

**CITY OF NEWARK  
DELAWARE  
COUNCIL MEETING MINUTES**

**July 28, 2008**

Those present at 7:30 pm:

Presiding: Mayor Vance A. Funk, III  
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 H. Lopata  
City Secretary Patricia M. Fogg  
City Solicitor Roger A. Akin  
Assistant to the City Manager Carol S. Houck  
Interim P&D Director Maureen Feeney Roser  
Public Works Director Richard M. Lapointe  
Captain Rick Williams, NPD

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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 THE AGENDA BE AMENDED BY REMOVING ITEM 5-B, RECOMMENDATION FOR APPROVAL OF VEHICLE PURCHASES STATE OF DELAWARE AWARDED CONTRACT NO. 07-013-HF (2) 2008 FORD CROWN VICTORIA POLICE INTERCEPTORS, AND ADDING ITEM 10-C, EXECUTIVE SESSION RE PERSONNEL.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

A. Regular Council Meeting of July 14, 2008

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

4. **2-B. SPECIAL COUNCIL MEETING OF JULY 25, 2008**

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

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

A. Public

Thyme Gadson, State Organizer of Delaware Alliance for Safe Roads based in Dover discussed the impact of bigger trucks on roads, highways, and bridges. He reported there were 43 structurally-deficient bridges in Delaware. According to Mr. Gadson, the trucking industry was proposing an increase in the

gross weight limit to 97,000 lbs., up from 80,000 lbs. which had been in place since 1991. Along with the Teamsters and OOIDA (Owner Operated Independent Driver's Association), his coalition was opposed to truck weight increases for safety purposes, infrastructure underpayment reasons and environmental purposes. Mr. Gadson requested the City's participation in opposing changes to current regulations in the form of a resolution.

Mr. Funk asked Mr. Gadson what Senator Carper's position was on the change. Mr. Gadson said as of 2005, Senator Carper refrained from the vote and did not vote on the previous authorization bill. Senator Biden voted for the authorization bill to limit bigger trucks. Mr. Funk asked how Council wanted to proceed. Mr. Athey requested the staff to do further research before they consider a resolution. Mr. Lopata said staff would research the subject for further consideration.

**6. 3-B. UNIVERSITY**

1. Administration – There were no comments forthcoming.

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

There were no comments forthcoming.

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

Messrs. Pomeroy, Athey, Clifton, Markham and Funk congratulated staff on the Food and Brew Fest which was a great event that was well attended. Mr. Clifton felt the shuttle service made a difference to businesses in the outlying area. He suggested the schedule of groups playing in different locations be publicized well in advance and that retail stores stay open later for the event.

9. Messrs. Pomeroy and Markham expressed appreciation to Mr. Lopata and staff for their prompt response during the recent storms experienced by the City.

10. Mr. Pomeroy said he was asked to serve on a business recruitment effort happening in conjunction with BRAC.

11. Mr. Pomeroy reported that things were moving ahead with the sale of the Chrysler plant and noted the amount of interest in the site was encouraging. He said the City hoped to attract a business that would be lasting and sustainable and would lead Newark ahead in the 21<sup>st</sup> century.

12. Mr. Athey noted in the Administrative Report that the reservoir was again being used because of low flow stream conditions, and he felt the investment continued to pay off in the summer during low flow and in the winter when salinity levels often get too high.

13. Mr. Athey referred to the City Solicitor's memo regarding Peddling, Vending and Soliciting which was developed in part due to a rash of recent applications. His only reservation was that the hours of 9:00am-9:00pm seemed like a very broad time period. In Mr. Lopata's cover memo he said 9:00pm for weeknights was too late, especially in the winter, and thought 8:00 or 7:30pm was restrictive enough. Mr. Akin said there was a great deal of case law on time restrictions, but very little on restricting days. He thought that taking the entire weekend away from commercial entities might be deemed too broad by a court. Mr. Lopata suggested leaving in weekend afternoons from noon or 1:00-5:00pm. Mr. Funk felt that noon-5:00pm on weekends would be viewed as reasonable for door-to-door solicitation. Mr. Markham said the word should go out that "no soliciting" signs needed to be respected. It was the consensus of Council that all the recommendations in Mr. Akin's memo should be incorporated into an ordinance for their review.

14. Mr. Clifton said he served on the Board of the Emmaus House, and as a member of their board, he thanked the Greek community for raising \$9,500 on

their behalf at a very successful fund-raising event recently held during the Greek games. The fund raiser was an air band concert which was a unique experience for him.

15. Mr. Tuttle commented on receiving a number of appreciative comments on the street work going on in the City this summer.

16. Mr. Tuttle mentioned the ongoing issue with downtown towing was being explored by staff, and he looked forward to discussing ways to change the current environment. Mr. Lopata said there would be a report at the next Council meeting. Mr. Clifton heard that some of the towing companies wanted to come before Council to discuss their charges, and three of the four major towing companies agreed to do so. He was encouraged to hear that they were trying to self-police themselves.

17. Mr. Markham recognized State Senator Liane Sorenson.

18. Mr. Temko thanked the Public Works Department for changing the Scotch Pine Street sign in Evergreen that had been incorrectly spelled as one word for quite some time.

19. Mr. Temko announced a community meeting regarding the 203 New London Road project at the George Wilson Center on August 13<sup>th</sup> at 7:00 p.m.

20. Mr. Temko thanked Carol Houck for compiling information about the Fair Labor Environmental Standards in terms of bidding, and he requested discussion of the subject at the next Council meeting.

