fairfield and Nottingham Green, in terms of their open space for comparison purposes. Both communities were very aesthetically pleasing but because of their dates of approval they have a very small amount of open space. Fairfield had 7.38 acres of open space, Nottingham Green had 3.6 acres of open space, and this proposal had 37.30 acres of open space.

At the present time there were several existing ponds on the site and their environmental analysis indicated those ponds were manmade ponds and if the pumping of water on the site were to cease, those ponds would likely dry up. However, the developer planned to preserve those ponds with two of the ponds converted to stormwater management ponds to help better control drainage runoff from the site post-development Ponds to be saved were shown on the power point. Mr. Tucker also noted that because of the date of the creation of the ponds, they were not "stepped," which was now required by DNREC. That would prevent if a small child were to fall in to the side of the pond, they would not be below water and there would be a stepping out area. The developer agreed to retrofit the ponds with a certain slope, as designated by the City's Public Works Department, in order to provide that type of stepping or similar safety measure for the existing ponds.

In addition, a small area of jurisdictional wetlands on the site would be preserved. Public walking trails will be provided throughout the perimeter of the site. An existing maintenance facility on the site used to operate the golf course will be given to the City. The approximate value of the land and the improvements of that facility was approximately ½ million dollars.

The Code requires a significant amount of tree plantings as a function of the approval process. Mr. Tucker advised 1,131 new trees would be planted on the site. The Parks and Recreation Department identified 15 specimen trees on the site that were worthy of preservation. The Developer worked with that department in developing their landscaping plan and found they were able to save 70 specimen trees. In addition, a significant buffering of 45 feet was proposed along Delrem Drive and Fairfield. A 100-foot buffer was proposed along West Main Street. The present Code encouraged this type of buffer, and Mr. Tucker said the developer exceeded the requirement.

### **Traffic Impact**

DelDOT required, as part of its review of this proposal, an extensive traffic impact study that was completed in February 2007. DelDOT required an analysis of the "level of service." Mr. Tucker explained that the "level of service" was a function of a delay in any given intersection during peak hours of traffic

(the morning and evening rush hours). How much of a delay was occurring in terms of the number of seconds at those intersections and the various turning movements associated with an intersection classified those peak periods. Traffic engineers did not consider “D” and “E” level of service a bad thing. Both were quite common in cities and in New Castle County. The number of seconds between a “D” and an “E” level was about 15 seconds of additional delay. The study looked at four intersections: West Main & Hillside; West Main & New London; New London & Cleveland; and Elkton & Apple. The study indicated that the level of service at those intersections were not going to change with or without this proposal being approved at the ultimate build out in 2015. Mr. Tucker explained the level of service now at those intersections, in 2015 without this development, and with the project included. It was emphasized that he did not mean there would not be an additional delay. In fact, there could be various seconds of delay, but not a critical point where the number of seconds would drive the level of service into a lower category.

As part of the traffic study, they were required to determine whether the development warranted new traffic signals on Nottingham Road. DeIDOT required eight warrants to be evaluated by a traffic engineer and none of the warrants were met. However, the City believed a traffic light was warranted and the developer was prepared to install a traffic light. The developer agreed that before the 135<sup>th</sup> certificate of occupancy is issued, he would perform an updated warrant analysis and if at that time there was a warrant, he would put in one or two signals with DeIDOT’s approval. This was not required by Code, but the developer believed it was a reasonable request and agreed to pay for an additional study in the future. He has also agreed to an equitable portion of the local matching funds required for the Elkton Road, Maryland border to Delaware Avenue project.

### **Drainage Consideration**

There is the Christina Creek drainage basin and the White Clay Creek drainage basin. State law requires that a developer maintain peak rate runoffs from pre- to post-development. In other words, what the runoff was today, that same amount of runoff has to be maintained post-development. In this case, the City asked for and the developer agreed to improve the peak runoff by reducing it by 15% to 25%. Two existing ponds will be converted into stormwater management facilities and will be oversized and benched to obtain that result.

### **Conclusion**

The proposed development does the following:

1. Lower density than permitted by the Comprehensive Development Plan.
2. More than four times open space required by law--30 of the 70 acres would be public open space.
3. Roadway improvements by owner which would result in no adverse impact on projected levels of service at surrounding intersections.
4. Peak drainage run-off reduced by 15% to 25%.
5. All environmental requirements would be followed as required by state and federal laws.
6. 70 specimen trees saved.
7. Over 1,100 new trees would be provided.

Mr. Tucker asked Council to approve the plan not just because it satisfied Code requirements but, in some cases, greatly exceeded requirements. With regard to the case Ms. Stabler touched upon, Mr. Tucker said that case appeared on its surface to be in significant conflict with a host of Delaware cases. However, when read in detail, he found that the judge was very careful to carve out a relatively small exception for what was presented in front of Kent County.

The court made significant note that in Kent County, the project was proposed in an agricultural preservation district. Another significant fact in that decision was, as emphasized by the court, the state was against the project and sent correspondence to Kent County Levy Court indicating the state was not going to invest any infrastructure in that area, had no plans to in the future, and recommended strongly against the project being approved. The court went further to identify another case, decided in 1994, East Lake v. Dover, and noted that the Ashburn case was not the same as the East Lake case (which, much like this proposal—a residential zoning district and an area incorporated in a city where the state encouraged development/growth in cities).

Mr. Tucker said he spoke with Connie Holland, Planning Director for the State of Delaware, and she confirmed that the state of Delaware encouraged growth in incorporated municipalities and did not consider them non-growth area. He concluded by saying he agreed that Ashburn had nothing to do with the facts he presented with the proposed Country Club Estates project.

At this time Mr. Tucker advised that the City Staff has proposed several amendments to the agreement which the developer has agreed to. They were read into the minutes as follows:

1. Unless otherwise prohibited by the Delaware Department of Transportation (“DeIDOT”) as an entrance permit condition for Country Club Estates, Developer agrees that no secondary access onto Nottingham Road from Country Club Estates shall be directly aligned with any existing public road taking access to Nottingham Road from Nottingham Green. In no case shall this provision apply to County Club Estate’s primary access onto Nottingham Road as currently depicted upon the Country Club Estates Plan.

