

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

May 12, 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
Community Affairs Officer Dana Johnston
Police Chief Paul Tiernan
Captain John Potts
Interim P&D Director Maureen Feeney-Roser
Parks & Recreation Director Charlie Emerson
Parks & Recreation Supervisor Sharon Bruen
Public Works Director Rich Lapointe

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

2. **1-B. PRESENTATION OF 250TH ANNIVERSARY PARADE AWARDS**

Dave Tully, President of the University of Delaware Greek Council, presented a check in the amount of \$4,500 to the Newark Historical Society. Bill McClain, President of the Newark Historical Society, was pleased to receive the check which would allow the society to continue their mission of collecting historical mementos and preserving and sharing them at the museum on Main Street.

Mr. Tully congratulated the City on a successful 250th Anniversary celebration, and noted the Greeks were proud to be part of the event.

Mayor Funk awarded the following trophies for the 250th Anniversary Parade:

Best Float – Newark Senior Center
Best Vehicle – Spicer Mullikin Funeral Home
Best Band – University of Delaware
Best High School Band – Alexis I. duPont High School
Chinese American Community Center (U of D China Club Dragon)
Delaware Saengerbund
Library Association
VFW

3. MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THE AGENDA BE AMENDED TO ADD ITEMS 5-B, CONTRACT 08-04, STREET IMPROVEMENT CONTACT AND 9-B-5, APPOINTMENT TO PLANNING COMMISSION – DISTRICT 5.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

4. MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT ITEM 9-C-1, PRESENTATION BY JMT CONSULTANT FROM DELDOT RE IMPROVEMENTS TO ELKTON ROAD (FROM CASHO MILL ROAD TO DELAWARE AVENUE), BE HEARD AFTER APPROVAL OF REGULAR COUNCIL MEETING MINUTES, OR AFTER ITEM 2-A.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

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

A. Regular Council Meeting of April 28, 2008

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

6. Mr. Lopata introduced Dana Johnston, new Community Affairs Officer for the City. Dana came from the Food Bank of Delaware.

7. **9-C-1. PRESENTATION BY JMT CONSULTANT FROM DELDOT RE IMPROVEMENTS TO ELKTON ROAD (FROM CASHO MILL ROAD TO DELAWARE AVENUE)**

Darrel Cole, Director of Public Relations at DeIDOT, said in the last year, DeIDOT cut out half a billion dollars in projects from their six-year budget. The good news was that the major Newark projects remained in the six-year program, and those were a priority for DeIDOT. DeIDOT agreed the Christina Parkway and Elkton Road needed immediate attention, and the solution was to do a temporary fix on those roads from Casho Mill to the state line. Work will commence this summer or fall. The temporary fix will be an overlay which will create a smooth surface, although this would not repair the inherent problems underneath the surface. The project was signed off by Secretary Wicks last week, and details were currently being worked out. Council and the public will be kept informed as the project progresses, and time will be allowed for comments and solutions.

Mr. Cole introduced Chante Hastings, Project Manager for both Elkton Road projects. Ms. Hastings reported the entire planning study was divided into two distinct projects; from the Maryland State line to Casho Mill Road and from Casho Mill Road to Delaware Avenue. DeIDOT representatives gave a PowerPoint presentation regarding the improvement project, and hard copies of the report were available and on file in the City Secretary's office.

Mr. Pomeroy felt the short-term fix was a significant solution and said the repaving would appear to be a new road surface. He credited Aetna for helping to raise issues about the challenges they faced on a daily basis in relation to the roads. Mr. Pomeroy indicated one of the biggest issues for the project from the state line to Casho Mill Road was whether left turns would be permitted onto Elkton Road from Casho Mill Road. The factors DeIDOT would consider in making this decision were reviewed.

Mr. Pomeroy asked what issues DeIDOT would consider in determining whether to close Chrysler Avenue at Elkton Road. DeIDOT will review updated traffic counts, the number of left turns at the intersection, how many trips will be diverted to Short Lane and how well Short Lane and Lehigh Road could handle additional trips. Emergency access will play a role as well, and DeIDOT met twice with Aetna representatives who expressed a desire to be able to enter Chrysler Avenue from Elkton Road. DeIDOT will also explore a signal warrant analysis.

