

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

April 28, 2008

Those present at 7:30 pm:

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

Staff Members: Interim City Manager Roy Lopata
City Secretary Patricia Fogg
City Solicitor Roger Akin
Assistant to the City Manager Carol Houck
Police Chief Paul Tiernan
Captain Rick Williams
Interim P&D Director Maureen Feeney-Roser
Parks & Recreation Director Charlie Emerson
Public Works Director Rich Lapointe

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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. MARKHAM: THAT THE AGENDA BE AMENDED BY MOVING ITEM 9-A-2, RESOLUTION NO. 08-: RETIREMENT OF CHERYL C. THORNTON, TO BE HEARD AT THIS TIME.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

9-A-2. RESOLUTION NO 08- RETIREMENT OF CHERYL C. THORNTON

Mr. Clifton read the resolution which was endorsed unanimously by Council. Cheryl Thornton was retiring from the Police Department after twenty-three years of service. Mr. Funk said Ms. Thornton had been an outstanding secretary over the years and was an outstanding person.

(RESOLUTION 08-I)

3. MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THE AGENDA BE AMENDED TO ADD ITEMS 9-A-3, 9-C-2, 10-A-3, AND 10-A-4.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

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

A. Regular Council Meeting of March 24, 2008

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

5. **2-B. ORGANIZATIONAL MEETING OF APRIL 15, 2008**

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

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

A. Public

Mr. Steve Purvis, 9 E. Mill Station Drive, asked Council to review the ordinance pertaining to parking in private lots and the towing policy. He was made aware of a situation where an individual parked in what she thought was the Pat's Pizza lot and later discovered a tow truck pulling up to tow away her car. To keep the vehicle from being towed, she had to pay a \$75.00 fee. Mr. Purvis examined the area and said the tow-away signs were extremely small and hard to read, and you would be unaware of the signs if you parked in the middle of the lot. He suggested the signs be enlarged or that residents be warned about the perils of parking in the wrong location.

Mr. Lopata said Pat's Pizza posted a large banner warning customers not to park in Papa John's lot, and the signage in the lots was better than in many other parking areas in the City. The major problem was that the two different property owners have been at odds with the parking situation. Mr. Lopata and Council agreed to explore solutions to the problem.

7. **3-B. UNIVERSITY**

1. Administration – There were no comments forthcoming.

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

There were no comments forthcoming.

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

Messrs. Pomeroy, Clifton, Tuttle and Markham extended their congratulations and thanked Ms. Thornton for her 23 years service to the City.

10. Mr. Pomeroy and Mr. Athey welcomed Mr. Temko to Council.

11. Mr. Pomeroy reported the 5K walk/run for Chief Nefosky was a tremendous event as was Ag Day. Mr. Athey thanked Jerry Simpson, NPD, for the 5K and felt it was a great tribute to Chief Nefosky.

12. Mr. Pomeroy acknowledged the Police Department in regard to the impressive number of cases that have been resolved.

13. Mr. Pomeroy announced DeIDOT would attend the Council meeting on May 12th to discuss Elkton Road and suggested inviting area legislators to the meeting. Mr. Kowalko had several discussions with DeIDOT regarding the Route 4 connector between Route 896 and Elkton Road, and Representative Schooley, Senator Amick, and Senator Sorenson have also conversed with DeIDOT on the subject. Mr. Kowalko was discouraged that further progress had not been made. Mr. Pomeroy noted the roads were important avenues for regular transportation but were also key gateways for the economic development initiatives planned for the City.

14. Mr. Pomeroy and Mr. Tuttle congratulated Mr. Purvis and the residents of West Branch for the meeting hosted by their Civic Association on the Newark

Country Club with Mr. Stritzinger. It was a positive sign hearing from Mr. Stritzinger how that project will move forward.