2. Unless otherwise prohibited by DeIDOT as an entrance permit condition for Country Club Estates, Developer shall install signage at Country Club Estates primary entrance way onto Nottingham Road which shall limit the primary access way onto Nottingham Road to left turns and right turns out, provided however, that this provision is not intended to prohibit any turning movements into Country Club Estates.

3. The Developer agrees to create an architectural review committee (“ARC”) for Country Club Estates through the recordation of a perpetual covenant requiring the formation and continuation of the ARC, including standards to maintain architectural consistency while avoiding monotony for exterior elements and materials for the units and the lots. The Developer agrees to be the sole voting member of ARC until the issuance of 90% of the certificate of occupancies by the City for County Club Estates. ARC shall be required to review and approve all new home architectural designs as well as any proposed architectural changes to such homes. Developer further agrees to appoint a representative from the Nottingham Green Community and the Fairfield Community as advisory members of ARC until such time as the City issues 90% of the certificates of occupancy.

4. The Developer agrees to perform additional invasive soils, groundwater, surface water, and sediment testing for insecticides, fungicides, rodenticides and pesticides and constituents thereof, including metals such as arsenic, lead and mercury, based on the guidance related to sampling in DNREC's Remediation Standards Guidance under The Delaware Hazardous Substance Cleanup Act, as is necessary in order to characterize the Property, particularly in the areas which are more likely to have elevated levels of chemicals surrounding tees and greens. Further, in the event that such sampling identifies such materials at levels exceeding DNREC residential standards for those constituents, the Developer agrees to enter into the Voluntary Cleanup Program (“VCP”) administered by Delaware’s Department of Natural Resources and Environmental Control (“DNREC”) under the Hazardous Substance Cleanup act of 1990, 7 Del. C. § 9101, *et seq.* If for any reason DNREC determines that

the Property is not eligible for the VCP and/or the application is rejected for any reason, the Developer shall reimburse the City for any reasonable and customary costs of an independent third party to review the scopes of proposed investigations as well as sampling results and remediation, including reasonable and customary health and safety protective measures for the site due to soils disturbance associated with the construction. Developer agrees to perform any necessary remediation to DNREC standards applicable to residential properties as if the property were regulated by DNREC under the Hazardous Substance Cleanup Act. Provided, however, that no costs shall be incurred by the City until the Developer has been provided a reasonable opportunity to review an estimate of such costs and the credentials of such third party reviewer the City may consider retaining.

Mr. Pomeroy thanked Mr. Tucker for the presentation and the developer for his willingness to entertain the amendments. He commented on Amendments 1 and 2. There were two entranceways proposed onto Nottingham Road—one currently aligned directly with Radcliffe, and a second one was near Bent Lane. His major concern was if the two roads were aligned, there would be a tremendous flow of traffic from the new development (and possibly other developments) using those roads as thoroughfares to get to Casho Mill Road. Another point was the fact that if the roads were aligned and no traffic signal was warranted, traffic would be crossing back and forth creating a thoroughfare.

Mr. Pomeroy interpreted Amendment 1 to read if DeIDOT had no problem with the amendment, there would be no secondary access onto Nottingham Road from Country Club Estates that would be directly aligned with any existing public road taking access to Nottingham Road from Nottingham Green. Amendment 2 stated that the developer would restrict turns to only left or right turns out of the neighborhood, assuming DeIDOT had no problem with that. He thought that would provide some measure of control. He advised that he received a petition from residents of Radcliffe Drive and Bent Lane requesting the roads into and out of Country Club Estates not be aligned with Radcliffe Drive and Bent Lane. That petition, at the request of Mr. Pomeroy, has been made a part of the record and is attached to the minutes.

Mr. Pomeroy had no confidence that DeIDOT would ultimately allow a traffic signal on Nottingham Road. Therefore, he requested that the City seek not to align Radcliffe Drive with a primary entrance into Country Club Estates, mainly because of public safety.

Mr. Tucker said the only concern he would have was if DeIDOT prohibited an entrance permit because of that condition. Also, he would not want to be required to come back before Council for an alignment change if DeIDOT prohibited that. Mr. Pomeroy recognized that DeIDOT had the final say on this and agreed that it could be handled administratively as opposed to coming back before Council.

MOTION BY MR. MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THE RESOLUTION AND SUBDIVISION AGREEMENT BE APPROVED.

It was the consensus of Council that each amendment proposed would be voted on separately.

**(AMENDMENT 1)**

AMENDMENT BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT UNLESS OTHERWISE PROHIBITED BY THE DELAWARE DEPARTMENT OF TRANSPORTATION (DeIDOT) AS AN ENTRANCE PERMIT CONDITION FOR COUNTRY CLUB ESTATES, THE DEVELOPER AGREES THAT NO ACCESS ONTO NOTTINGHAM ROAD FROM COUNTRY CLUB ESTATES SHALL BE DIRECTLY ALIGNED WITH ANY EXISTING PUBLIC ROAD AT NOTTINGHAM ROAD FROM

THE RESIDENTIAL SUBDIVISIONS OF NOTTINGHAM GREEN, NOTTINGHAM MANOR, AND OAKLANDS. SAID ACCESS ALIGNMENT CHANGES SHALL NOT REQUIRE FURTHER REVIEW BY COUNCIL AND SHALL BE HANDLED ADMINISTRATIVELY BY THE CITY.

Mr. Clifton viewed this amendment as a means of traffic calming and thought it was easier to address traffic calming measures this way rather than waiting for it to become a problem.

Mr. Athey disagreed with Messrs. Pomeroy and Clifton because he felt the folks who lived on Country Club Drive were asking that the access way proposed on their street be eliminated. He felt the only way the City could manage the amount of traffic that would be generated from this development was to disperse it as well as possible. Closing off access points, eliminating turning movements, etc. would make the four intersections Mr. Tucker discussed go to level "F" or "E" a lot quicker. He suggested putting the closing of this access way on the same amendment and either vote them both up or both down.