Mr. Athey expressed concern with the elimination of the Lincoln Drive crossover. DeIDOT's plan was for vehicles to turn in at Thorn Lane and loop around to enter the community. This was a much safer turn since it was from a signalized access. Mr. Athey questioned if a u-turn capability would be provided at West Park. DeIDOT's plans would not include such a provision since the road was too tight in that area to allow u-turns. Mr. Athey asked when the decision had to be made on the brick sidewalk option. DeIDOT would like an answer within the next several months, and Mr. Funk suggested bringing it back to the table in June or July.

Mr. Clifton asked about the possibility of installing countdown timers on the crosswalk lights. DeIDOT planned to do a test case at the Elkton and Apple Road intersection with an audible pedestrian signal for the sight impaired, and they had no plans for a countdown timer. This would be the first intersection in the state to have the audible pedestrian signal. Mr. Clifton discussed the bike lane in front of the Municipal Building from a safety standpoint. DeIDOT planned a standard intersection treatment, as bikes were considered through vehicles.

Mr. Tuttle hoped DeIDOT would find a solution to maintain an open status at the Chrysler Avenue intersection due to the traffic impact on Short Lane and Lehigh Road which were significantly narrower streets than Chrysler Avenue.

Mr. Markham confirmed that sidewalk improvements included both sides of the street from Delaware Avenue to Apple Road. He asked how the bike lanes from Elkton Road to Delaware Avenue would be designed. Ms. Hastings reported there would be an extra-wide shoulder (8') for bike use, with one travel lane in each direction and a center lane for left turns. There will be striping and obvious bike path symbols, but no rumble strips. Mr. Markham questioned the utility pole relocation and was advised DeIDOT will reimburse the City for the relocations, but the City must complete the work.

Mr. Temko verified that bike lanes would be on both sides of the road from Delaware Avenue to the Maryland line. DeIDOT plans included a shoulder that will function as a bike lane. In addition, from the Maryland line to Casho Mill Road, there will be a multi-use path on one side of the road so off-road and on-road biking will be available. Mr. Temko requested an estimate of the maintenance costs associated with the different sidewalk options and asked about the possibility of extending the brick sidewalk in front of the City Municipal building. DeIDOT will work up those costs. Mr. Temko was concerned drivers may be confused with the center lane for left turns. DeIDOT recognized there currently were no left turn lanes on Elkton Road, but this arrangement was the best treatment to provide a pull-off area from which to make safe left turns. The area will be left wide enough so the road could be returned to two lanes in each direction if necessary. Mr. Temko questioned the feasibility of underground utility lines. Ms. Hastings said DeIDOT will only reimburse for what currently exists (pole lines), and the City would have to bear additional costs which would be very expensive.

In regard to the brick sidewalks, Mr. Funk commented they were difficult for people with physical impairments to navigate.

MOTION BY MR. POMEROY, SECONDED BY MR. TEMKO: TO SUSPEND THE RULES AND OPEN THE ITEM 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.

Delaware State Senator Liane Sorenson was grateful the City's projects remained on the DeIDOT schedule. The State was dealing with serious budget problems, and a number of other projects were postponed indefinitely. Senator Sorenson was pleased with the temporary fix and noted it will make a big difference in Elkton Road. She indicated the State would be able to help with the sidewalk costs.

Steve Purvis, 9 E. Mill Station Drive, asked if stamped concrete had been considered and whether it was any less expensive than brick. Mr. Funk said the stamped concrete tended to wear off. DeIDOT proposed the brick to continue the feel of Main Street. DeIDOT could run a cost estimate, but the stamped concrete would not look identical to Main Street.

Delaware State Representative John Kowalko echoed Senator Sorenson's thoughts about the temporary fix and applauded DeIDOT's efforts on behalf of the City.

Gene Nyland, Director of the Newark Fire Department and liaison to the City, was pleased with the improvements proposed by the DeIDOT team. Mr. Nyland pointed out that various aspects of the project would significantly reduce the large number of motor vehicle accidents. His only negative reaction was to the closure of the Chrysler Avenue median due to the congestion on Lehigh Road and the fact that they would have to drive their equipment through a residential street with parking on both sides and two-way traffic. Chrysler Avenue was a large street with safer and quicker access, and they hoped DeIDOT would keep it open for the Fire Department.

