

**CITY OF NEWARK
DELAWARE
COUNCIL MEETING MINUTES**

August 25, 2008

Those present at 7:30 pm:

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

Absent: District 2, Jerry Clifton

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
Electric Director Rick Vitelli
Finance Director Dennis McFarland
Parks & Recreation Director Charles Emerson
Public Works Director Richard M. Lapointe
Water & Wastewater Director Roy Simonson
Chief Paul Tiernan, NPD
Captain Rick Williams, NPD
Community Affairs Officer Dana Johnston

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

2. MOTION BY MR. ATHEY, SECONDED BY MR. MARKHAM: THAT THE AGENDA BE AMENDED BY MOVING ITEM 9-A-1 AND 9-A-2 TO ITEM 3 AND 4.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

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

A. Council Members

1. Resolution 08-___: Retirement of Lt. Susan K. Poley

Ms. Fogg read the resolution endorsed unanimously by Council, honoring Lt. Poley who retired after serving the citizens of Newark for over 26 years. Mayor Funk noted that Lt. Poley performed proudly and humbly as an officer of the Newark Police Department.

(RESOLUTION 08-T)

4. 9-A-2. RESOLUTION 08- : RETIREMENT OF LT. THOMAS L. Le MIN

Ms. Fogg read the resolution endorsed unanimously by Council, honoring Lt. Le Min who served in the Newark Police Department since 1990. Mayor Funk appreciated Lt. Le Min's challenges at the Alderman's Court.

(RESOLUTION 08-U)

5. 3. ITEMS NOT ON PUBLISHED AGENDA

A. Public

(Secretary's note: This item was heard out of agenda order to accommodate the large group present for the discussion.)

Harvey Hooper, 303 Jaymar Boulevard, Newark, represented the ABATE motorcycle organization which was concerned about selective noise enforcement for motorcycles. He said Newark was known as a friendly and welcoming town and had a good relationship with a variety of motorcycle organizations. The group felt the climate had changed, and their concern was the possibility of inappropriate citations for loud mufflers. Mr. Funk assured the group that motorcycles would not be unfairly targeted. Mr. Hooper asked for open dialog with the City and recognized the need to balance residential rights with the reasonable pursuit of the group's long-established life style. Mr. Funk planned to discuss the situation with a representative of the group.

6. 1-B. PUBLIC HEARING FOR 2009-2013 CAPITAL IMPROVEMENT PROGRAM

Mr. McFarland presented the capital improvement program which was summarized in a power point presentation. Mr. Lopata said the Planning Commission reviewed and unanimously recommended adoption of the program.

Mr. McFarland explained that an amendment would be proposed increasing the 2009 program by \$162,000 (\$40,500 in City funds) for the Curtis Paper Mill site.

Mr. McFarland detailed the goals of the CIP. The first goal was to physically maintain existing infrastructure including streets, sidewalks, parks, parking, municipal facilities and utility infrastructure and determine where the infrastructure could be improved to get the most value for the capital dollar. The capital investment served to support the provision of services to City residents while maintaining the financial strength of the City. In addition, elements of environmental sustainability were being introduced into the program.

The proposed 2009 Capital Improvement Program was compared to the program for the 2008 calendar year. Some of the biggest changes occurred in the Electric Department which was down about \$1 million, reflecting the completion of the large Kershaw Substation project. In the Sewer Department, both years were high because construction of the Christina Creek sewer crossing was anticipated in 2008, and the project was delayed. Thus, the project cost of \$1 million was included for both years, and the funds would be spent in 2009. Public Works was up over \$200,000 with curbside recycling and the commencement of a multi-year program to comply with ADA regulations proposed in the new program. The Police Department fell off about \$200,000, reflecting the completion of the local command post in 2008. In the Parking Department, the large increase was for a downtown parking garage engineering study in 2009 which could lead to the construction of a facility in 2010 at a cost of \$20 million. Other increases reflected inflationary pressures across the board in the larger projects.

Mr. McFarland explained that the City's Charter required a five-year capital program, and he felt the financial forecast helped to evaluate the program

during the same time frame. Further, the assumptions were made as conservatively as possible. The assumption was made that whatever transpired at the Chrysler site would be financially neutral to the City. At the time the forecast was developed, the reservoir litigation was still pending, and nothing was reflected for that expenditure in the forecast. The litigation was later settled at an expense of \$3.6 million.

Mr. McFarland reported that in order to maintain its financial strength, the City's operating surplus should be in the range of \$1.5 to \$2 million each year, but the forecast fell short of that amount. Even more important was the cash flow over the five-year period. The period began with about \$19 million and ended with about \$21 million, but that figure had to be adjusted for the \$3.6 million spent to settle the reservoir litigation, or about \$17 million in cash reserves over the period. He felt that amount would be judged insufficient to maintain the City's AA credit rating, and the forecast would have to be substantially better before going for a review with the rating agencies.