Mr. Pomeroy disagreed with putting the Country Club Drive entranceway in with the (4) amendments because he viewed them as four "tight" stand alone amendments. Although he respected where Mr. Athey was coming from, he looked at it from a common sense perspective. For example, if a driver chose to take a shortcut through Bent or Radcliffe, it was highly probable their end destination would most likely be somewhere to the south. He believed the traffic volumes that chose to go down Bent or Radcliffe would be the same traffic, not more traffic, which would likely be dispersed to the north. He thought his proposal provided for a measure of common sense regarding public safety in closing off access points for what could be a reasonable flow of traffic into residential neighborhoods. Folks in the new development who needed to get to I-95 and didn't want to take Cleveland Avenue or go through town, would find this shortcut. He believed his proposal was a traffic calming measure without limiting the dispersion of the traffic. Cars would still be able to go left and right. He did not think drivers who go out Cleveland Avenue or go out through Country Club Drive were the same drivers looking to head down Radcliffe or Bent.

Mr. Athey thought everyone recognized that DeIDOT would probably not approve a traffic light. Also, the developer agreed to pay the cost for a traffic light if it was approved and that would be a six-figure cost. Therefore, he asked if the developer would consider traffic calming measures along Radcliffe and Country Club Drive in lieu of a traffic signal.

The chair opened the discussion to the public.

Robert Bennett, 117 Dallas Avenue, advised that the Conservation Advisory Commission (CAC) made two recommendations to the Planning Commission – the maintenance of the trail and that the builders consider some percentage of their houses be designed with green energy in mind. He questioned if there would be access from Rt. 896 to the public trail and was told no. It was suggested that an access could be made through the Wilson Center. He also questioned the name of the development. He suggested if one wanted to see estates they should go to Greenville. Since there would no longer be a country club, he thought the name was a misnomer on both accounts and suggested renaming it to "A Community of Two Watersheds." He also questioned if there were plans for lighting on the trail and would there be a specified time when the trail would be accessible to the public. He was told there were no plans for lighting and the trail would be closed at dark (similar to when parks were closed to the public unless there were lit facilities).

Sean Casey, 108 Country Club Drive, speaking on behalf of the Fairfield Civic Association, said although they were realistic in knowing the development would be built, the civic association opposed the development. They opposed the destruction of a home in the Fairfield community in order to join their

community with Country Club Estates. They did not believe Council needed to approve that aspect of the proposal. He advised that Council received a petition from residents in the Fairfield community opposing that connection because it would result in Country Club Drive becoming a thoroughfare.

James Froggatt, 117 Meriden Drive, commented on the traffic at the intersection of New London Road and Cleveland Avenue that was estimated to be level "D" (50-55 second delay). At 12:30 pm on a Saturday, he measured the light cycle to be two minutes. His favorite turn was going from southbound Delaware 896 onto westbound Cleveland Avenue. The corresponding arrow was yellow or 23 seconds at that time. If there was no traffic, the average wait time calculated out to 39 seconds, an average level of service "D" without any traffic. If you add traffic, rush hour, and the new development, and general increases by 2015, the result was an intolerable situation. Mr. Froggatt said that when he made his observation, about 12 cars made it through with five or six cars left waiting, making them wait 97 seconds, or a level service of "F". He emphasized the fact that this occurred when there was not heavy traffic. Therefore, he disagreed with the traffic analysis. During peak times he frequently waited through several cycles. When the University was in session on garbage pickup day on Cleveland Avenue, the traffic was even worse. He understood the garbage pickup time was changed about a year ago but claimed the situation still existed. Mr. Froggatt thought a rejected solution to traffic was to construct a corridor through the proposed development, between Rt. 896 and Rt. 273, but that was not considered politically feasible. He also commented on the fact that former Mayor Gardner was a member of the Country Club which could create a conflict.

Steven Martin, 207 Hulihan Drive, commented on the effects of the present housing market in light of the proposal for 270 additional units. In terms of the water policies to maintain the ponds, he questioned if there was financing in place to maintain the pumping in perpetuity. He also suggested that the City had the right to wait for the Supreme Court to rule in the Kent County court case before making a decision on this subdivision.

Tom Needles, 424 Locust Street, commented on the traffic impact study recommendation regarding the intersection of Rt. 896/Cleveland Avenue/Hillside Road and the optimum solution to put in a lane on either Rt. 896 or Cleveland Avenue which would be too expensive and cause a home and church to be demolished. He hoped there would be a discussion on why there was no provision made to address the unacceptable level of service at that intersection.

Chris Scherf, 7 Moss Court, complimented the thorough job that was done by the City. He felt everyone went the extra step throughout the entire process to not only lower the density but to hire outside counsel to explore all options. He saw no other option other to grant approval of the subdivision.

Mark Sharnoff, 43 Winslow Road, said he lived near the intersection of Winslow Road and Orchard Road that had traffic pass through from W. Delaware Avenue to Park Place without having to go on S. College Avenue as well as traffic from Elkton Road to S. College Avenue without having to go around the racetrack at the center of town. He reminded everyone when the Newark Country Club was founded years ago, it was located on the far outskirts of what was then Newark. Today, the club was close to the center of town. Traffic has always been a concern and he felt that was because the town was transected by railroad lines that dictated the courses of roads and created traffic tie-ups even at modest times of the day when it could take 15 minutes to get out of the City to go somewhere else. He congratulated the developer for designing a beautiful, thoughtful, suburban development located in the center of town. Had the country club not been there, he was sure the City planners would have taken Stamford Drive and Cambridge Drive and connected them across the greenway with Radcliffe and Bent and permitted access down to shopping centers on Elkton Road, etc. This proposal would restrict that possibility and some of the

amendments proposed would foreclose the option. He suggested that Council think about the requirements of public transportation in the future—how would a bus go from the new bus station on Delaware Avenue through the Fairfield development and this new development and connect with Nottingham Green and do it economically. The more cul-de-sacs in a development the more walking people would be required to use any public transportation system. He was sympathetic to the people who live on Country Club Drive.