Mr. Markham and several other Council members saw traffic calming ideas at another meeting where the spacing was designed in such a way that the fire department could go through without having to deal with the bumps (although cars could not). He thought DeIDOT might want to consider this method as an alternative to closing the Chrysler Avenue median.

Ms. Hastings said before making a final decision on Chrysler Road, DeIDOT will continue to look at traffic count data and updated accident information. Based on that information and the fire department's input, they will consider different options to maintain emergency vehicle access.

Jean White, 103 Radcliffe Drive, commended DeIDOT for the planning and the work they put into the Elkton Road project. Regarding the sidewalks, she felt brick sidewalks were more difficult to walk on and would require more maintenance than concrete, thereby increasing the cost. Mrs. White thought DeIDOT should install the countdown timers at the larger intersections as she was favorably impressed with them in Washington, D.C.

Rick Armitage reported the University of Delaware hired a transportation consultant who recommended countdown timer crosswalks at almost every intersection along Elkton Road.

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

Mr. Temko suggested another option in terms of the sidewalks that would take into account the accessibility features, with red concrete strips across instead of bricks but keeping the bricks on the side.

DelDOT will keep the City and the public updated on the project.

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

A. Public - There were no comments forthcoming.

9. **3-B. UNIVERSITY**

1. Administration – There were no comments forthcoming.

10. **3-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

11. **3-C. COUNCIL MEMBERS**

Mr. Temko advised he attended the Newark Day Nursery legislative breakfast, and he passed on their appreciation to the City for funding received under the shared revenue program. Newark Day Nursery's program was one of only six in the state accredited by the National Association for the Education of Young Children.

12. Mr. Temko said he attended a performance at Chapel Street Players on Saturday evening; fortunately, that performance was not disrupted by Chapelfest activities.

13. Mr. Temko thanked Ms. Fogg for helping with letters to residents on Corbit Street and on Country Club Drive regarding traffic calming.

14. Mr. Temko was contacted by a Newark resident who complained about towing practices in the City. Mr. Temko hoped Council would address the issue. Mr. Lopata advised the problem was being worked on internally by members of staff.

15. Mr. Temko thanked Mr. Pomeroy for volunteering to develop a draft resolution on open government, and he fully supported such a resolution.

16. Mr. Markham reported the Curtis Paper Mill partners met recently. Their website, www.curtispapermill.com, contained updates on the progress of the project by Mr. Bauernschmidt. Mr. Lopata hoped the website would soon display the list of sponsors, including the City. He felt it was important to acknowledge the group had the support of the local community.

17. Mr. Markham encouraged CAC and T&G to consider a bike sharing program that had been implemented in Europe and other areas through a private corporation who provided rental bikes at bike racks placed throughout the City.

18. Mr. Markham was present during Chapelfest with the Police Department, and he complimented them on being well prepared for this unofficial, unsanctioned, unpermitted event. He also thanked the University of Delaware Police Department for their assistance. Mr. Funk thought the ordinance related to parades and public assemblies should be revisited and perhaps there should be a special meeting to discuss how to better control the event. Chief Tiernan said attendance was about 50-50 students and non-students, and approximately 45 arrests were made. Mr. Lopata reported tentative plans to meet with the Chief and other members of his staff together with the University of Delaware representatives and possibly with the landlords.

19. Mr. Markham appreciated the opportunity to meet with Senator Sorenson, Representative Kowalko and several other legislative members to discuss transfer taxes. He felt the legislators were sympathetic and understanding.