21. Mr. Funk said he and Mr. Pomeroy have been very busy with media contact regarding Chrysler. There was an incredible amount of interest in the site, and he was anxious to hear the results of the bidding process.

22. Mr. Funk said he was disappointed with the fake brick being used at 100 Elkton Road, and noticed the same was being used at 102 E. Main Street. Mr. Athey was also under the impression that both projects were supposed to have real brick. Mr. Lopata said the Elkton Road project had a long history of changes, and by the time it got to Council, real brick was not stipulated in the agreement. Mr. Lopata will go back and check the record on 102 E. Main Street.

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

- A. Bill 08-12 An Ordinance Amending Ch. 20, Motor Vehicles & Traffic, By Amending the Penalty for Driving in Excess of the Speed Limit (TABLED 6/9/08)

MOTION BY MR. ATHEY, SECONDED BY MR. POMEROY: TO LIFT BILL 08-12 FROM THE TABLE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

MOTION BY MR. ATHEY, SECONDED BY MR. POMEROY: TO DEFEAT BILL 08-12 AS PRESENTLY DRAFTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Clifton asked Captain Williams if 20 mph over (one of the benchmarks) was considered exhibition of speed. Captain Williams said it was not and that speed exhibition would be spinning wheels, drag racing with one car, etc. Mr. Clifton asked if 20 mph over was the six point level, and Captain Williams said he assumed the points had not changed as to the fines being given.

Mr. Athey noted the July 11<sup>th</sup> memo from Corporal Davis contained an error, and the \$20 figure should be \$15 (bill was correct).

**(2<sup>ND</sup> READING 8/11/08)**

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

A. Recommendation to Authorize Change Order Increases to Contract No. 07-20 (Capital Project E9102) Kershaw Substation Expansion

Ms. Houck summarized her memo to Mayor and Council dated July 16, 2008, wherein she explained that the Kershaw Substation Expansion project required additional funding in association with three change orders. The total increase was \$14,798, and funds totaling \$199,433 were available for the project. Ms. Houck recommended approval of the additional funding for the new expansion.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: TO AUTHORIZE CHANGE ORDER INCREASES TO CONTRACT NO. 07-20, KERSHAW SUBSTATION EXPANSION, TOTALING \$14,798.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

**25. 5-B. RECOMMENDATION FOR APPROVAL OF VEHICLE PURCHASES STATE OF DELAWARE AWARDED CONTRACT NO. 07-013-HF (2) 2008 FORD CROWN VICTORIA POLICE INTERCEPTORS**  
(Removed from Agenda)

**26. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING**  
None

**27. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS**  
A. Request of the University of Delaware for a Certificate of Economic Hardship Relating to the Demolition of the Belmont Hall Garage Located at 203 W. Main Street

Rick Armitage, representing the University, requested the certificate of economic hardship for the demolition of the small garage at 203 W. Main Street associated with the University's Belmont House. Mr. Armitage met with the Planning Commission on June 3<sup>rd</sup> and was asked to contact neighbors in the vicinity of the garage. Mr. Armitage hand-delivered letters to 39 homes in the vicinity of the garage and was not contacted or questioned by neighbors as a result of the letter. The Planning Commission recommended demolition. The engineering firm contracted by the University to evaluate the structure determined restoration would be very expensive. The current use of the garage was for storage only. If demolition was approved by Council, the University Center for Historic Architecture and Design would record the garage before it was destroyed.

Mr. Funk said he felt when the fire escape was added, it destroyed the historical significance of the building. Mr. Armitage said at that time it was probably a Code requirement to have exterior metal fire stairs.

Mr. Pomeroy questioned if there were plans to replace the garage. Mr. Armitage said there were no plans for anything else to be built at the site. Mr. Pomeroy asked the downside to keeping the garage. Mr. Armitage said it was an eyesore in its current condition and would become more of a hazard if it was left standing.

Mr. Temko asked why the garage structure deteriorated so severely over the years. Mr. Armitage said the University had limited resources to maintain some 400 buildings. They put their resources into buildings that they use for laboratory space, academic teaching spaces, the library and dormitory space. The 25 x 20 foot garage had only been used for storage for the past 30 years, so it fell to the bottom of the list. Mr. Temko asked if the University had other historic properties that were not in active use and were not being maintained. Mr. Armitage was not aware of any and said probably one third of the campus was on the historic register which added significant cost to maintain their façades during renovation.

The Chair opened the discussion to the public.

Mrs. Jean White, 103 Radcliffe Drive, said while she was not opposed to the demolition per se, she had commented at the Planning Commission meeting that the University could have limited much of the deterioration by repairing the roof. At that meeting she asked whether the electric line that ran from Dallam Road up to the garage could be taken out all together. If she understood the Electric Department correctly, that line was only to the garage and was not lighting the parking lot further toward Main Street. All the electric wires were underground to Belmont Hall from Main Street, but electric to the garage ran from Dallam. She asked Mr. Armitage whether those poles and the electric lines could be taken down that ran alongside the house on Dallam next to the Belmont Hall property. Mr. Lopata assumed they were City poles, and said it would be odd to leave them up. Mr. Pomeroy asked Mr. Lopata to look into removal of the poles.