Linda Stapleford, 802 Dallam Road, representing White Clay Creek Wild & Scenic River Program, advised that she submitted comments to Council last week and again tonight. However, she wanted put into the public record, that her organization obtained professional assistance to assist what natural resource features exist on the site that should be protected to be consistent with the White Clay Creek and Tributary Watershed Plan of which the City was a signatory to a Memorandum of Understanding. She claimed that after reviewing the proposed subdivision agreement, there were some things missing that she mentioned last October should be a part of the agreement. She has discussed the missing points with Mr. Stritzinger who has agreed to her suggested amendments having to do with the developer providing a design and maintenance plan for riparian buffers, open space landscaping plans and management plans, and if a sewage pumping station was required, that an alarm system be provided.

Jean White, 103 Radcliffe Drive, asked that the Developer not prohibit the use of outside clotheslines in light of the world crisis of global warming. She believed residents should have the option of drying their clothes outside by the sun. She commented that the entrance opposite Radcliffe Drive should not have the name E. Radcliffe Drive and suggested a name using “Boulevard” because that was reflected on a blueprint provided by the developer. She supported moving the entrance so it was not opposite Radcliffe Drive and thought it could easily be moved toward town.

Ms. White claimed in a *Newark Post* article and a *News Journal* article that Mr. Tucker was willing to answer any questions from residents. She felt that statement came too late and the input should have been received long ago. At the October and November Planning Commission meetings she asked if the Newark Country Club or the developer had done environmental studies as to the chemicals put on the golf course and still had not received an answer. She was pleased to see Amendment 4. She suggested when the study was done, that a public hearing be held to discuss it by either DNREC or the City. With regard to the 70 specimen trees being saved, Ms. White pointed out there were 200 such trees in good condition.

Ms. White concluded by asking the City to institute a charette policy for future developments. A “charette” is where the developer talks to the residents about what they would like to see. She also took this time to acknowledge all the work that was done by the developer and the City.

Bill Dunn, 216 Fenwick Avenue, VP of the Milltown/Limestone Civic Alliance, a group that has been actively involved in numerous communities in the review of the Hercules property. He pointed out that DNREC had no formal responsibility for golf courses and orchards, assuming whatever was applied to those properties were through a legal and appropriate application of pesticides, herbicides, and insecticides. As long as this property has been a golf course, he claimed it was inconceivable that there weren't some levels of lead arsenic, chlordane, or mercury based compounds applied up through the early 50's to the property to protect the greens of tees (the most sensitive part of golf courses most sensitive to insect infestation). After the 50's, up through the early 70's there were similar problematic things used such as 245T as well as compounds used when put together with other things that became Agent Orange, which was used during the Vietnam War. In 1972, Delaware law required golf courses to keep a log of everything they applied to the course and he suggested that the City take a serious review as to what was used at least during that period of time.

He also advised looking for direct analysis of each of the greens and tees and doing test bores at 6", 12" and 36" to see if there was any migration of heavy metals and/or other toxics. He also thought the 20 test bores that have been done was inadequate to protect the City and the citizenry.

Mr. Tucker responded to the questions raised by the public. Regarding the maintenance of the trail, the City would maintain the part of the trail in the public area because it would be dedicated to the City. Any portion that fell within the private open space would be maintained by the private maintenance declaration. Regarding green energy, the City Code addressed a plan to encourage energy conservation and included southern exposure provisions. The engineers did their best to lay out the subdivision to comply with those requirements.

In regard to the entrance to Country Club Drive comments, Mr. Tucker agreed that was a tough issue and said the developer did not have a position one way or the other on that. However, DeIDOT wanted a connection there and that was why the property was purchased and the connection was made under basic planning principles. If Council wanted that road closed, he asked they make it a condition on DeIDOT accepting that closure. From a planning perspective, the connection made great sense, but from a popularity contest, the neighbors won.

Regarding the traffic analysis, Mr. Tucker said the engineers have a long history in the state and tri-state area and it was a reputable, creditable firm. Susan Best was the Traffic Engineer and the analysis was reviewed by DeIDOT. Mr. Funk interjected that a lot could be done at the intersection at New London/Cleveland Avenue by improving the timing. Mr. Markham asked if the wait time included the time at the light.

Susan Best, Traffic Engineer, Urban Engineers, Inc., explained that the control delay averaged out over all movement at an intersection (12 movements at the intersection discussed). You could have a situation where the overall level of service was "D" and some movements could be at "E" but it averaged out to "D." She claimed an intersection analysis was an extremely complex process and a lot of research was done that was federally funded and there was a lot of federal documentation on how to do the evaluations. Two firms did the analysis and came up with the same results that were accepted by DeIDOT. She agreed that timing was an issue, but the timing that worked well today may not be the timing that worked well tomorrow.

Mr. Tucker added that the traffic analysis process was a mathematical process and not a perfect process, but it was the standard imposed by DeIDOT. As for the connector road that was suggested by DeIDOT, Mr. Tucker said they had lengthy discussions with DeIDOT and the City and it was determined that a connector road would not change the level of service. He thought DeIDOT would like to see the connector road, but the development did not trigger a need for it in terms of the level of service issues. DeIDOT confirmed they had no desire to condemn a church to improve the level of service at one intersection.

The suggestion made that Council wait for the Sussex County decision was addressed. Mr. Tucker said the case, particularly on page 15 of the written decision by the judge in Kent County, made it very clear to distinguish that case in a non-growth area (Ag District) from another case that the court did not overrule (East Lake Partners).

Regarding Ms. Stapleford's testimony, Mr. Tucker said his client spoke with her today and agreed to enter a private agreement with her organization to preserve the riparian buffer areas and some other sensitive areas so long as such preservation would not conflict with city, state, or federal law. He would not want that to be added to the City agreement because such wording still needed to be drafted.

Mr. Tucker agreed not to restrict clotheslines in the development to appease Ms. White. There was a Phase I analysis done at the site that showed no level of contamination in the preliminary analysis. He also noted that his client entered into an agreement with their environmental firm to do additional analysis because it is a golf course. He credited Mr. Athey for helping to address the issue as fully as possible so that if the additional testing (which included the tees and the putting areas) revealed a problem, there would be remediation, and if DNREC did not take jurisdiction or offer to oversee it, #4 Amendment had language that said the developer would reimburse the City to hire a third party to oversee that. He believed they have done everything possible to address that concern.