20. Mr. Tuttle was grateful for the time the City's legislative delegation spent listening to pleas in regard to transfer taxes.
21. Mr. Tuttle recognized the Police Department's participation in the College Park Neighborhood Association meeting on April 30th to discuss solving community problems.
22. Mr. Clifton said he was impressed by the professional conduct of the Police Department during Chapelfest. Mr. Clifton spent over five hours with the police, and he was embarrassed by the irresponsible, anti-social behavior witnessed that day in an area that was a gateway to the City.
23. Mr. Clifton commented he felt the predatory towing situation in private parking lots would stop if the towing companies had to subscribe to the City's contractual towing fees.
24. Mr. Clifton discussed tentative long-term housing plans at the University with Mr. Armitage. Mr. Armitage felt the Dickinson and Rodney dorms would probably come down, and there would be an expansion of housing on the east campus.
25. Mr. Athey advised he attended the annual Town & Gown Volunteer Awards program which honored about 24 University of Delaware students.
26. Mr. Pomeroy commended Mr. Emerson for the help he provided to the Little League.
27. Mr. Pomeroy praised the police on their response to Chapelfest and to the incidents involving Newark High School.
28. Mr. Pomeroy congratulated the University of Delaware on their forum during the past weekend.
29. Mr. Pomeroy thanked Ms. Fogg for assisting him with a letter regarding traffic calming on Dallam Road.
30. Mr. Pomeroy agreed that the towing issue must be addressed and felt the changes outlined in Mr. Funk's letter and Mr. Lopata's proactive steps were a move in the right direction.
31. Mr. Pomeroy noted the Greater Newark Network made the Elkton Road/Chrysler Avenue issue a priority as an economic development gateway.
32. Mr. Pomeroy advised that during his visit to Legislative Hall, the budgetary challenges being faced by the state were outlined in detail and demonstrated how important it was for the City to preserve its revenue source. Mr. Pomeroy asked Mr. Kowalko to report any progress to Council near the end of the legislative session.
33. Messrs. Pomeroy and Funk and Ms. Roser attended the Delaware Expo for the BRAC relocation to Aberdeen. Based on positive comments, Mr. Pomeroy felt the City was well poised to capitalize on bringing residents and businesses into the City.
34. **4. ITEMS NOT FINISHED AT PREVIOUS MEETING**
None

35. 5. RECOMMENDATIONS ON CONTRACTS & BIDS

A. Contract 08-05, Purchase of Mobile Generator with Trailer

Ms. Houck summarized her memo to Council dated May 1, 2008 wherein she recommended the purchase of a commercial mobile generator to provide emergency power to the City's water facilities. One sealed bid was received from Cummins Power Systems totaling \$88,400. Funds were available from a Homeland Security grant totaling \$100,000. She recommended that this contract be awarded to Cummins Power Systems of Bristol, PA.

MOTION BY MR. POMEROY, SECONDED BY MR. ATHEY: THAT CONTRACT 08-05 FOR THE PURCHASE OF A MOBILE GENERATOR WITH A TRAILER BE AWARDED TO CUMMINS POWER SYSTEMS FOR A TOTAL COST OF \$88,400.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

36. 5-B. RECOMMENDATION ON CONTRACT NO. 08-04 STREET IMPROVEMENT CONTRACT

Ms. Houck summarized her memo to Council dated May 9, 2008 wherein she recommended the authorization of the contractual award of the annual street improvement program to Fontana Concrete Contractors, Inc. in the total amount of \$774,301.50. Funds were available from the Community Transportation Fund, formerly the Bond Bill Fund, as well as from three capital programs.

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: TO AWARD THE STREET IMPROVEMENT CONTRACT NO. 08-04 TO FONTANA CONCRETE CONTRACTORS, INC. OF WILMINGTON, DE FOR A TOTAL COST OF \$774.301.50.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

37. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING

A. Bill 08-09 An Ordinance Amending Ch. 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. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 08-09.

Mr. Akin worked with the Police Department who brought a concern to him that the Code allowed some concealed weapons offenses to be handled in the Alderman's Court. Given the limited scope of punishments the Court may hand down, the Police Department was concerned the penalty might not be serious enough to deal with certain offenses. The amendment states all charges for carrying concealed dangerous and deadly weapons shall be prosecuted pursuant to the provisions of the State Criminal Code.

The Chair opened the discussion to the public.

Mrs. Jean White, 103 Radcliffe Drive, preferred to keep the language in the Code (rather than delete it) which defined concealed weapons and to add a statement that these offenses will be charged and prosecuted under applicable

statues in the Delaware Criminal Code. Mr. Akin said the State Code extensively defined deadly and dangerous weapons, or dangerous instruments, and it did not make sense to list those 40-60 prohibited items. Mr. Funk added that every time the State Code changed, it would have to be updated in the City's Code.

The Chair returned the discussion to the table.

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. 08-07)

38. 6-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. POMEROY, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 08-10.

Mr. Clifton requested this ordinance based on a complaint from a neighbor who was concerned that the first offense in Alderman's Court under the barking dog ordinance would be a criminal offense which seemed a harsh penalty. There was no change to the subsequent offenses.