15. At the request of Mr. Pomeroy a memo was circulated by Messrs. Lopata and McFarland on tax increment financing in regard to how today's economy required creative investment strategies by local governments. At the current time, tax increment financing was not a tool that was available for the City's use. According to Mr. McFarland's wording a tax increment financing statute permits eligible municipalities to issue bonds to finance infrastructure investments that foster the development or redevelopment of designated geographic areas called TIF districts. The debt service is then funded by the incremental property tax revenues generated by the development. The base tax revenues to the City are not lost during that time, but rather the increase in the tax revenues are used to finance the debt service. Mr. Pomeroy felt it was a great tool for certain projects and worth noting that the enabling legislation currently in the State allowed it to be used for land acquisition and for infrastructure issues such as roads or other utilities. Mr. Pomeroy thought it was important to realize it was a funding tool, and not a planning tool. A potential example would be the Chrysler plant where the City could carve that out as a TIF district. Mr. Pomeroy asked Mr. Lopata if he would work with Bob Maxwell to see if Newark could take advantage of the enabling TIF legislation (subject to Council's approval). The legislation, as currently written, allowed only municipalities with + 50,000 residents to take advantage of this financing. New Castle County and the City of Wilmington were able to take advantage of this, and Kent and Sussex Counties were both trying to pave the way for it now.

Mr. Maxwell reported there were approximately seven municipalities that have initiated TIF as an economic development tool with varying degrees of success. In the case of municipalities, all have done this through a charter change. A charter change for Newark was trickier than having enabling legislation through the state. Mr. Maxwell encouraged Council to fully understand what was involved prior to moving forward.

Mr. Pomeroy asked Mr. Lopata to coordinate the best way to proceed. Mr. Lopata said he would look into it and perhaps include it with the Charter changes that will be proposed on the next agenda.

16. Mr. Pomeroy was asked by a number of residents in his district, by the Delaware League, and some other organizations to look into the open government bills that were currently being discussed in Dover. Messrs. Pomeroy and Athey have been exploring what other municipalities have done in this regard. Mr. Athey heard from several constituents about proposing a resolution to encourage the General Assembly to have an open form of government. He has spoken with the lobbyist who works for the Delaware League whose feeling was it was time to make it a public conversation and perhaps bring it to the table. Messrs. Athey and Pomeroy have started working on some draft language, and asked if Council agreed to proceed.

Mr. Funk felt individual letters to area legislators would be appropriate.

Mr. Temko heard about this from residents in his district as well and agreed with the idea of a resolution, although he did not feel it should contain criticism.

Mr. Clifton wanted to have a clear nexus of how a resolution impacted the City, and in many ways he thought the openness of our state government impacted local government and what the City received from the lower and upper houses. He agreed with the points made and would support a resolution which did not contain any criticism. He felt if enough municipalities and other governmental bodies weighed in on this, at some point in time the ball would move forward.

Mr. Pomeroy will draft language for a resolution that he will distribute to Council for future discussion at the table.

Mr. Markham said the key wording was that Council believed in open government in all bodies in the State of Delaware abiding with FOIA, but not targeting any particular group.

17. Mr. Athey was pleased to see the DNP was accredited as a 2008 National Main Street program.

18. Mr. Athey praised the new entrance signs coming into town.

19. Mr. Markham applauded the commendation to the Water Department from the University of Delaware.

20. Mr. Markham was pleased to see more seeding done at the reservoir to try to deal with some of the runoff issues there.

21. According to Mr. Markham, volunteers were still being sought for "U Don't Need It".

22. Mr. Markham asked whether the Council Chamber was an adequate location for the DelDOT update. Mr. Lopata said they would be reporting on the Elkton Road project, and he did not anticipate a huge crowd. However, additional seating could be added as needed.

23. Mr. Temko reiterated what Mr. Pomeroy said about tax increment financing. He thought it was an important tool, and there was no reason a town with a population under 50,000 should not use it.

24. Mr. Temko said he participated in the Community Clean-Up, and good progress was made in cleaning up Route 72, although there was still a lot of work to be done.

25. Mr. Temko advised he attended the Young Elected Officials Network Conference for individuals aged 18-35 years old.

26. **4. ITEMS NOT FINISHED AT PREVIOUS MEETING**

None

27. **5. RECOMMENDATIONS ON CONTRACTS & BIDS**

A. Pomeroy Branch Rail to Trail – Design Contract Supplement

Ms. Houck summarized her memo to Council dated April 8, 2008. It was determined that an additional 1,200 feet should be added to the Pomeroy Trail design effort that was underway by Pennoni Associates. The design work was necessary to allow for the link to the state park property which was planned from the beginning. The associated fees with the additional work totaled \$24,314.90. Including the anticipated 2007 funding, there was an excess of \$2.3 million available from the \$4.7 million highway grant awarded to the City for this project. Ms. Houck recommended that Council authorize this increase to the contract with Pennoni.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT CONTRACT 22-015-01 BE AWARDED TO PENNONI ASSOCIATES TOTALING \$24,314.90 TO SUPPLEMENT THE ORIGINAL TRAIL DESIGN BY 1,200 FEET.