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

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: TO APPROVE THE UNIVERSITY OF DELAWARE'S REQUEST FOR A CERTIFICATE OF ECONOMIC HARDSHIP RELATING TO DEMOLITION OF THE BELMONT HALL GARAGE AT 203 W. MAIN STREET.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

**28. 7-B. REQUEST OF CACCIATORI PIZZERIA FOR A SPECIAL USE PERMIT FOR THE SALE OF ALCOHOLIC BEVERAGES IN THE EXISTING SIT-DOWN RESTAURANT LOCATED AT 108 LOUVIERS DRIVE, SHOPPES AT LOUVIERS**

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

Theodore Sandstrom, Esquire, 273 E. Main Street, represented Cacciatori Pizzeria, Inc., who requested a special use permit for serving beer and wine inside the premises in conjunction with meals. The restaurant was located in the Shoppes of Louviers, and the principle, Mr. Dabbraccio, was present to answer

any questions posed by Council. The business was family run and had been in the location over two years with no complaints. Mr. Sandstrom advised that Mr. Dabbraccio had agreed with the Planning Department's recommended conditions. He also agreed to come under the same restrictions that were imposed on Blackstone's. Residents of the Woods at Louviers were contacted with a letter of intent before the application was filed on June 2<sup>nd</sup>. Mr. Sandstrom said he received no response to his letter, and Mr. Dabbraccio had been in touch with the community and received positive feedback.

Mr. Lopata advised that the restrictions were consistent with the most recent ones approved by Council for Pinang, and the hours were a little different than Blackstone's.

Mr. Markham asked Mr. Sandstrom how many letters were sent, and he said 20 letters were mailed to adjacent properties. Mr. Lopata reported the City also sent notification letters. Mr. Markham's understanding was that the restaurant did not plan to be open past 10 pm. Mr. Sandstrom said that was correct – the hours would be Monday through Saturday from 10:00 to 10:00 and Sunday from 11:00 to 9:00. Mr. Markham asked what operating hours were stated in his letter as he did not want those to differ from what was proposed to the community. Mr. Lopata said the restrictions were mirrored to be consistent with Pinang because it was anticipated the applicant would come back and ask for the same hours, and Council would have to review it again. Mr. Sandstrom indicated the hours of operation would be 7 days a week from 10:00 to 10:00, and that was acceptable to Mr. Dabbraccio.

AMENDMENT BY MR. MARKHAM, SECONDED BY MR. TUTTLE:  
THAT THE HOURS OF OPERATION BE FROM 10:00AM TO 10:00 PM  
TO MATCH THE TIME STATED IN MR. SANDSTROM'S LETTER TO  
THE COMMUNITY.

AMENDMENT PASSED: VOTE: 6 to 1.

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

Mr. Markham asked if the residents were told there would be no bar. Mr. Sandstrom said he understood there could not be a bar, and he did not believe a bar was allowed in a BB district at that location.

The chair opened the discussion to the public.

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

Mr. Temko visited the restaurant which he said was a nice, family-oriented restaurant, and said he saw no issue with alcohol being served. While he felt the hours of operation made sense, he thought Council should not try to mandate other restrictions such as the number of performers, using electronically-amplified systems, whether dart boards were permitted, and being required to offer a menu as patrons entered the establishment.

Mr. Lopata commented that the reason for keeping the proposed restrictions was that although the existing restaurant was run by a good operator, it could be sold at any time, and the special use permit conditions would run with the land.

Mr. Pomeroy agreed with Mr. Temko's point that the way in which some of these restrictions came about was sometimes a bit arbitrary and brought to light the issue of how much business should be micro-managed from the table. Mr. Pomeroy understood in this particular case the applicant accepted the restrictions, but he thought the point being made was still valid. Mr. Funk

concluded there was a tendency to micro-manage. Mr. Markham said some things were more important to different areas, and with the Shoppes at Louviers surrounded by residents, the noise issue was very important to them. He felt it was less confusing to have the same restrictions throughout the shopping center. Mr. Lopata said the micro-managing started with Blackstone's who proposed most of their restrictions and having consistent restrictions in the shopping center would make enforcement easier for the City.

Mr. Clifton clarified that his lack of support for the amendment was based on the fact that he felt every business should have the same rules. While he was not pleased with micro-management or government intervention, he said government got involved at the will of the people when people act irresponsibly. Further, while it was not a pleasant experience to do this, some of the things like the dartboard and the advertising were all elements that would allow a restaurant to morph itself from a restaurant to a bar. He agreed it might be micro-management, but it was being done to put everybody on the same page and protect the quality of life in an area that backed up to a residential community.

Mr. Pomeroy said he thought Council had moved toward a presumption of guilt that was almost inherent in every one of these matters. He was in agreement with placing responsible parameters, especially regarding noise or other issues that would affect the quality of life for people in and around a particular area. He felt the decisions were dictated by the nature of the community and how the venue matched with the community. However, as the decisions appeared to be getting rescinded at a later time, he thought there needed to be a better balance that was currently not being achieved.

Mr. Temko added that important issues were raised about micro-management. He appreciated the discussion about conformity and commented that nothing was handled uniformly on Main Street. He hoped the discussion would be continued by Council at another time beyond this issue.

Mr. Markham said expectations were being set here for what was expected from the restaurant by the City and by the community.

Question on the Motion as amended was called.