Mr. Pomeroy asked if advance knowledge of the reservoir litigation would have changed some of what was proposed. Mr. McFarland said most of what was included in the capital program was strongly supported by staff, regardless of the outcome of the litigation.

Mr. Pomeroy raised the issue of the Chrysler plant and agreed it was safe to consider it revenue neutral. However, he indicated at some point the City would need to make an investment to pave the way for site development which could occur very quickly. He wondered why the budget did not directly address that possibility. Mr. McFarland said at the time the report was compiled, it would have been difficult to make those assumptions. Mr. Pomeroy asked if there was any way to predict the investment that might be needed to prepare for the contingency. His concern was that the City needed to be prepared to take advantage of the opportunity. Mr. McFarland said the financial forecast was a rough cut, and the City needed to look at the issue in terms of their capability to respond.

Mr. Vitelli added that there was some capacity available at the Chrysler site if the project was built in stages, and the worst case scenario would be a new substation transformer at a cost of approximately \$1.5 million. He said a substation was already in place, and he hoped it might be donated to the City. Mr. Funk thought it would be worth investigating whether Chrysler would be willing to donate the substation to the City.

Mr. Athey asked Mr. McFarland to elaborate on the neutrality of the parking garage. Mr. Lopata interjected there have been meetings with potential landowners and contractors who might offer a lease-back type arrangement for the City where it would become revenue neutral over time. At Lot 1, the intent was to work with various property owners who were seeking commercial space. The project was moving forward somewhat rapidly as there was strong community interest to improve the downtown parking situation. Mr. McFarland said the estimate would be refined as the project progressed, and he put it in the program as a placeholder, although it could feasibly stretch out over multiple years.

Mr. Athey asked how many annual dollars would be generated by the probable rate increase of 13% for water service. Mr. McFarland said gross to the City was a few hundred thousand dollars, and the increase would be a relatively nominal amount to homeowners.

Mr. Athey felt a potential bond referendum did not appear very likely given the current situation. Mr. McFarland thought it was too soon to make a judgment until Council had the opportunity to go through the operating budget. He said the rating agencies often put more emphasis on the forecast than current results.

Mr. Tuttle noted there was a clear difference from when the budget was developed to what had occurred with power costs. He asked if there was anything else Mr. McFarland would point out other than the purchased power increase where the numbers needed to be re-examined. Mr. McFarland did not think so and stated this was a general forecast for a five to six year period. He expected power rates to moderate and come back down.

Mr. Markham was pleased to see the reservoir water resources kiosk, recycling, Red Park improvements, and online bill paying included in the program. He noticed some upgrades for the Council Chamber in the budget. In view of recent discussions about ADA access issues, Mr. Markham suggested the possibility of including an overall update to the Council Chamber.

Mr. Markham noted there was nothing forecast for underground electrical cables. Mr. McFarland said that issue was on the table for discussion at the Council workshop in September. Mr. Lopata reported Council would see those costs in relation to others which would be helpful to Council in establishing priorities. He noted that an underground utility fee assessed to downtown developers was also included in the Comprehensive Plan.

Regarding Public Works, Mr. Markham asked if the transfer station was being closed. Mr. Lapointe said the transfer station was not being closed, but DNREC required the City to have a closure plan. According to Mr. McFarland, the City was required to build a capital reserve for the eventuality of the transfer station closure.

Mr. Markham thought Council had previously approved the document imaging system for the City Secretary's office which was now another year out. Mr. McFarland said it became a capital project where before it was not, and it slid into next year. In addition, further research was done on the most appropriate system for the office. Mr. Markham asked why this was targeted for 2010 rather than 2009. Mr. McFarland explained that in the struggle to manage the City's resources in 2009, it was pushed back a year. Mr. Markham preferred to see it pulled back a year in 2009 as this project was integral to reducing paperwork.

Mr. Temko said the burying of utility lines on Elkton Road was something he would like to see in coordination with the Elkton Road DeIDOT improvements because it would become a very difficult undertaking after the project was completed.

Mr. Temko asked Mr. McFarland to elaborate on the timing of the process. Mr. McFarland said there were Charter requirements stating the date by which the capital program had to be approved. As a practical matter when approved, it set the program for 2009 but did not set the program for the years beyond that because Council could revisit it on a yearly basis. While it was a multi-year program, it was amendable in the next calendar year. Mr. McFarland felt Council had a number of significant financial decisions to make in terms of capital investment, and the September workshop would present an opportunity to develop a baseline forecast for the operating budget in the fourth quarter. At that point, Council could take another look at the capital program for 2009 and add or remove items by amendment.