In regard to funding concerns with the Cleveland Avenue area, Mr. Markham asked Mr. Funk if he had any feelings about this impacting other areas of the trail. Mr. Funk was surprised to learn this area was not included in the original plan for the project.

Question on the Motion was called

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

28. 5-B. RECOMMENDATION TO WAIVE THE BID REQUIREMENT TO PURCHASE PORTABLE RADIOS AT STATE CONTRACT PRICING

Ms. Houck summarized her memo to Council dated April 21, 2008 wherein she recommended they waive the bid process and authorize the purchase of 10 Model II Portable Motorola communications radios with various accessories from a previously awarded state contractor. Funds to cover the cost were available from the Police Department's equipment replacement program at a total cost of \$39,958.50.

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT COUNCIL WAIVE THE BID PROCESS AND AUTHORIZE THE PURCHASE OF 10 MODEL II PORTABLE MOTOROLA COMMUNICATIONS RADIOS FROM DELMARVA COMMUNICATIONS, INC. AT A TOTAL COST OF \$39,958.50.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

29. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING

A. Bill 08-08 An Ordinance Amending Ch. 30, Water, Article II, Water Resource Protection Regulations, By Adopting & Incorporating Subsequent Amendments to the Current Water Resources Agency's Water Resource Protection Area Map

Ms. Fogg read Bill 08-08 by title only.

Mr. Lopata explained this was an amendment to the water resources protection regulations in the Code to insure the most recent map was utilized for the regulations currently in place. The original map was from 1995 and had subsequently been updated.

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

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(ORDINANCE NO. 08-07)

30. 6-B. BILL 08-05 – AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE, BY REZONING FROM BN (NEIGHBORHOOD SHOPPING) TO BB (CENTRAL BUSINESS) .3867 ACRES, LOCATED AT 119 ELKTON ROAD

NOTE: The public hearing on this item, 7-A and 7-B was held at the same time, but voted on separately.)

Ms. Fogg read Bill 08-05 by title only.

Lisa Goodman, attorney representing Elkton Road, LLC, was joined by Mark Ziegler, Project Engineer and Kevin Heitzenroder, representative of Elkton Road, LLC with a plan which would continue the redevelopment and revitalization of Elkton Road. The project was unanimously recommended by the Planning Commission. The site was the shuttered Pizza Hut on Elkton Road and was approximately .4 acres, was currently fully paved, and was zoned BN. In May, 2007, the boundaries of downtown Newark were expanded to include this area. The district was defined as "intended to be redeveloped with first floor shops and apartments/offices on upper floors with careful attention regarding apartments to traffic, parking, design and intensity." This proposal was designed to fit within that definition. Currently there were three redevelopment projects within close proximity of this project. All were rezoned to BB which was suggested for this project and were three stories with commercial on the first floor, and apartments above, the same as proposed for this site. The plan proposed a 3,483 square foot footprint with 21 parking spaces to the rear. The rendering showed brick and stucco exterior with an attractive, non-flat roof line and lots of glass in the front making a very inviting streetscape. A brick sidewalk was in the proposal, although DeIDOT indicated they would like to see concrete as they were concerned about the longevity of brick. In terms of the rezoning analysis, this was in the downtown district and provided ample parking, an attractive design and was consistent with the other redevelopment projects in terms of number of stories, number of uses and less density than two of the three projects recently approved.

Mr. Funk asked if there were any restrictions on the number of occupants per apartment. Mr. Lopata said that was discussed at length at the Planning Commission, and based on the available parking compared to the downtown projects, there was no restriction in terms of the number of tenants. Mr. Markham thought the location might have problems with students parking there to walk to class. Ms Goodman replied the property owner was comfortable they provided adequate parking for the businesses and the tenants based on their leasing experience.

Mr. Temko claimed he spoke with the developer who had agreed to complete the LEED checklist, and he appreciated the voluntary agreement.

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON:
THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF
BILL 08-05.

Mr. Markham asked if there was an area designated for bicycle storage. Mr. Heitzenroder said there was an overhang of the building in the right-hand corner where there was ample room for a bike rack. Mr. Markham confirmed that this location was in the area of Elkton Road designated for changes by DeIDOT to reduce it to one lane in each direction and add pedestrian and bike paths.