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

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

**29. 8. ORDINANCES FOR FIRST READING**

- A. Bill 08-16 - An Ordinance Amending Ch. 2, Administration, By Amending the Duties of Alderman Regarding Probation Before Judgment

Ms. Fogg read Bill 08-16 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THIS BE THE FIRST READING OF BILL 08-16.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(2<sup>nd</sup> READING 8/11/08)**

**30. 8-B. BILL 08-20 AN ORDINANCE ANNEXING AND ZONING TO RH (SINGLE-FAMILY, DETACHED RESIDENTIAL) A 5.0 ACRE PROPERTY LOCATED SOUTHWEST OF PATRIOT WAY BETWEEN ELKTON ROAD AND THE NORTHEAST CORRIDOR RAILROAD RIGHT-OF-WAY**

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Ms. Fogg read Bill 08-20 by title only.

MOTION BY MR. POMEROY, SECONDED BY MR. TUTTLE: THAT THIS BE THE FIRST READING OF BILL 08-20.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(2<sup>nd</sup> READING 8/25/08)**

**31. 8-C. BILL 08-19 - AN ORDINANCE AMENDING CH. 26, STREETS, BY INCORPORATING ADA (AMERICANS WITH DISABILITIES ACT) STANDARDS FOR SIDEWALKS IN THE CITY OF NEWARK**

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Ms. Fogg read Bill 08-19 by title only.

MOTION BY MR. POMEROY, SECONDED BY MR. ATHEY: THAT THIS BE THE FIRST READING OF BILL 08-19.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(2<sup>nd</sup> READING 8/11/08)**

**32. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA**

A. Council Members:

1. Resolution No. 08-\_\_\_: Support of Energy Efficiency in the City of Newark

Mr. Temko said he called this the “green” resolution, which would incorporate an array of policy goals to get renewable and efficient energy for the City. He proposed that Staff investigate these goals and report back by the November 10<sup>th</sup> meeting with specific ordinances where needed and full implementation by July 1<sup>st</sup> which is when new rate structures would be set. Mr. Temko explained the measures he included.

1. Make bill paying more electronically oriented so residents can receive and pay bills on line, and include a bell curve showing energy usage.

2. Establish a voluntary opt-out “Operation Round-up,” a program that would round up bills with those funds going to help economically-disadvantaged residents.

3. Electric rate redesign, which would include items like inclining block rates, “Smart Metering,” seasonal electric rates and electric heat rates. The average bill payer would not see an increase or a decrease.

4. Establish a municipal conservation program for the City’s operations, including fleet purchasing and buildings, and consider unexempting ourselves from the state’s renewable energy portfolio standards or establishing the City’s own.

5. Establish "Renewable Energy Portfolio Standards" to allow residents to purchase higher levels of renewable energy than they currently could in the Green Energy Subscription program. Investigate alternative energy sources for the program as a number of participants have expressed not being comfortable with the landfill gas source.

6. Establish a Green Fund to finance energy conservation projects funded by monies generated from establishing a local community foundation and increasing the system benefit charge.

Mr. Lopata commented that he reviewed the resolution with the Finance and Electric Departments. In adopting the resolution, Council would commit to the stated objectives and would thereby direct Staff to come back with ordinances and/or policy changes for Council's review and final determination.

Mr. Pomeroy pointed out that Council typically did not do things of this nature in the form of resolutions but rather would first request Staff to prepare a report before drafting ordinances.

Mr. Lopata explained that Mr. Temko's original draft was watered down because it was more rigid in terms of flexibility, and Staff was not sure that Council was ready to be committed to that. Mr. Temko said he put forward a resolution because he felt all the objectives were extremely important for Council's consideration, and he hoped they would support them.

Mr. Athey was concerned about setting a precedent because eventually a Council member might want to vote against something they already supported in a resolution.

MOTION BY MR. TEMKO, SECONDED BY MR. ATHEY: THAT STAFF INVESTIGATE OBJECTIVES ONE THROUGH SIX AND RETURN WITH A REPORT AND ORDINANCES BY NOVEMBER 10, 2008 FOR FURTHER CONCIL CONSIDERATION AND IMPLEMENTATION (SHOULD COUNCIL CHOOSE TO ADOPT THEM) BY JULY 1, 2009.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

### **33. 9-A-2. DISCUSSION RE STUDENT VOTING**

Mr. Temko felt clarification was needed regarding voting registration for University of Delaware students from out-of-state who were now domiciled in Delaware. He felt the opinion letter of 10/7/04 from Attorney General M. Jane Brady was not being followed by the Department of Elections. He met with the Attorney General's office, and they would not offer clarification unless asked to do so by the City Solicitor. Mr. Markham said he was not sure if a new request would produce any different information, but Mr. Funk said with another Attorney General in office, there might be a different response. Mr. Temko felt the City should ask what specific steps students needed to take to register and how this might impact their insurance and financial aid. In addition, he was interested in knowing whether a UD identification card was a valid form of identification. Another issue he raised was that there appeared to be a difference between what the Department of Elections and the Attorney General's office said about required documentation, and this discrepancy made the process confusing.

Mr. Akin advised that the opinion letter from Attorney General Brady issued to the State Election's Commissioner on October 7, 2004 addressed the specific question in terms of what an enrolled University student attending school in Delaware must do to satisfy state election registrars they are qualified to vote in the general election. The letter listed specific forms of identification or

documentation recommended to prove that a student enrolled at the University who normally resided out of state needed to declare Delaware as their domicile for voting purposes. Mr. Akin said the specific question of whether a University ID would be proof of domicile would not carry the day. The other documentation that the Attorney General advised the elections board to ask for were items that would prove more permanent intention to declare Delaware their domicile rather than be residing in the state for nine months as a college student. He thought the letter from the Attorney General might answer a number of the questions on the table but would go back to the Attorney General for clarification of any portion of the letter.