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

Mr. Pomeroy said he still took strong objection to anyone who did not want to realign the entrances onto Nottingham Road. He strongly believed the neighborhoods were designed much more in a suburban nature. If Newark was a big interlocking grid, he thought it would be nonsensical to not have the roads aligned. He thought each development operated almost as a stand along single-family suburban neighborhood. As a father of two small children, he and other neighbors with small children have concerns about the flow and speed of traffic that traveled on Country Club Drive, Bent and Radcliffe, Dallam and others making this a top priority of his no matter what proper planning design was. He looked at this in the reality as opposed to the theoretical and people who live on those roads know that traffic speeds along those roads mentioned. Anything that would be done to mitigate that was a worthwhile exercise to entertain. Therefore, he still supported the amendment.

Question on Amendment 1 was called.

AMENDMENT PASSED. VOTE: 6 to 1.

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

Nay – Athey.

Mr. Tuttle could not support Amendment 2 because he has never seen any intersections controlled in a way that motorists could be convinced they could turn left and right only and not proceed straight ahead if the physical road allowed them to proceed straight ahead. Also, northbound traffic would not be precluded from proceeding straight across going back into Country Club Estates. He would not want to create a situation where they gave people a false sense of safety. Although he understood the motivation, he did not think it was a practical form of traffic control. Mr. Markham questioned whether or not DeIDOT would support the signage. Mr. Pomeroy said if that were the case it would end up being a moot case but he thought they may defer to local control on those kind of issues.

**(Amendment 2.)**

AMENDMENT BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT UNLESS OTHERWISE PROHIBITED BY DELDOT AS AN ENTRANCE PERMIT CONDITION FOR COUNTRY CLUB ESTATES, THE DEVELOPER SHALL INSTALL SIGNAGE AT THE COUNTRY CLUB ESTATES PRIMARY ENTRANCE WAY AT NOTTINGHAM ROAD WHICH SHALL LIMIT THE PRIMARY ACCESS WAY ONTO NOTTINGHAM ROAD TO LEFT AND RIGHT TURNS OUT, ONLY, PROVIDED HOWEVER, THAT THIS PROVISION IS NOT INTENDED TO PERMIT ANY TURNING MOVEMENTS INTO COUNTRY CLUB ESTATES.

AMENDMENT FAILED: VOTE; 3 to 4.

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

**(AMENDMENT 3.)**

AMENDMENT BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THE DEVELOPER AGREES TO CREATE AN ARCHITECTURAL REVIEW COMMITTEE (“ARC”) FOR COUNTRY CLUB ESTATES THROUGH THE RECORDATION OF A PERPETUAL COVENANT REQUIRING THE FORMATION AND CONTINUATION OF THE ARC, INCLUDING STANDARDS TO MAINTAIN ARCHITECTURAL CONSISTENCY WHILE AVOIDING MONOTONY FOR EXTERIOR ELEMENTS AND MATERIALS FOR THE UNITS AND THE LOTS. THE DEVELOPER AGREES TO BE THE SOLE VOTING MEMBER OF ARC UNTIL THE ISSUANCE OF 90% OF THE CERTIFICATE OF OCCUPANCIES BY THE CITY FOR COUNTY CLUB ESTATES. ARC SHALL BE REQUIRED TO REVIEW AND APPROVE ALL NEW HOME ARCHITECTURAL DESIGNS AS WELL AS ANY PROPOSED ARCHITECTURAL CHANGES TO SUCH HOMES. DEVELOPER FURTHER AGREES TO APPOINT A REPRESENTATIVE FROM THE NOTTINGHAM GREEN COMMUNITY AND THE FAIRFIELD COMMUNITY AS ADVISORY MEMBERS OF ARC UNTIL SUCH TIME AS THE CITY ISSUES 90% OF THE CERTIFICATES OF OCCUPANCY.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(AMENDMENT 4.)**

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THE DEVELOPER AGREES TO PERFORM ADDITIONAL INVASIVE SOILS, GROUNDWATER, SURFACE WATER, AND SEDIMENT TESTING FOR INSECTICIDES, FUNGICIDES, RODENTICIDES AND PESTICIDES AND CONSTITUENTS THEREOF, INCLUDING METALS SUCH AS ARSENIC, LEAD AND MERCURY, BASED ON THE GUIDANCE RELATED TO SAMPLING IN DNREC'S REMEDIATION STANDARDS GUIDANCE UNDER THE DELAWARE HAZARDOUS SUBSTANCE CLEANUP ACT, AS IS NECESSARY IN ORDER TO CHARACTERIZE THE PROPERTY, PARTICULARLY IN THE AREAS WHICH ARE MORE LIKELY TO HAVE ELEVATED LEVELS OF CHEMICALS SURROUNDING TEES AND GREENS. FURTHER, IN THE EVENT THAT SUCH SAMPLING IDENTIFIES SUCH MATERIALS AT LEVELS EXCEEDING DNREC RESIDENTIAL STANDARDS FOR THOSE CONSTITUENTS, THE DEVELOPER AGREES TO ENTER INTO THE VOLUNTARY CLEANUP PROGRAM (“VCP”) ADMINISTERED BY DELAWARE’S DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL (“DNREC”) UNDER THE HAZARDOUS SUBSTANCE CLEANUP ACT OF 1990, 7 DEL. C. § 9101, ET SEQ. IF FOR ANY REASON DNREC DETERMINES THAT THE PROPERTY IS NOT ELIGIBLE FOR THE VCP AND/OR THE APPLICATION IS REJECTED FOR ANY REASON, THE DEVELOPER SHALL REIMBURSE THE CITY FOR ANY REASONABLE AND CUSTOMARY COSTS OF AN INDEPENDENT THIRD PARTY TO REVIEW THE SCOPES OF PROPOSED INVESTIGATIONS AS WELL AS SAMPLING RESULTS AND REMEDIATION, INCLUDING REASONABLE AND CUSTOMARY HEALTH AND SAFETY PROTECTIVE MEASURES FOR THE SITE DUE TO SOILS DISTURBANCE ASSOCIATED WITH THE CONSTRUCTION. DEVELOPER AGREES TO PERFORM ANY NECESSARY REMEDIATION TO DNREC STANDARDS APPLICABLE