The Chair opened the discussion to the public.

Bill Pace, 13 E. Mill Station Drive, felt it was naïve to approve the project with only 21 parking spaces for six apartments and the businesses when there was already a major parking problem downtown. Mr. Funk noted there was a large U of D parking lot next to the building that was available for public use. Mr. Pace asked what type of businesses could go in based on the rezoning. Mr. Lopata said it would be restricted to office or light commercial-type businesses.

Steve Purvis, 9 E. Mill Station Drive, liked the improvements that were occurring on Elkton Road and was very much in favor of the proposed project. He reported DeIDOT's plans for Elkton Road could now be accessed on line at the DeIDOT website.

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

Mr. Temko said this commercial/residential project was an appropriate property for the City's central business district, and he would vote in favor of it.

Mr. Markham supported the project. It was a boarded-up property in an area that needed to be revitalized, and it fit in with the zoning and the extended downtown. He appreciated the fact of redeveloping the property and the opportunity to encourage people to live downtown.

Mr. Tuttle found this very consistent with what was done to expand the downtown area. He was very pleased with the project and would vote in favor of it.

Mr. Funk approved the project and thought it was very exciting to see the changes along Elkton Road.

Mr. Clifton supported the project and saw it as another piece of the puzzle to transition the Elkton Road area from a business to a business-residential area which was the City's intent. He noted the size was consistent, the density was less, it was a nicely designed building, and no parking waiver was needed. He also liked the idea of the brick and felt it was a calming device both for pedestrian and motor vehicles.

When the decision was made to include parts of Elkton Road in what was designated a downtown core area, Mr. Athey's intent was to encourage some redevelopment along that part of Elkton Road. Therefore, he planned to vote in favor of the project.

Mr. Pomeroy thought a key point was that people were investing in Newark at a time when the economy was tight. This redevelopment trend on Elkton Road was one of the most exciting things he witnessed since joining Council. He felt the plan showed good attention to detail and would vote in favor of the project.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(ORDINANCE NO. 08-05)

- 31. 7-A. REQUEST OF ELKTON ROAD, LLC FOR THE MAJOR SUBDIVISION OF 119 ELKTON ROAD (FORMER SITE OF PIZZA HUT) IN ORDER TO CONSTRUCT A MIXED USE OFFICE & RESIDENTIAL BUILDING THAT WILL CONTAIN 3,483 SQ. FT. OF FIRST FLOOR OFFICE SPACE & SIX APARTMENTS ON THE UPPER TWO FLOORS OF THE FACILITY (RESOLUTION & AGREEMENT PRESENTED)**

(NOTE: The public hearing on this item was held at the same time as Item 28, but voted on separately.)

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: TO APPROVE THE REQUEST OF ELKTON ROAD, LLC FOR THE MAJOR SUBDIVISION OF 119 ELKTON ROAD (FORMER SITE OF PIZZA HUT) IN ORDER TO CONSTRUCT A MIXED USE OFFICE & RESIDENTIAL BUILDING THAT WOULD CONTAIN 3,483 SQ. FT. OF FIRST FLOOR

OFFICE SPACE & SIX APARTMENT ON THE UPPER TWO FLOORS OF THE FACILITY.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(RESOLUTION 08-J)

32. 7-B. REQUEST OF ELKTON ROAD, LLC FOR A SPECIAL USE PERMIT AT THE PROPERTY LOCATED AT 119 ELKTON ROAD IN ORDER TO CONSTRUCT APARTMENTS IN A BB ZONING DISTRICT.

(NOTE: The public hearing on this item was held at the same time as Item 28, but voted on separately.)

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: TO APPROVE THE REQUEST OF ELKTON ROAD, LLC FOR A SPECIAL USE PERMIT AT THE PROPERTY LOCATED AT 119 ELKTON ROAD IN ORDER TO CONSTRUCT APARTMENTS IN A BB ZONING DISTRICT.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

33. 7-C. REQUEST OF 1364 MARROWS ROAD, LLC FOR THE MINOR SUBDIVISION OF 1364 & 1370 MARROWS ROAD & 709 OGLETOWN ROAD TO REMOVE THE PARCEL LINES IN ORDER TO EVENTUALLY CONSTRUCT AN AUTO DEALERSHIP & ACCESSORY USES AT SAID LOCATION (RESOLUTION & AGREEMENT PRESENTED)

MOTION BY MR. CLIFTON, SECONDED BY MR MARKHAM: TO APPROVE THE MINOR SUBDIVISION OF 1364 & 1370 MARROWS ROAD & 709 OGLETOWN ROAD.