Mr. Pomeroy asked Mr. Temko whether he was concerned about students having access to vote in municipal elections, as he felt there were not many barriers to vote in City elections. Mr. Temko replied he was concerned about students having access to vote in any election. Mr. Pomeroy felt it was appropriate for Mr. Temko to request clarification on behalf of his constituents.

Mr. Tuttle said in terms of barriers, the City no longer maintained its own rolls, so whatever barriers existed in state elections existed wherever students wanted to cast their vote.

Mr. Akin said he would write a letter to Attorney General Biden on the subject but wanted to know what areas were unclear. Mr. Lopata said he thought Mr. Temko was concerned about the disconnect between the letter and the State Board of Elections. Mr. Temko would be interested in knowing whether the UD identification card was an appropriate form of documentation, and whether registration in Delaware would impact insurance or financial aid. Mr. Akin did not think the Attorney General would answer questions regarding insurance, which was a private matter between an insured and his insurance company or about financial aid received from an agency in another state. Mr. Temko requested a list of acceptable documentation – whether they were stand alone, what the categories were that needed to be proved and what fell under what category. Mr. Temko wanted an answer to the question of what a student needed to do to register to vote. Mr. Temko was concerned that the Department of Elections was operating on a case-by-case basis in evaluating the list of documentation.

Mr. Clifton felt students from out-of-state who had not registered their vehicles in Delaware and therefore had not paid into the Delaware tax system should not be eligible to vote in Delaware elections. He noted that the entire time he was in the military, he was never denied the right to vote and was able to obtain an absentee ballot from his home community.

**34. 9-B. COMMITTEES, BOARDS & COMMISSIONS**

None

**35. 9-C. OTHERS**

1. Curtis Paper Mill Site – Paper Mill Partners Report

Paul Bauernschmidt presented the June 19th report of the Paper Mill Partners. He thanked Ms. Houck for her help through the process and detailed the following site ideas:

- Trail Head – this would serve as a gateway and would need a good map and a small pavilion.
- Art Garden with native plants – Delaware Center for Horticulture had a consultant on staff who would be happy to assist the City. Mr. Bauernschmidt said native plants in Delaware are interesting because they were not seen very often, and 90% of the plants were drought resistant. Simple things could be built with stone pavers and an old millstone.
- Water Resources and Art interpreted through the use of signs and panels – one side could detail history, one side could talk about water resources, and another side could house public art.

- Skate Park – A good example was the one in Smyrna Community Park. It was approximately the size of a tennis court, and was lighted. However, Paper Mill Partners recommended Newark’s park be dusk to dawn. Mr. Markham added the skate park was recommended to be shielded with native plants and set back from the road.
- Pavilion – Paper Mill Partners talked about creating a destination space at the old mill site and wanted it to be unique. Wiring for sound and lighting was suggested to allow public performances or school field trips. Benches were an option to provide the opportunity for live performances and to seat an audience.
- Picnic Area – A rustic look was suggested, and this would accommodate school group visits to teach water resources and local history – an example was at Brandywine Park near the zoo.
- History – Interpreting the history of the site was the most strongly favored suggestion. Signs and interpretive panels would run throughout the park, and the Delaware markers program of the Delaware Public Archives was one possible option.
- Funding sources – Dedicated benches, remembrance gardens, memorial trees, and sponsored art were some possible ideas. Memorial bricks were another option, but there was negative feedback about that suggestion.

Mr. Clifton was surprised there was negativity about the memorial bricks since he felt it was a nice way to capture the people in the town. Mr. Bauernschmidt replied people wanted to see something more out-of-the ordinary, and memorial bricks were fairly common.

Mr. Markham discussed a display for the Japanese surrender document, and Mr. Bauernschmidt said while Curtis Paper produced paper for end of war treaties, it could not be confirmed or denied that the Japanese surrender document was signed on Curtis paper.

Mr. Pomeroy asked Mr. Bauernschmidt to comment on what he would recommend for the site based on his meetings. He said he would incorporate everything on the list, and the park could be segmented.

Mr. Clifton questioned the development feasibility with five out of seven acres in the floodplain. Mr. Lopata indicated there were many recreational choices that could go in the floodplain. Mr. Bauernschmidt said the idea with the park was if flooding occurred, it would be dry in several days, and the area could be used again. Mr. Athey said he did not have a problem with requesting the Parks and Recreation Department to proceed with a master plan, but there would have to be a decision on its components. Mr. Lopata felt the best approach was to develop a master plan that would incorporate the comprehensive overview with costs and potential phasing. In regard to re-covering the site, he explained Ms. Houck talked to DNREC about puncturing the holes needed to cover the old foundation. DNREC gave the green light to do that once the area was inspected from an environmental standpoint. He felt that getting some green at the site was a first priority.

Mr. Markham said for the short-term he hoped to see dirt and grass added to replace the rubble and concrete, and the second phase would be the start of fund raising. Mr. Markham commented that several sources of clean free fill dirt were provided, and Ms. Houck said there was a possibility of bringing in more free dirt, depending on the timing.

Ms. Houck said the foundation was left in place because of the possibility of environmental issues. She planned to meet on July 31st at the site with an engineering firm to follow through on some of the instructions given from DNREC. She hoped limited punctures could be done to determine what was under the foundation and then more punctures could be made in the foundation that would be necessary for drainage in order to grow and maintain grass.

Mr. Bauernschmidt felt it was important for the stack to remain in order to put everything into historical context. He said fund raising was set up and ready to go, and he wanted to be sure Council was in agreement to save the stack.