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. 08-09)

39. 6-C. BILL 07-38 – AN ORDINANCE AMENDING CH. 23, PARADES & PUBLIC ASSEMBLIES, BY REDEFINING A PRIVATE SOCIAL GATHERING & BY PROVIDING FOR REQUIRED FINES (AMENDED)

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-38.

According to Mr. Funk, this revised version of the ordinance was developed in meetings between several Councilmen, the SGA, the Greek Council, Town & Gown, and the Police Department.

Mr. Temko spoke with the graduate liaison to the T&G Committee, who was pleased there was an ordinance on the table to which all the different parties were in agreement.

Mr. Clifton was concerned about Chapelfest's impact on the business community and the danger the event posed to the responders. He stressed the City needed to take control of this situation, particularly in light of the location and the overtime costs in excess of \$7,000. Mr. Clifton hoped this ordinance would help the City to gain more control over such events. He felt public safety was the

most important issue and the secondary one was changing the culture to insure these events were carried out properly.

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

(ORDINANCE 08-10)

40. 7-A. REQUEST OF SCHLOSSER & DENNIS, LLC FOR THE FOLLOWING SPECIAL USE PERMITS THAT WOULD APPLY TO THE PROPOSED BUILDING ADDITION TO BE CONSTRUCTED BETWEEN THE BUILDINGS AT 173 E. MAIN STREET (DAYS OF KNIGHTS) & 175 E. MAIN STREET (ALI BABA RESTAURANT)

- 1. A SPECIAL USE PERMIT TO ALLOW AN APARTMENT IN BB DISTRICT WITH CERTAIN CONDITIONS IMPOSED BY THE PLANNING COMMISSION.**
- 2. A SPECIAL USE PERMIT TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES FOR CONSUMPTION ON THE PREMISES OF A BUILDING ADDITION BETWEEN THE PROPERTIES AT 173-175 E. MAIN STREET WITH CERTAIN CONDITIONS IMPOSED BY THE PLANNING COMMISSION.**

MOTION BY MR. TEMKO, SECONDED BY MR. MARKHAM: THAT THE SPECIAL USE PERMITS BE GRANTED AS REQUESTED.

Paul Schlosser, Jr. of Schlosser & Dennis, LLC, advised that he intended to fill in the alleyway between 173 & 175 E. Main Street. The additional area was designed for expansion of the Ali Baba restaurant and a two-bedroom apartment on the second floor. Mr. Pomeroy questioned how the connection would be constructed, and Mr. Schlosser said several openings would be left in the existing block wall between Ali Baba and the new addition. If there was a future need to separate the buildings, those spaces could easily be filled in. Mr. Funk asked if the current Ali Baba Restaurant would be sprinklered. Mr. Schlosser said all of Ali Baba, Days of Knights, the barber shop and the apartments upstairs would be sprinklered at the same time. In response to Mr. Temko's question regarding participation in the LEED program, Mr. Schlosser replied he would be willing to complete the LEED checklist to the best of his ability.

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

Mr. Markham noted there was a net loss of three parking places. Mr. Schlosser advised he received approval of a five-space parking waiver, and there were two new spaces on Main Street. Mr. Lopata said a condition of approval was for the curb cut at the alleyway location to be removed and replaced with raised curbing.

Mr. Clifton asked if the special use permit for alcohol would parallel Ali Baba's. Mr. Lopata said Ali Baba pre-dated the special use permit, so this project would put both sides of the restaurant under the revocation clause, making the standards much tougher, provided Ali Baba applied and occupied the space. Mr. Clifton asked that Council be provided with contact names and

telephone numbers on future reports. Mr. Lopata will see that this information is included in the reports to the Planning Commission which Council received.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

41. 7-B. REQUEST OF ANDREW YEUNG FOR A SPECIAL USE PERMIT TO PERMIT THE SALE OF ALCOHOLIC BEVERAGES IN A PROPOSED SIT-DOWN RESTAURANT IN THE SHOPPES AT LOUVIERS ON PAPER MILL ROAD TO BE KNOWN AS PINANG.

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

Mr. Andrew Yeung, 1709 Newkirk Street, stated he planned to open a Malaysian-Japanese restaurant that would serve alcoholic beverages at the Shoppes at Louviers.