TO RESIDENTIAL PROPERTIES AS IF THE PROPERTY WERE REGULATED BY DNREC UNDER THE HAZARDOUS SUBSTANCE CLEANUP ACT. PROVIDED, HOWEVER, THAT NO COSTS SHALL BE INCURRED BY THE CITY UNTIL THE DEVELOPER HAS BEEN PROVIDED A REASONABLE OPPORTUNITY TO REVIEW AN ESTIMATE OF SUCH COSTS AND THE CREDENTIALS OF SUCH THIRD PARTY REVIEWER THE CITY MAY CONSIDER RETAINING

Mr. Athey commented that he was alerted to the problem at Hercules about a month ago and pointed out that DNREC had an entire page on their website devoted to the Hercules site. If DNREC has no authority, this amendment would give the City the ability to hire a third party and the developer would pay the cost. All remediation work has to be done by DNREC standards. Ideally he thought it would have been nice if the Phase I analysis was released earlier, but he understood the developer's hesitation to do that. He appreciated all the work that was done to get this Amendment as written.

Question on the Amendment was called.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Markham asked for a discussion on the Country Club Drive entranceway and whether it could be moved behind Rite-Aid. Mr. Clifton asked if wetlands would have to be crossed to put the exit/entrance at that location. He was told a bridge would have to be built. Mr. Clifton said he would support that recommendation, but another similar situation occurred in his area where the fire department was uncomfortable with not having a third entrance into the development. He asked if any emergency services were contacted about moving this entranceway. Mr. Tucker said his client did not control whether the drugstore would allow a connection through their property. He said they were willing to reserve a swath a land in the event there was a future agreement worked out where a connection could be punched through. Currently they could not make a connection because they didn't own the property, but they could reserve an area.

Mr. Athey asked if the drugstore or the assisted living facility was contacted because he thought a road could be put in that area. Mr. Tucker said he did not contact anyone because the house had already been purchased on Country Club Drive. He reiterated that they would not object to reserving the swath of land for a future connection. Mr. Athey asked how that would be accomplished to which Mr. Tucker said the original idea was not to go through the drug store area but through the existing Wilson Center site.

Mr. Funk understood that DeIDOT's purpose for the back entrance was to get people to Rt. 896 without going down to Rt. 273. He thought if a right-of-way could be obtained, the best solution would be to match the road with the road to Clayton Hall and the University would be willing to help with putting a traffic signal there.

Parley Hess, Civil Engineer, McBride & Ziegler, said they looked at the idea of putting a connection through the Wilson Center. However, the intersection of Clayton Hall did not line up with the property at the Wilson Center so somebody would have to condemn a piece of property. The developer did not have the power to do that; however, the City had the power to condemn. Mr. Funk felt that location really needed to be explored.

Mr. Pomeroy said the reasons he gave about not aligning roads on Nottingham Road were the same about not wanting the entranceway on Country Club Drive. Even though closing it would put a higher volume on Rt. 273, it

would be better for the residents in Fairfield. He supported exploring some other access point from the development onto Rt. 896.

Mr. Osborne supported looking at other alternatives to the Country Club Drive connection, especially one that would line up with Clayton Hall. He pointed out that many residents bought their houses 40 years ago and did not expect a road to come through their street adding more traffic to the road. He also realized that an entrance had advantages because it would not put everyone out on Rt. 273. However, he encouraged exploring the access onto Rt. 896.

Mr. Osborne also commented that he supported the review process recommended that would make sure the houses would be compatible with existing developments especially in light of the fact that the site could eventually be built by numerous developers.

Mr. Lopata suggested that, subject to agreement from the developer, the subdivision plan be revised before recordation to show three reserved for future rights-of-way—the Country Club Drive, the Rite-Aid access, and a general Wilson Center access. They would be dotted lines on the plan with the caveat that the construction improvements plan would have to come back with a final a, b, or c alignment approved by the City, subject to the review and approval of DeIDOT, with the understanding by the community that one of those three would be built. The City could not guarantee at this time which one it would be, but that access was vital from the staff and Council's point of view. He did not think they could have all the traffic going south. By doing the plan in this manner, it would leave the option open to go another direction. The developer would be responsible for the plan revisions and any roadway linkages within their property.

Mr. Funk thought they were looking for a statement from the developer that they would make a good faith effort to explore other options to include lining up a road with the entrance to Clayton Hall, or in the area of Rite-Aid.

Mr. Tucker said they would be willing to offer a reservation of those areas for potential connections with two conditions. One, that they would not be mandated to follow a path that DeIDOT would refuse to issue an entrance permit. Two, if private property would have to be purchased, that it be recognized by the City that it would happen through some condemnation authority. His client has already purchased one property because he believed it was required by DeIDOT in order to create that connection. He pointed out if a property owner found out the plan could rise or fall on a punch through in the area of the drug store, everyone knew what would happen to the price of that property, and it would only be obtained through a condemnation process where fair market value was preserved. Mr. Tucker concluded that they would work in good faith with the three proposals, but they did not want to be put in the position where they would be mandated to purchase the property because they could not control the price of that property.

Mr. Clifton asked if he was asking the City to use its right of eminent condemnation to do that. Mr. Tucker answered if it was the City's desire to connect there, he would ask the City to consider that and he thought DeIDOT would have the ability to do that also. Mr. Athey asked if the developer would reimburse the City but no answer was given.

Ms. Stabler thought Council could consider Mr. Lopata's suggestion of three expressed reservations on the plan and ask the developer to agree to exercise a good faith effort. Also, Council always had the ability to exercise its condemnation authority if it desired to do that.

Mr. Tucker said they had no problem exploring the additional rights-of-way in good faith, but if a condemnation was necessary or other types of construction, that a number be picked in terms of his client's cost that would be tied to the fair

market value of the lot in Fairfield (that could be determined by an appraisal). That way there would be a cap to his client's cost.