Mr. Temko agreed the stack should be saved. He said the most frequent requests he received for the site were for a skate park and a dog park. He asked Mr. Bauernschmidt to talk about the fund raising plans and goals. Mr. Bauernschmidt said once the costs were identified, he would begin to tackle the fund raising aspect. Mr. Lopata said it would be necessary to decide everyone's role in the fund-raising process and with a tight budget, any additional assistance from the community of voluntary contributions would be very helpful.

The Chair opened the discussion to the floor.

Rebecca Johnson Melvin, 215 Cheltenham Road, said she worked with Paul Bauernschmidt on the History of Newark project which she felt fostered wonderful community spirit. She thought doing something at this site was a way to continue the community spirit. She said there were a lot of people interested in the history of the mill, which was a very significant site in the history of Newark and that everyone wanted the landmark smokestack to remain. Ms. Melvin thought this was an opportunity for a green educational and recreational site. She noted there was a lot of interest in being minimalist and non-invasive because of the floodplain while still turning the site into a beautiful place. She said the participants were impressed with the skateboarders who were very articulate and noted they were the first ones to talk about potential partners with funding and donations. Mr. Lopata added this was an opportunity for a comprehensive community project since Curtis Paper was one of the City's icons.

Tyler Jacobsen, 17 Indian Road, spoke on behalf of the skateboard community, and said they were excited with the prospect of a skate park. They felt this was something truly missing from the City and noted the closest facilities were Newport and Smyrna. In his opinion, neither of those were prime skateboard facilities, and he felt the best parks were Cherry Hill, New Jersey and Washington, D.C. Thus, he hoped the City would look for better examples when moving forward with the project. He referenced a park outside of Washington that was a cement facility with a substructure built from recycled tires used to create the shape. Mr. Jacobsen said a well-designed cement park had more possibilities than a modular ramp-style park. Mr. Funk suggested that Mr. Jacobsen pass on his comments to the Parks & Recreation Department. Mr. Funk asked what sources of private funding were available. Ms. Melvin said one participant spoke about Lowes donating in-kind materials, and one of Mr. Jacobsen's friends had experience with setting up a park and getting funds from contractors. In regard to graffiti, Mr. Markham believed he heard it mentioned that the skateboarders would take care of looking out for and protecting the park. Mr. Jacobsen said there was a strong sense of community between the skateboarders with people looking out for each other. He claimed since the cement was so smooth, if there was graffiti, it would be easy to clean off. Mr. Jacobsen hoped it would be a free public facility for the skateboarders.

Mr. Clifton asked why the skateboarders wanted a concrete park that would remain the same forever versus a modular one where the dynamics of it could be changed from time to time. Mr. Jacobsen said that a good cement park could be designed in a way where it would be so fluid, there was almost an endless combination of ways to go around it.

**MOTION BY MR. MARKHAM, SECONDED BY MR. POMEROY:  
THAT THE PAPER MILLS PARTNER REPORT FOR THE CURTIS  
PAPER MILL SITE BE ACCEPTED AND REFERRED TO THE PARKS  
AND RECREATION DEPARTMENT FOR THE DEVELOPMENT OF A  
GENERAL PLAN.**

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**36. 10. SPECIAL DEPARTMENTAL REPORTS**

**A. Special Reports from Manager & Staff**

**1. Recommendation to Revise the Investment Policy Statement for the City's Pension Plan**

Mr. Zusag explained that the reason for the recommendations made in his May 19, 2008 memo was that for sometime there was concern about the ratio of assets to liabilities in the plan. As of January 1, 2007, the assets covered 78% of the liabilities of the plan, or approximately \$38 million in assets to \$48.5 million in liabilities. Generally, it was expected that an asset/liability ratio of less than 80% was cause for concern. He explained this was not an emergency because some pension plans were even much lower than that, but it should generally stay above 80% in the ratio of assets to liabilities. There were only a few different ways to try to accomplish this. One would be to commit more money to the plan, and the City currently spent about \$1.5 million per year to fund the pension plan. Another way was to try to reduce the liabilities by reducing benefits. He noted that employees would not be pleased with that prospect, which would have to be negotiated with the three bargaining units. The more immediate change considered in consultation with the City's financial advisor from Russell Investment Group was to modify the current allocation of assets provided for in the City's Investment Policy Statement. He thought that was the most feasible change. Currently, the assets for the pension plan were divided into 57% equities and 43% fixed-income investments. Russell Investment Group did an allocation study because Mr. Zusag did not want to recommend ramping up to 90% stocks, and 10% fixed income which might produce a higher expected yield over time but would also entail a much more significant level of risk than the City would be willing to assume. In order to limit the increase in risk within a reasonable amount and improve the yield over time, the allocation recommended was 60% in stocks divided up among large cap stocks, small cap and international stocks and reducing the allocation for fixed income from 43% to 30% and investing 10% in real estate funds. The expected yield for such an allocation would be 8.58% and a risk level of 10.34%.