Mr. Markham confirmed the operating hours would be Monday through Thursday, 11 am-10 pm, Friday and Saturday 11-12 am, and Sunday 12-9 pm. Mr. Yeung advised there would be a sushi bar with 15 seats, three of which would be used as a waiting area serving alcohol but no food. The remaining seating was at tables. Mr. Markham asked what type of alcohol would be served. Mr. Yeung planned to serve beer and wine, including Sake, and he had no objection to limiting his alcohol sales to those items. Mr. Markham stressed that residents in his district did not want the restaurant to become a bar, and suggested adding the same conditions included in Blackstone's special use permit.

AMENDMENT BY MR. MARKHAM, SECONDED BY MR. CLIFTON: THAT THE SPECIAL USE PERMIT BE GRANTED WITH THE FOLLOWING CONDITIONS:

1. HOURS OF OPERATION SHALL BE LIMITED TO: MONDAY – THURSDAY (11 AM TO 10 PM); FRIDAY – SATURDAY (11 AM – 12 AM); AND SUNDAY (12 PM TO 9 PM).
2. THE BAR, AS DEFINED IN THE CITY ZONING CODE, SHALL BE LIMITED IN SIZE, IN TERMS OF SEATS, TO NO MORE THAN 15% OF THE TOTAL NUMBER OF SEATS IN THE RESTAURANT.
3. ALCOHOLIC BEVERAGES SOLD ON PREMISES SHALL BE RESTRICTED TO WINE, INCLUDING SAKE, AND BEER SALES ONLY.
4. NO ADVERTISING OF ALCOHOL SPECIALS AS DEFINED IN THE CITY ZONING CODE, EXCEPT THAT ALCOHOLIC BEVERAGES OR SPECIALS MAY BE PROMOTED TO PATRONS WHILE THOSE PATRONS ARE WITHIN THE PREMISES.
5. NO SIGNAGE IN THE WINDOWS ADVERTISING OR PROMOTING ALCOHOL PRODUCTS.
6. GUESTS MUST BE OFFERED A SEAT AND A MENU UPON ENTERING THE ESTABLISHMENT.
7. NO PLASTIC OR CARDBOARD ALCOHOL PARAPHERNALIA INSIDE OR OUTSIDE THE RESTAURANT.
8. LIVE ELECTRONICALLY AMPLIFIED ENTERTAINMENT SHALL BE LIMITED TO A MAXIMUM OF TWO PERFORMERS USING A SINGLE ELECTRONICALLY AMPLIFIED SYSTEM. SUCH LIVE ELECTRONICALLY AMPLIFIED ENTERTAINMENT SHALL CONFORM TO ALL THE APPLICABLE STANDARDS AND SPECIFICATIONS OF MUNICIPAL CODE, CHAPTER 20A, NOISE.
9. ALL REASONABLE EFFORTS SHALL BE TAKEN TO ENSURE THAT ALCOHOL SALES DO NOT COMPRISE MORE THAN 40% OF GROSS REVENUES.

10. THERE SHALL BE NO MORE THAN TWO TELEVISIONS ON THE PREMISES; VIDEO GAMES OF ANY KIND SHALL NOT BE PERMITTED WITHIN THE PREMISES; CIGARETTE VENDING MACHINES OR SALES BY STAFF OR OTHERS OF TOBACCO PRODUCTS SHALL NOT BE PERMITTED; AND NO DARTBOARDS SHALL BE PERMITTED ON THE PREMISES.

Although some of the restrictions seemed to be arbitrary to Mr. Pomeroy, he planned to vote in favor of the special use permit since the petitioner agreed to the restrictions. Mr. Pomeroy commented that a person could get just as drunk on beer as they could on gin and tonic, and that the restrictions simply prevented a responsible drinker from being able to order other types of alcoholic beverages.

Mr. Markham said by imposing the restrictions, they were trying to set the same playing field for the entire shopping center.

Mr. Temko agreed with Mr. Pomeroy's comments.

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

Question on the Amendment was called.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Question on the Amended Motion was called.

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

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

42. 8. ORDINANCES FOR FIRST READING

A. Bill 08-12 – An Ordinance Amending Chapter 20, Motor Vehicle & Traffic, By Amending the Penalty for Driving in Excess of the Speed Limit

Ms. Fogg read Bill 08-12 by title only.