Lisa Goodman, was the attorney representing 1364 Marrows Road, LLC (Martin Honda), with Mark Ziegler, Project Engineer and Hommy Poursaied of Martin Honda. Martin Honda was in business in Newark since 1995 and were seeking to bring a property into the City for a new auto dealership.

The property contained five parcels of land, totaling 3.7 acres located at the southeast corner of Ogletown and Marrows Road, but did not include the corner (the Shell station). The site was between the gas station and the veterinary clinic and extended behind the gas station to Marrows Road. It was currently being used by Martin Honda for inventory and an occasional sale.

The City bordered the property on three sides. To the south, the veterinary property, office building and Toyota dealership were zoned BC. To the north, 84 Lumber was BC zoning. To the west, Bennigan's was zoned BB, and KFC was zoned BC.

The plan was to reuse and renovate the three existing buildings on the site for storage and for administrative functions, and a Phase II would include a new building for an eventual new dealership. They proposed extensive landscaping around the border of the site. The area was addressed in the City's Comprehensive Plan in the adjacent area's land use plan and called for it being commercial, auto-oriented and was consistent with the City's plan regarding annexation and use for areas that immediately surround the City. It would bring into the City a business that was thriving and did not change the essential use of the parcel.

Mr. Lopata explained the deed restrictions in the subdivision agreement were relatively lengthy and echoed the restrictions included by the City for all the properties on the east side of Marrows Road when Council first started annexing land in that area. There was concern about not having a strip commercial road on Marrows Road to keep it low impact, and he felt the City had been successful in that regard.

Mr. Clifton said in the interest of disclosure, he had worked at the Honda dealership in management about a decade ago (although he saw no conflict of interest).

Mr. Markham asked whether the igloos were still on that site. Mr. Funk replied they had been removed about a year ago. Mark Ziegler addressed the runoff and stated before the plan was advanced to Council, they met with the Public Works Department to discuss drainage concerns. About one third of the site drained towards Route 273, and they were adding a 6400-square foot underground detention facility that would have infiltration, so that would reduce the rate and the volume of runoff. The other third of the site would drain into a culvert that goes under Marrows Road around the proposed building and would again utilize infiltration. The only portion of the site where they were not doing any kind of treatment was the back where the existing garage was located. That site did not have to be treated because they would be reducing the amount of runoff going off in that direction and were taking that towards the front, thereby reducing the quantity and the rate of runoff.

Mr. Markham asked if they planned to fence the property for security purposes. Ms. Goodman said the current plan was not to fence the property, as they have utilized it for storage with no security issues for the past three years.

Mr. Markham questioned the traffic volume. Ms. Goodman advised the plan was to continue using the site for inventory storage and the occasional sale. Traffic issues were not expected for the next phase as automobile dealerships generated a very low volume of traffic.

Mr. Temko asked whether the client was willing to complete the LEED check list. Ms. Goodman did not see that as a problem since it was not a requirement to comply with LEED. Mr. Temko also asked the reason for requesting annexation. Ms. Goodman responded it was for consistency for the business in having to deal with one regulatory party instead of two.

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

Mr. Pomeroy said it was an encouraging sign anytime a business was brought into the City with a good track record, and he thought it made sense to consolidate lands in an area such as this.

Mr. Athey felt it was a good fiscal decision to annex commercial ventures into the City whenever possible so the City did not have to rely solely on residential properties.

Mr. Clifton thought the annexation would make Marrows Road more consistent at the City line and with the business uses on Rt. 273. Further, Martin Honda had been a good neighbor, and he felt it would be a positive addition to the City.

Mr. Funk said it was logical for the City to do this, and the City and the dealership have worked well together. He noted the next site down the road was vacant which might present the City with further opportunities.

The annexation made sense to Mr. Tuttle in terms of consistency with their land use, and he commented it was good to see a Newark business expanding.

Mr. Markham noted the property fit into the zoning and there was no change of use. It seemed to be good for the business and for the City.