Mr. Temko asked Mr. McFarland if any major projects proposed were cut substantially in terms of funding. Mr. McFarland said there was a whole host of items where an additional 5-10% in funding would have been useful to most departments.

In regard to the Council Chamber upgrade, Mr. Temko asked if the recording upgrade would include an audio upgrade. Mr. McFarland replied it would cover the entire sound system.

Mr. Temko questioned the technology plan for the City. Mr. McFarland said a five-year technology plan was developed a year ago and upgrades to different systems combined with investment in the infrastructure were identified. The capital improvement program incorporated all the elements of the IT plan over the five-year period.

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

Mr. Pomeroy questioned if Parks & Recreation online registration would be available in the future. Mr. McFarland explained it would require an upgrade to the existing system and to the City's infrastructure primarily for security reasons, but he expected it would be implemented in the future.

AMENDMENT BY MR. MARKHAM, SECONDED BY MR. TUTTLE: TO INCLUDE THE PAPER MILL PARK PROJECT IN THE 2009-2013 CAPITAL IMPROVEMENT PROGRAM.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: TO APPROVE THE 2009-2013 CAPITAL IMPROVEMENT PROGRAM AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

7. 2. CITY SECRETARY'S MINUTES FOR COUNCIL APPROVAL

A. Regular Council Meeting of August 11, 2008

Mr. Tuttle corrected page 8, item 28 third paragraph to read: "Mr. Tuttle noted that there was a request for 'satisfaction pieces' in the draft."

Mr. Athey corrected page 6, second paragraph to read: "Mr. Athey asked what the time period was for commercial sites such as at the New London Road Shopping Center."

MOTION BY MR. ATHEY, SECONDED BY MR. TUTTLE: TO APPROVE THE MINUTES OF THE REGULAR COUNCIL MEETING OF AUGUST 11, 2008 AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

8. 3. ITEMS NOT ON PUBLISHED AGENDA

A. Public

Eric McDonald, 15 Turnbridge Road, expressed concern about the rampant abuse of the fire lane at the College Square Shopping Center and inadequate enforcement. He asked for a review of the situation to insure that the fire lane provided the safety and protection for which it was designed. Mr. Lopata stated that Chief Tiernan would investigate Mr. McDonald's concerns.

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. Pomeroy noted Council received a letter from Mr. Lopata to Transportation Secretary Carolann Wicks about the City's interest in the rail station, both passenger and freight, at the Chrysler site. He said the letter came as a request from the Greater Newark Network. He thanked Mr. Lopata for the letter and suggested the subject remain on Council's radar. Mr. Funk said the City's official position after the hearings on the train station was that the station should not be moved.

12. Mr. Pomeroy was asked to look into red light camera fines by a resident who received a citation. He reported that the company administering the program received a flat fee of about \$4300 per month which came off the fines first, plus an additional \$13.50 for each citation after that. Newark received about \$61.50, and the state received a state transportation fee of \$37.50. From his research, 60% of the revenue collected was required to go towards safety on local roads and highways. He found there were cities (after they have done audits) that were able to use other portions of their red light camera funds towards other public safety uses like funding officers, etc. Mr. Pomeroy was interested in finding out whether the required revenue was dedicated towards safety on local roads and highways and whether the remaining funds could be used for other law enforcement efforts. Chief Tiernan said 60% of the funds had to be used for public safety or road improvements. Mr. McFarland added the program was audited by the state, and the City had collected between \$180,000 and \$220,000 a year from the program. There were 15 different categories under the area of public safety and traffic where the fines had to be used. Mr. McFarland said the amount of money the City typically spent on public safety and traffic went well above the 60% required. Mr. Pomeroy asked the disposition of the other 40% in fines. Mr. McFarland said the revenues were commingled and went toward the general fund, and it might be worthwhile to discuss this pool of revenue at the September 16th workshop.

13. Mr. Pomeroy learned from a constituent about the Cecil County, MD Commissioners vote to privatize County water and sewer to Artesian. One of the obvious by-products of their decision was to expand their growth corridor and deal with their water needs. He felt there was the potential for significant impact on Newark because the current plan was for water to be piped in from Chester through Delaware to Maryland with the waste water being returned to Delaware via the Christina Creek. He was particularly concerned with the discharge of nutrients. Mr. Simonson said, based on the information that Mr. Pomeroy forwarded, he did some investigation of the situation with DNREC and expected to talk with the manager of Artesian. He felt this was a very problematic situation. He said moving water between states was an issue, as was discharging water back from one state to another, whether it was treated into the receiving waters. Further, Delaware had specific prohibitions against discharging treated sewage into streams. In regard to the TMDL requirements, which looked at total discharge limits for pollutants into streams, all of the pollutant limits were allocated, and there were no more allocations within Delaware. Mr. Simonson hoped to have more definitive information from Artesian that would clear up some questions. Mr. Pomeroy asked him to keep Council posted on the situation. Mr. Pomeroy wondered how Cecil County could proceed with a plan that would have a profound impact on Delaware without keeping the City in the loop. Mr. Simonson said DNREC was as surprised as the City was to hear of it.