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THIS BE THE FIRST READING OF BILL 08-12.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 6/9/08)

43. 8-B. BILL 08-13 – AN ORDINANCE AMENDING CH. 2, ADMINISTRATION BY AMENDING THE FEE ASSESSED IN ALDERMAN'S COURT FOR COURT COSTS FOR MAILED-IN SUMMONS

Ms. Fogg read Bill 08-13 by title only.

MOTION BY MR. ATHEY SECONDED BY MR. POMEROY: THAT THIS BE THE FIRST READING OF BILL 08-13.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Funk asked Mr. Lopata to verify whether the City's fee was consistent with Magistrate Court fees prior to the second reading.

(2ND READING 6/09/08)

44. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA

A. Council Members:

1. Resolution No. 08- __: Amending the Newark City Charter, Being Chapter 152 of Volume 48, Laws of Delaware, As It Relates to the City's Ability to Borrow Money for Current Expenses & the City's Power to Incur Bonded Indebtedness

Mr. Fogg read the resolution by title only.

Mr. Funk complimented the draft wording in the ordinance.

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(RESOLUTION NO. 08-N)

45. 9-B-1. RECOMMENDATION FROM COMMUNITY DEVELOPMENT/REVENUE SHARING COMMITTEE RE TARGET FUNDING FOR 2009 REVENUE SHARING PROGRAM

Mr. Lopata advised that the recommended local revenue sharing funding target level for the 2009 budget was \$59,180, a 2.5% increase over the 2008 Revenue Sharing Program. Mr. Temko recommended and Council agreed the target level be increased by 4%, or \$60,050, which would follow the National Consumer Price Index.

MOTION BY MR. TEMKO, SECONDED MR. CLIFTON: THAT COUNCIL APPROVE A TARGET LEVEL OF \$60,050 FOR REVENUE SHARING FUNDING FOR 2009.

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

46. 9-B-2. APPOINTMENT TO COMMUNITY DEVELOPMENT/REVENUE SHARING COMMITTEE – DISTRICT 3

MOTION BY MR. TUTTLE, SECONDED BY MR. POMEROY: TO APPOINT EDWARD V. TWARDUS TO THE COMMUNITY DEVELOPMENT/REVENUE SHARING COMMITTEE TO REPRESENT DISTRICT 3; SAID TERM TO EXPIRE MARCH 13, 2011.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

47. 9-B-3. APPOINTMENT OF CHAIR TO COMMUNITY DEVELOPMENT/REVENUE SHARING COMMITTEE – MAYOR APPOINTMENT

MOTION BY MR. FUNK, SECONDED BY MR. CLIFTON: THAT DANA DIMOCK BE APPOINTED TO SERVE AS CHAIR OF THE COMMUNITY DEVELOPMENT/REVENUE SHARING ADVISORY COMMITTEE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

48. 9-B-4. RESIGNATION FROM PLANNING COMMISSION – DISTRICT 5

MOTION BY MR. TEMKO, SECONDED BY MR. MARKHAM: THAT THE RESIGNATION OF JOSEPH RUSSELL FROM THE PLANNING COMMISSION BE ACCEPTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

MOTION BY MR. TEMKO, SECONDED BY MR. POMEROY: THAT PEGGY BROWN BE APPOINTED TO THE PLANNING COMMISSION; SAID TERM TO EXPIRE SEPTEMBER 15, 2008.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

49. 9-C. OTHERS

1. Presentation by JMT Consultant from DeIDOT re Improvements to Elkton Road (From Casho Mill Road to Delaware Avenue)

(See Item #7)

50. 10. SPECIAL DEPARTMENTAL REPORTS

- A. Special Reports from Manager & Staff – None

51. 10-B. ALDERMAN'S REPORT

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THE ALDERMAN'S REPORT DATED MAY 6, 2008 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

52. 10-C. FINANCIAL STATEMENT

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: THAT THE FINANCIAL REPORT DATED MARCH 31, 2008 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

53. 10-D. REQUEST FOR EXECUTIVE SESSION RE PENDING LITIGATION

MOTION BY MR. MARKHAM, SECONDED BY MR. ATHEY: 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 9:53 pm and returned to the table at 10:15 pm. Mr. Funk said no further action was required.

54. Meeting adjourned at 10:17 pm.

Patricia M. Fogg, CMC
City Secretary

/av