Mr. Temko thought it was good to bring a business into the City, and it would help the City's borderlines make more sense. In addition it conformed to the City's Comprehensive Plan.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(RESOLUTION 08-K)

34. 8. ORDINANCES FOR FIRST READING

A. Bill 08-09 – An Ordinance Amending Chapter 31, Weapons, By Revising the Code Dealing With Carrying Weapons

Ms. Fogg read Bill 08-09 by title only.

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THIS BE THE FIRST READING OF BILL 08-09.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 5/12/08)

35. 8-B. BILL 08-10 – AN ORDINANCE AMENDING CH. 5, ANIMALS, BY REVISING THE CODE DEALING WITH NOISY ANIMALS

Ms. Fogg read Bill 08-10 by title only.

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT THIS BE THE FIRST READING OF BILL 08-10.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 5/12/08)

36. 8-C. BILL 08-11 – AN ORDINANCE AMENDING CH. 32, ZONING, BY REVISING REVIEW REQUIREMENTS FOR BB (CENTRAL BUSINESS) DISTRICT PARKING WAIVERS

Ms. Fogg read Bill 08-11 by title only.

MOTION BY MR. CLIFTON SECONDED BY MR. ATHEY: THAT THIS BE THE FIRST READING OF BILL 08-11.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 6/09/08)

37. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA

A. Council Members:

1. Resolution No. 08- __: Recognition of Earth Day

Mr. Temko read the resolution recognizing April 22, 2008 as Earth Day.

MOTION BY MR. TEMKO SECONDED BY MR. CLIFTON: THAT THE RESOLUTION BE APPROVED AS READ.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(RESOLUTION NO. 08-L)

38. 9-A-2. RESOLUTION NO. 08-__: RETIREMENT OF CHERYL C. THORNTON

(See Item #2)

39. 9-A-3. RESOLUTION NO. 08-__: URGING NEWARK LEGISLATORS TO OPPOSE ANY CHANGE IN THE REALTY TRANSFER TAX

Mr. Funk calculated the City would need to significantly increase property taxes based on information received from Mr. McFarland if the Delaware General Assembly revised or eliminated the realty transfer tax. Council members agreed to amend the resolution to incorporate this point.

AMENDMENT BY MR. ATHEY, SECONDED MR. CLIFTON: THAT THE RESOLUTION INCLUDE A STATEMENT THAT THE CITY WOULD BE FORCED TO SIGNIFICANTLY INCREASE PROPERTY OWNER TAXES IF THE REALTY TRANSFER TAX WAS REDUCED OR ELIMINATED.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

MOTION BY MR. POMEROY, SECONDED MR. MARKHAM: TO APPROVE THE RESOLUTION AS AMENDED

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

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

Mr. Pomeroy asked Bob Maxwell, the City's lobbyist in Dover, to share with Council what was currently known about this important issue.

Mr. Maxwell felt Council's actions would be replicated throughout the State in several other municipalities. The legislature's proposed actions to return a local or a County portion (or both) of the realty transfer tax to the State could represent a \$5 million loss of revenue for New Castle County, \$4 million for Sussex County and about \$1 million for Kent County. The ramifications of that were obvious in light of what was happening in the housing market. Mr. Maxwell provided a copy of a letter that was emailed to all three county administrators based on a meeting held in Kent County Levy Court. The plan was similar to

what was encompassed in Newark's resolution; identify the problem, identify the amount of lost revenue, and translate that lost revenue into a potential tax increase that would be needed to cover that loss. Once the letter was signed by the president of the Delaware Association of Counties, the next step recommended would be to distribute it to every legislator in the General Assembly.

Mr. Maxwell noted the General Assembly for over a decade attempted to solve financial shortfalls on the backs of municipalities who collect transfer taxes. He reminded Council that in 2005 the governor pushed for and got passage of Senate Bill 229 that earmarked a portion of the State's share of the State transfer tax to farmland preservation, and legislators should be reminded that local municipalities and County governments were also acquiring open space and preserving farmland.

Mr. Pomeroy observed that every year since being elected to Council this discussion had taken place. It seemed to him that as the financial situation in the State became bleaker, the reality of this occurring became more real.

Mr. Temko had been involved in discussions with other local elected officials who felt even if this was initially imposed only on the Counties, the State would not be in a prosperous situation next year. Once the door was open, the next target might be the municipalities. He asked Mr. Maxwell if the timing was right to advise constituents to contact their legislators. Mr. Maxwell did not think it was too soon to do this and said public discussion should occur now (and some discussion had already occurred through the Delaware League and the Counties.)