Mr. Lopata said that was why he made his suggestion. He felt the developer would be responsible for any internal road construction and anything beyond their property would be the City's responsibility. The developer would also pay for the recordation of the three rights-of-way and DeIDOT and/or the City would have to come up with a way to finish the road connection unless Council wanted to require the developer to pay for the entire road. Mr. Tucker interjected that at this point they did not know if a bridge would be required, and the bridge would be on the land dedicated to the public. The cost could become astronomical and that was why he could only support that they would put forth a good effort, determine the market value of the house purchased, and contribute that amount toward the extended road.

MOTION BY MR. MARKHAM, SECONDED BY MR. POMEROY: THAT THE DEVELOPER MAKE A GOOD FAITH EFFORT TOWARD EXPLORING THE POSSIBILITY OF TWO ADDITIONAL ALTERNATIVE RIGHTS-OF-WAY IN ORDER TO PROVIDE FOR THE CONSTRUCTION OF CONNECTIONS TO THE SITE WITH COUNTRY CLUB DRIVE, IN THE VICINITY OF THE RITE AID DRUG STORE, AND/OR ROUTE 896 AND THAT THEY SHALL BE NOTED ON THE APPROVED SUBDIVISION PLAN.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Clifton asked if there was an acceleration/deceleration lane on Rt. 273. He was told there would be tapers on the shoulders of the road similar to what was near Christianstead.

Mr. Clifton questioned the responsibility of the stormwater ponds and was advised by the Public Works Director that the City would be responsible for all stormwater management except for one small pond along Rt. 273 which would be on private open space and maintained as a wet pond. All of the other ponds would be used as stormwater management and the responsibility of the City. A cash payment for that maintenance over the next several years was included in the agreement.

Mr. Clifton asked if a provision could be included, beginning with the first building permit, for a \$50,000 bond that would stay in effect three years after the completion of the last property for any stormwater management issues that became private property issues that were not foreseen at this time. He did not want a similar situation that occurred on Matthew Flocco Drive with a stormwater issue. Mr. Lapointe explained that at the present time the Subdivision Code provided for a bond to be issued for any incomplete items. With regard to the problem on Matthew Flocco Drive, he advised that the developer took care of that drainage issue, but it took a long time to evaluate whether or not there was a legitimate issue and the bond provided by the developer covered the cost of that. Mr. Clifton asked how long a bond was held and Mr. Lapointe said that one bond was held by the City that continues to conditional acceptance for all uncompleted items. Once that was completed, there was a 15% of construction improvements cost bond, which continues for a one-year guarantee period after everything was conditionally accepted. The period between the conditional acceptance and final acceptance by the City was covered by a bond worth 15% of all costs for public improvements.

Mr. Tucker added that if it was not clear in the standard bond requirement, he had no objection to the stormwater management being included within that bond. Mr. Clifton said he would like a separate bond strictly for the private

property issues. Mr. Tucker suggested adding in the private pond to be covered in the 150% bond. It was determined that no additional language was needed in the agreement, and Mr. Akin would make sure that the language in the bond was correct.

Mr. Pomeroy said he reviewed this project thoroughly and attempted to look at it as dispassionately as possible because of the emotion surrounding it. He thought there were good elements to the plan and pointed out that there were restrictions placed by DelDOT as well as restrictions presented by the City Code. This plan met the Code and for those who were hoping to get something else, he believed at this point that was not going to happen. He thought now was the time to move through some of that negativity whether this was the final version or there was something else in the future. He was sure Council has done the best it possibly could with this project and hoped everyone could view this as a positive for the City. In conclusion he thanked everyone who has been involved with this project.

Mr. Osborne said that although the project was very controversial, it met the Code requirements. His concern was for it to be compatible with the surrounding communities and for the residents to be happy with the result. When the project was completed, he believed it would be accepted just the same as other newer developments in the area have been accepted. He felt the Council did the best it could to try to make it compatible and, therefore, would support it.

Mr. Tuttle thanked everyone at the meeting and all the time spent preparing to be there. Although this was not the plan many would pick as their first choice, the fact of the matter was when it was zoned residential over 50 years ago that set the tone as to how this property would eventually be used. He did not think anyone foresaw that it would not be a country club. He thought they were making the best use that it could of the situation and he intended to vote in support of the amended agreement.

Mr. Funk said that legally, Council had no choice and had to approve the project. He wished the City had the money to purchase a large portion of the property for open space, but because of the reservoir lawsuit, that could not happen.

Mr. Clifton thought that everyone at the meeting put his or her heart and soul into this project to get the best possible project. He understood the issue with the house on Country Club Drive because when you buy a house on a street, you assume all the houses on the street would remain. He reminded everyone that Council was a quasi-judicial body with a constitutional responsibility to the State of Delaware and to the City of Newark which meant protecting citizens' rights as neighbors that would be most impacted by a project. He believed they did a pretty decent job doing that. On the other hand it was also about protecting the integrity of the system, the developer's rights, and how a property was zoned. Both he and Mr. Tuttle thought it was important when they look at the City's Comprehensive Land Use Plan that a lot of thought had to be put into it, and this project was a good example why they had to do that. In this case, the developer met the technical requirements, went above other requirements, and there has been a spirit of cooperation.

Mr. Athey viewed this as a real tough issue. Although he did not support Mr. Pomeroy's amendment, that did not mean he was not sympathetic to the traffic. He commented on the case in Kent County and the fact that he received a lot of phone calls and emails when the article hit the newspaper. The City's attorneys read it very closely and there were significant differences between what happened in Kent County and this project. If Council were to table the project or vote it down, he did not feel the City had a legal leg to stand on. He commended the applicant for giving the City everything they asked for on the environmental issue and for over detaining with the stormwater management aspect. Although

he did not view it as the perfect plan, he thought it was a good plan and would be voting yes.

Mr. Markham said because of the present housing market, he did not think it would be developed quickly. He did not think more homes were needed and acknowledged there was a chance a new plan could come back in the future. He thought the plan was better compared to when this project first began, that there would always be issues with traffic, and with it being Code compliant, he would vote in favor of the amended agreement.

Question on the Motion as Amended was called.

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

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

Nay – 0.

**(RESOLUTION NO. 08-E)**

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

- 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. OSBORNE, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 08-01.