Mr. Zusag explained that while the Investment Policy Statement was being revisited, it would be a good time to modify other minor aspects of the plan. The suggested amendments were:

1. The "Investment Horizon" for the plan was the period over which the performance of the plan was evaluated and the period of time over the investment objectives were expected to be reached. Ten years was a bit short for a pension plan since it was established in perpetuity for the long range, and 20 years was considered a more appropriate "Investment Horizon."
2. The current Investment Policy Statement had a target ratio of assets to liabilities of one to one, and the plan was short of that now. Mr. Zusag felt a more appropriate ratio was a range, rather than a specific number, anywhere between 90% -110% of assets to liabilities.
3. Clarification of the language which prohibited derivative investments by changing the IPS to state that derivatives may not be utilized except as expressly permitted by the IPS.
4. Place restrictions on the strategy of "short selling" of investments. Some of the City's current investments with Russell do engage in short selling to hedge against risk. The plan technically does not permit the practice and

the change would allow it to provide no more than 30% of the securities in a given fund.

5. The Operations and Investment Committee (OIC) consisting of Messrs. Lopata, McFarland and Zusag, discussed assumptions for the plan such as the mortality tables used to estimate life expectancies, the amount of money expected from the state, and turnover rates among police officers. These assumptions were used by the actuary in coming up with the liability figure for the plan. However, the IPS does not explicitly state whose responsibility it was to revise these assumptions, and the OIC thought it should be mentioned in the IPS.

Mr. Funk said it seemed the plan recommendations were going from a conservative approach to a less-conservative approach, and the market has not yet hit the bottom. Mr. Zusag said it may seem like that, but among pension plans nationwide, the average allocation was 60% for stocks, 33% for fixed income, 2% real estate, and 5% other. Mr. Zusag responded that the market was down right now and, it might be a good time to make these changes. Mr. Lopata felt the intent was to get a little more flexibility regardless of which way the market was going.

Mr. Clifton asked, in regard to life cycle funds, was there any way of looking at how aggressive the City should be based on anticipated retirement dates. Mr. Zusag said every January he compiled all the data on current employees and retirees. Information including the ages of employees, their hire dates, the service requirements for pension eligibility, and the pension amount were listed in the annual evaluation report and included the assumptions they made and the actuarial principles they applied. This information was then peer reviewed and put into a report detailing the City's liabilities versus assets, and the amount that should be contributed to the plan.

Glen Harris of Russell Investments said with pension plans there was less of a life-cycle approach than matching of liabilities. He felt the City's plan was under-funded at this time, and was just shy of 80%. Once a plan was fully funded at 100% and assets equaled liabilities, the City should consider moving more towards being 100% invested in longer term fixed income or bonds to match the timing of the cash flows over a longer period of time. The most common way of doing that was using 30-year treasury bonds, but when a plan was underfunded, other assets were needed to provide extra return, and stocks were the most common way to do that. Being in a low-return environment and not knowing where the economy was headed, other sources of returns were needed besides stocks or bonds. Mr. Harris explained that what other pension funds were doing was diversifying even further, whether it be hedge funds, private equity, commodities, real return-type assets or private or public real estate. In addition to seeking out additional returns, it was even more important to minimize risks in this period of time when stocks were volatile. He noted that returns on private real estate investments would be a little more stable than stocks, so there was a two-fold purpose in adding real estate.

Mr. Funk asked what the timing was on getting the plan over 80% since the City would go through a bond renewal this winter. Mr. Harris thought there would continue to be a lot of volatility in the markets, so returns for both equities and stocks would probably end up in the negative, if not in the low single digits. Fixed-income securities or bonds would probably perform a little bit better. Mr. Funk questioned what amount would be required if the City wanted to write a check to get up to 80%, and Mr. Harris replied it would be about \$1 million.

Mr. Athey asked how many years it would take to get from 80% to 90% if the City opted for this slightly more aggressive strategy and the yield was as anticipated. Mr. Funk felt that would never happen, and the City needed to start putting more money into the plan. Mr. Harris agreed that would be necessary and said the last time organizations had to make contributions was when the

country came off the last recessionary period. Mr. Lopata anticipated this was only one part of a multi-pronged effort. Mr. Athey felt if the policy was adopted to be at 90%, the City owed it to their retirees to look into what it would take to get to that level.

Mr. Athey asked Mr. Zusag to clarify the third point which stated derivative investments were prohibited, so the IPS should state that derivatives may not be utilized except as permitted by the IPS. Mr. Zusag said derivative investments would only be permitted as expressly permitted by the Investment Policy Statement. Mr. Athey said the IPS language prohibiting derivative investments was not really correct – it was not prohibited, but should say “restricted.”

Mr. Pomeroy noted that the whole concept of short selling was getting a lot more scrutiny of late, and he felt that scrutiny might grow during the coming months. He thought the City was opening itself up to that practice a bit more, and he was curious about what went into that decision.

Mr. Harris explained that when first hearing of short selling, people had a negative feeling of market sabotage, but he thought short selling played a huge part in the financial markets (and had for quite some time.) Unfortunately, a lot of money manager firms who did this type of short selling were forced to meet a lot of their requirements because of the huge sell off in the equity markets last August. Short selling was used more as a hedging strategy, not necessarily as more of a speculative strategy. The shorting in this case was only in one of the investments. Currently the City was using five underlying funds in the pension plan. The only fund that was actually doing short selling was a large cap structure fund which was a quantitative-type fund. Further, two of the five underlying managers were doing shorting, which was why the IPS stated up to 30% or less of the fund would be short. Mr. Pomeroy asked if this was a common practice for pension funds. Mr. Harris replied it was common in pension plans but was limited to a certain percentage and was done to seek other opportunities and thereby achieve a better performance structure while mitigating risk at the same time. Mr. Pomeroy asked if the 30% range was consistent with other pension funds, and Mr. Harris confirmed that it was.