Mr. Markham agreed it was important to provide this information to constituents who might be facing a large tax increase.

Mr. Clifton asked who the motivating force behind this was, and Mr. Maxwell replied it was the leadership with a lot coming from the Budget Director and from discussion of the budget writing committee

Mr. Pomeroy thought these kinds of decisions were largely made by a few people at the very end of session, and if anybody was curious as to what the tie back was to the open government issue, this was it.

Mr. Funk noted none of those legislators live in the Newark area, and that was another issue for the City.

Mr. Markham indicated there was a meeting with legislators in Dover on May 6th at 2:00 p.m., and the League encouraged municipalities to make a presence at Legislative Hall at that time.

Mr. Maxwell commented on a note from Representative Kowalko saying the City's resolution was the responsible thing to do to protect and preserve home rule.

MOTION BY MR. TEMKO, SECONDED BY MR. ATHEY: TO SUSPEND THE RULES AND OPEN THE DISCUSSION TO PUBLIC COMMENT.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

The Chair opened the discussion to the public.

Steve Purvis, 9 E. Mill Station Drive urged Council to alert the residents to the seriousness of this situation and how it could impact them. Mr. Lopata said he would get information put on Channel 22 and the City's website.

Susan Eggert, 306 Apple Road, thanked Mr. Pomeroy for making the connection around open-government and this particular issue and the way this process might roll out.

There were no further comments forthcoming.

(RESOLUTION 08-M)

40. 9-B. COMMITTEES, BOARDS & COMMISSIONS

1. Appointment to Newark Housing Authority

Mr. Clifton recognized and thanked Susan Eggert and Amy Rowe, Commissioners with the Newark Housing Authority, for their efforts. Mr. Clifton recommended the appointment of Clinton Tymes, Director of the Small Business Development Authority, to fill the expired term of Jackie Baldwin.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT CLINTON TYMES BE APPOINTED TO THE NEWARK HOUSING AUTHORITY FOR A SIX-YEAR TERM, SAID TERM TO EXPIRE ON JANUARY 17, 2014.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Athey recommended a tribute for Jackie Baldwin who served on the Newark Housing Authority for a period of 14-16 years.

41. 9-B-2. PLANNING COMMISSION MINUTES APRIL 1, 2008

MOTION BY MR. ATHEY, SECONDED BY MR. MARKHAM: THAT THE PLANNING COMMISSION MINUTES OF APRIL 1, 2008 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Markham commented on the Choate/New Street problems with lighting and noise from the University's Frazier field. Mr. Markham talked to the University several times about the resident's concerns, and at one point they had talked about adding some landscaping. Mr. Markham asked Mr. Lopata to follow-up on this problem.

Mr. Temko noted there were also civic issues regarding Center and Linden Streets, and the Planning Commission said this was not their purview, Mr. Temko suggested this be passed on to T&G for discussion at the May 19th meeting.

42. 9-C. OTHERS

None

43. 10. SPECIAL DEPARTMENTAL REPORTS

A. Special Reports from Manager & Staff

1. Recommendation to Satisfy Balance of URS Judgment

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: TO APPROVE THE PAYMENT OF THE BALANCE OWED ON THE URS JUDGMENT.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Abstain – Athey.

44. 10-A-2. APPROVAL OF CURBSIDE RECYCLING PROGRAM

Mr. Lapointe said the new program would be a significant change to what the residents were used to in the current waste management program. Mr. Lapointe noted a report was previously submitted to Council summarizing details of the program, and he asked for direction from Council through a resolution or vote.

Mr. Lapointe said the purpose of the promotion period was to familiarize residents with the major changes that would take place, going from twice a week refuse collection to once a week collection. Mr. Lapointe expected that change would generate negative feedback as would the additional cart. Mr. Pomeroy asked if there was still time to make minor amendments to the program if residents or Council had questions or suggestions about the program. Mr. Lapointe advised the feedback was important, and he would look at ideas that could be incorporated into the program provided they were effective and economical for the City. Mr. Pomeroy asked what was planned for public outreach. Mr. Lapointe planned 3 or 4 open sessions followed by visits to civic associations as requested. Mr. Pomeroy questioned whether recycling options would be available for Main Street businesses. Mr. Lapointe said businesses wanting to participate in recycling would have to go to own their private vendors.