Mr. Luft summarized Bill 08-01 by explaining that it clarified the time limits for the completion of construction improvements and it gave the City the explicit right to utilize the developer's bond for the completion of those facilities.

Mr. Markham was responsible for suggesting this change and explained the reason for that was getting the developer to complete things in The Woods at Louviers. He pointed out that the revision did not address when the clock would start ticking. Mr. Lopata advised that the construction improvements were suppose to be completed within two years and that was addressed in a companion section of the Code. Essentially, it was a three-year process.

Mr. Lapointe explained the actual starting point began with the letter he receives from the developer indicating the project was finished. His inspectors would then inspect all the public improvements and provide a punch list that had to be completed and weather could affect when things were completed.

Mr. Lapointe explained the developer has to provide a bond prior to the issuance of the first CO, and that bond is usually a substantial amount of money. Mr. Markham would like the clock to start ticking three to six months after the last CO was issued.

Ms. Lamblack pointed out that the other section of the Code relating to this amendment already clarified the starting point as following the inspection and completion of the construction improvements so there was no need to create another starting point.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(ORD. 08-01)**

**18. 6-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**

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

MOTION BY MR. ATHEY, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 08-02.

Mr. Lopata explained that this bill represented the first step in the LEED program, to modernize and update the City's land use process to promote energy conservation. This was the result of months of work by the Conservation Advisory Commission. He thought the adoption of this bill would make Newark a pioneer in this area.

Mr. Lopata said this added energy conservation as a new set of definitions—the LEED program. In addition to applying to residential development, they would now apply to changes for industrial and commercial development—new development or the expansion of existing development. The LEED program was the nationally recognized program for energy conservation that builders, architects, and engineers were relatively familiar with. On February 14<sup>th</sup> the U.S. Homebuilders Association added a residential component to LEED.

The chair opened the discussion to the public.

Steve Dentel, Chairman of Conservation Advisory Commission, advised that LEED was recognized everywhere and he considered it the second step. The first step occurred last year when the CAC recommended changing the Code to include some of the energy savings aspect.

Mr. Dentel said the next step was to include a LEED Score Sheet for developers to fill out when they were putting a project together which documented why they were claiming points for LEED. He hoped not too far in the future the City could provide other incentives to get more points towards LEED certification.

Mr. Funk asked why the Score Sheet was not included now, and Mr. Dentel said he did not know whether it should be included in the Building or the Zoning Code. He planned to discuss it further with Mr. Lopata to determine how they would implement it. Once that has been determined, another ordinance would be provided for Council's consideration.

Kevin Hanson, 100 Lark Drive, JCM Environmental, said he supported this bill and also supported including the Score Sheet, which would be very useful to counteract the green washing it was designed to correct. He pointed out that in the last three years raw oil, corn, wheat, steel, and copper have doubled in price and emphasized the important fundamental role of municipalities in urging the LEED program forward. Newark could offer enormous benefits to the mass of people living way out in southern New Castle County who couldn't afford it.

Mr. Hanson also noted that LEED had several component programs to consider such as the new developments program. The National Association of Homebuilders System that just came about was very exciting because it was a much softer, easier program without a lot of heavy requirements. He viewed it as

low entry level and not nearly as rigorous. Mr. Hanson developed the green building program at Tetra Tech and the main hurdle was the certificate cost for large buildings. Therefore it was important to be careful about the threshold at which people were forced. He would rather support them going green rather than driving down a program from on top.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(ORD. 08-2)**

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

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

A. Council Members:  
1. See Item #2

21. **9-B. COMMITTEES, BOARDS & COMMISSIONS:** None

22. **9-C. OTHERS:** None

23. **10. SPECIAL DEPARTMENTAL REPORTS:**

A. Special Reports from Manager & Staff: None

24. **10-B. ALDERMAN'S REPORT**

MOTION BY MR. MARKHAM, SECONDED BY MR. ATHEY: THAT THE 2/21/08 ALDERMAN'S REPORT BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

25. **10-C. FINANCIAL STATEMENT**

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

26. **Meeting adjourned at 11:15 pm.**

Susan A. Lamblack, MMC  
City Secretary

/pmf

To Paul Pomeroy and City Council:

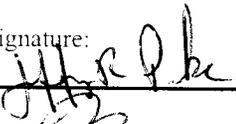
The residents of Radcliffe Drive and Bent Lane in Nottingham Green request that the roads into and out of Country Club Estates **NOT** be aligned with Radcliffe Drive and Bent Lane. We feel that any alignment will increase traffic on our roads and our development will become a short cut for their residents.

270 houses are planned for that development. If we assume that each house will have at least 2 cars and that each car will leave and return at least once a day, this will be 1080 car trips per day. This does not include school buses, mail, package delivery, service vehicles, trash removal, teenagers in the household and visitors. If even half of these vehicles use Radcliffe Drive and Bent Lane, it will be devastating to our community and a danger to the children. Many of the residents of Nottingham Green walk and bike in the development and in the summer many adults and children walk and bike to the pool.

Thank you

Signature:

Address:

|   |                     |
|---|---------------------|
|  | 500 Radcliffe       |
|  | 405 Radcliffe       |
| Esther Harris   | 707 Bent Lane       |
| Barbi Trotter   | 711 Bent Lane       |
| Wesley E. Waters  | 708 Bent Lane       |
| Asilly Pugh   | 404 RADCLIFFE DR.   |
| Gov. Espinosa   | 111 Radcliffe Dr.   |
| Naniya Kokkon   | 109 Radcliffe Dr.   |
| Harold B. White   | 103 Radcliffe Dr.   |
| Jack & Jackie Hoos  | 110 Radcliffe Drive |
| Joe O'Sheerin   | 305 Radcliffe Dr.   |
| Mark Mulphrey   | 307 Radcliffe Dr.   |
| Bob Elliott   | 705 Bent Lane       |
| John K. Elliott   | 705 Bent Lane       |
| Pat + Tom Brill   | 201 Bent Ln         |
| Stephen Worden  | 117 Bent Lane       |
| John + Jean Aneta Llera   | 113 Bent Lane       |