Mr. Temko noted that in looking at the investment mix, besides adding real estate, the biggest change he saw was the minimum amount of investment in non-U.S. equity was raised 10%. Mr. Harris explained the point was diversification without taking on more risk, and as we became more of a global economy, the average pension plan increased its allocation to non-U.S. stocks. In looking at publicly-traded stocks around the world, in 1970 the U.S. stock market was 2/3 versus 1/3 globally, where now it was 50-50, meaning that pension funds should try to align themselves more with a global approach to reach a 50-50 allocation.

Mr. Zusag said the target was where they attempted to have the ratio of assets in the plan. He noted there was a provision in the IPS that said Russell would automatically review the actual allocation and then rebalance it on a monthly basis, or if it exceeded the minimums or maximums, they bring it back into balance.

Mr. Markham stated he appreciated that the document showed the changes and the deletions which raised a question. On page 7 the statement was deleted that read: “The Trustees may employ one or more investment managers of varying styles and philosophies to attain the Plan’s objectives,” and he asked why the trustees would give up their ability to pick multiple investment managers. Mr. Zusag said the approach currently used was a manager’s approach. Mr. Harris added that across the five different funds, there were roughly 30-32 underlying money managers, which provided a lot of exposure to institutional money managers and added diversification at the manager level. Mr. Zusag said when the City first diversified, it hired a large cap manager, and if that large cap manager did not perform, a recommendation would be made to Council

to replace the manager. Mr. Markham wondered why a Trustee would want that option removed. Mr. Zusag responded that the City currently did not hire the managers, and if one of the managers in the large cap fund was not performing, they would replace him, and the City would not get involved. Since the City had been investing with Russell, managers have changed a number of times, and it was not a decision the City had to confront anymore. Mr. Lopata said the statement could be put back in if desired by Council.

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THE RECOMMENDED CHANGES TO THE INVESTMENT POLICY STATEMENT FOR THE CITY'S PENSION PLAN BE ACCEPTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**37. 10-A-2. RECOMMENDATION RE CASHO MILL ROAD/ELKTON ROAD INTERSECTION REDESIGN MATTERS**

Mr. Lopata said some time ago Council requested DeIDOT to consider the possibility of left turns from Casho Mill Road to Elkton Road as part of the Elkton Road improvement project. He noted that the Police Department and DeIDOT had concerns about new traffic that might be drawn to the location if this change was made. The Planning Department and the Interim City Manager did not think traffic would be drawn to Casho Mill Road to go into town from the northern and western parts of the City.

Mr. Funk felt Thorn Lane was a very under-utilized road in good condition, and from a safety standpoint, it seemed to make more sense to channel people through there. He said signage at the intersection of Thorn Lane and Casho Mill Road would help to encourage travel in that direction.

Mr. Tuttle said the County's portion of Thorn Lane (over which the City had no control) was narrower with parking on both sides, creating an environment where you did not want to meet oncoming traffic. He reported that Lincoln Drive access would be closed with the Elkton Road reconstruction, so all the traffic for College Park would come through the Thorn Lane/Elkton Road intersection. He did not feel sight line would be much of an issue for left turns at Casho Mill Road with a traffic signal, but right turns on red would be an issue.

Mr. Temko was in favor of the left turn provided the state would pay for the change. Mr. Lopata confirmed with Chante Hasting of DeIDOT that the state would bear the cost. Mr. Markham found it perplexing that DeIDOT opposed the change even though it would improve the level of service at the intersection. Mr. Pomeroy did not think some of the implied risks made a lot of sense. He did not agree that additional traffic on Casho Mill Road would hasten the demand for the underpass to two lanes, since everyone was aware the one lane underpass would not change. The issue with the underpass was part of the reason to want left-hand turns onto Elkton Road because, short of using Thorn Lane, the residents of the Wilson Farms would have to travel Barksdale Road to get downtown. Mr. Pomeroy felt if the state would pay for it, the level of service issue was a significant reason to favor the change.

Mr. Pomeroy asked the reason for the double left turn lanes off of Elkton Road onto Casho Mill. Mr. Lopata said it would eliminate back ups into Elkton Road northbound.

Mr. Athey noted that Thorn Lane was not a major thoroughfare like Casho Mill Road, and he would be less confident trying to funnel more traffic that way. He preferred to see Casho Mill Road improved to allow the left turn.

MOTION BY MR. TEMKO SECONDED BY MR.TUTTLE: TO REQUEST THAT DELDOT INCLUDE A LEFT TURN FROM CASHO MILL ROAD TO ELKTON ROAD AS PART OF THE ELKTON ROAD IMPROVEMENT PROJECT.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**38. 10-A-3. REAL ESTATE TAX ASSESSMENT ACTUAL ANNUAL BILLING ROLL - ANNUAL BILLINGS FOR THE PERIOD OF JULY 1, 2008 – JUNE 30, 2009**

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MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THE REAL ESTATE TAX ASSESSMENT ACTUAL ANNUAL BILLING ROLL FOR THE PERIOD OF JULY 1, 2008 TO JUNE 30, 2009 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

MOTION BY MR. ATHEY, SECONDED BY MR. MARKHAM: THAT THE ALDERMAN'S REPORT DATED JULY 21, 2008 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**40. 10-C. REQUEST FOR EXECUTIVE SESSION RE PERSONNEL**

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Council entered into Executive Session at 10:12 pm and returned to the table at 10:48 pm. Mr. Funk said no further action was required.

**41. Meeting adjourned at 10:49 pm.**

Patricia M. Fogg, CMC  
City Secretary

/av