Mr. Clifton asked if Mr. Lapointe still had the results of what he called the “District One experiment” of about ten years ago. Mr. Lapointe could provide the final report although it was not divided up into districts.

Mr. Athey asked Mr. Lapointe if the contract process could be accelerated. Mr. Lapointe felt quite a bit of feedback would be generated in light of the significant changes. He felt Council did need time to review the final report and possibly have a final meeting to hear resident comments prior to making a final decision. Mr. Lopata said this was a conservative plan in terms of time but it would be accelerated if possible, depending upon citizens’ reaction. Mr. Lopata noted the time schedule tied into the budget process.

Mr. Funk hoped residents that already had DSWA carts could continue to use them as there were about 550 of them in the City already. Mr. Lapointe said the DSWA provided the carts at no cost, and he presumed they would pull them back to utilize them for other customers.

Mr. Pomeroy asked how the required number of carts would be calculated. Mr. Lapointe said the survey would contain a request for the residents to indicate the size cart they wanted which would be either 35 or 65 gallons. Mr. Pomeroy felt an important point to communicate was the fact that regular trash collection would be reduced to once a week pick-up, regardless of whether a resident participated in the recycling program

Mr. Markham’s constituents were very supportive of the program, and they were filling their DSWA carts before pick up every two weeks. Mr. Markham felt voluntary recycling was the key based on the issues of cart storage in communities such as Jenny’s Run. There were several large developments in Mr. Markham’s district with no civic associations, and he indicated a need to

reach out to those groups. Mr. Lopata said district mailings could be done as required.

Mr. Temko was very happy the City was moving forward with recycling. He reported there were a number of trash and recycling carts made from recycled material which might be considered for use in the program. In concert with the program, he would like to see recycling on Main Street and in other public areas in the City. He hoped when the initial program was over, apartments and businesses would be looked at for participation in a recycling program. He had some questions in his district about the financial impact and asked to have that data made available to residents. Mr. Temko had concerns about people being able to dispose of their extra trash cans and suggested a one-time pick up of these trash cans.

Mr. Lapointe emphasized the budget figures were based on one year of the diversion and participation rates realized in the Wilmington program. These numbers will vary depending on participation in the City and the diversion rate we achieve.

Mr. Funk attended a DSWA meeting where a \$3 tipping fee surcharge was discussed. Mr. Lapointe explained under the new recycling bill the plan was to put a \$3 surcharge per ton on the existing tipping fee for all non-recyclable materials. However, if a 30% diversion rate was achieved, the municipality would be exempt from the \$3 surcharge.

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: TO AUTHORIZE THE PUBLIC WORKS DEPARTMENT TO PROCEED WITH THE PROPOSED CURBSIDE RECYCLING PROGRAM.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

45. 10-A-3. PENSION PLAN PERFORMANCE REPORT – 1ST QUARTER 2008

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE PENSION PLAN PERFORMANCE REPORT OF THE 1ST QUARTER, 2008 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Markham was glad the City was staying on top of this and was contacting Russell about the poor performance of the plan. Mr. Pomeroy commented on the statement “While not a cause for alarm, this depressed funded status is a concern which should be addressed over the next few years.” and stated every time a month goes by, it was a month lost in the time frame of the next several years. Mr. Lopata reported this would be addressed very soon.

46. 10-A-4. REAL ESTATE TAX ASSESSMENT QUARTERLY SUPPLEMENTAL ROLL

MOTION BY MR. TUTTLE, SECONDED BY MR. POMEROY: THAT THE FIRST QUARTER, 2008, REAL ESTATE TAX ASSESSMENT ROLL BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

47. 10-B. ALDERMAN'S REPORT

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: THAT THE ALDERMAN'S REPORT DATED APRIL 18, 2008 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

48. 10-C. REQUEST FOR EXECUTIVE SESSION RE LAND ACQUISITION

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT COUNCIL ENTER INTO EXECUTIVE SESSION WITHOUT THE PRESS TO DISCUSS LITIGATION.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Council entered into Executive Session at 9:45 pm and returned to the table at 9:57 pm. Mr. Funk said no further action was required.

49. Meeting adjourned at 9:57 pm.

Patricia M. Fogg, CMC
City Secretary

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