14. Mr. Pomeroy reported the Greater Newark Network discussed efforts for neighborhood revitalization and ways to encourage owner occupants in the City. He learned of a recent change exempting the City's property transfer tax for first-time home buyers who purchased a rental property and surrendered the rental permit. He felt it would merit evaluation to determine the financial impact to the City to offer that exemption to all first-time owner-occupant home buyers.

15. Mr. Athey thanked Mr. Simonson for his prompt response to DNREC on the inquiry regarding the Christina Creek sewer crossing.

16. Mr. Funk remarked that the Newark Community Band was upset they did not participate in the weekend band event.

17. Mr. Funk commented about the apparent lack of sidewalk/street cleaning over the weekend.

18. Mr. Tuttle acknowledged the memo from Mr. McFarland about the need to adjust electric rates and pointed out that the information should be disseminated to the public as to why the increase was necessary.

19. Mr. Tuttle reported that the City's fall newsletter contained a survey about grass collection, and he assumed the results from the survey would drive the future of the Saturday collection program. He encouraged residents to respond to the survey.

20. Mr. Markham asked if CSX work was completed at the railroad crossing, and Mr. Lopata said the project was finished ahead of schedule.

21. Based on river and creek levels, Mr. Markham asked if the reservoir was being used exclusively now, and Mr. Simonson reported it had been for some time.

22. Mr. Temko was pleased that Delaware State Senator Joe Biden was a Vice Presidential nominee.

23. Mr. Temko issued a reminder that the Newark Film Festival started on September 4th.

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

None

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

A. Contract 08-08, Construction of Material Bin Building/Roof

Ms. Houck summarized her memo to Mayor and Council dated August 14, 2008, wherein she provided purchasing details for the construction of a roof system for the waste bin at the maintenance complex. Four sealed bids were received, and McComsey Builders, Inc., the lowest bidder, had worked satisfactorily for the City in the past. There were two capital funding sources for the project, and she recommended that the contract be awarded to McComsey Builders for the bid amount of \$58,683.

MOTION BY MR. ATHEY, SECONDED BY MR. TUTTLE: THAT CONTRACT NO. 08-08 BE AWARDED TO McCOMSEY BUILDERS, INC. FOR THE CONSTRUCTION OF A ROOF SYSTEM FOR THE EXISTING WASTE BIN AT THE PHILLIPS AVENUE MAINTENANCE COMPLEX IN THE TOTAL AMOUNT OF \$58,683.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

26. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING

A. Bill 08-17 An Ordinance Amending Ch. 20, Motor Vehicles & Traffic, By Revising Article XVIII, Towing & Impounding Vehicles Generally

Ms. Fogg read Bill 08-17 by title only.

MOTION BY MR. ATHEY, SECONDED BY MR. TUTTLE: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 08-17.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Mr. Temko suggested adding the following sentence to Amendment 2: “Such storage fees, however, should not be assessed for any days that the storage facility is not open and available for vehicle redemption.”

AMENDMENT BY MR. TEMKO, SECONDED BY MR. TUTTLE: THAT THE ABOVE SENTENCE BE ADDED TO AMENDMENT 2.

AMENDMENT PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Mr. Funk said his business on Main Street had problems with illegal parking from time to time. After installing signs in his lot, the problems were eliminated. In terms of people who called to complain about towing, in a typical month he received three or four calls. In response to the complaints, he checked that the signs were correctly posted in the lots and urged people to talk to the lot owner to try to get a reduction in their fine. In the last 120 days, it seemed the calls increased to eight or nine a month.

At the request of Mr. Clifton, Mr. Lopata read an e-mail into the record from Katherine Dettwyler regarding her experience with towing in the City. (Secretary’s note: The e-mail is attached to the minutes.)

The Chair opened the discussion to the public.

Richard Turner, 57 S. Fawn Drive, a Newark resident for over 25 years, fully understood the property owner’s right and concerns, particularly in regard to liability. His objection was the nature and the manner of the towing of motor vehicles, and specifically, the high fees, and the length of time it took to retrieve a vehicle once it was seized. He found these to be unreasonable and was concerned with the predatory nature of towing operators. He felt the situation begged for regulatory control from the City for the good of the community. He referred to an incident where a car was left in a restaurant parking lot by someone who had consumed alcohol. The car was left in the lot for approximately 12 hours, was then towed, and was charged \$200 to retrieve the vehicle. He felt this was a harsh penalty considering the driver made the proper choice not to drive while impaired. He implored Council to regulate and control the towing and impounding of vehicles.

Kathy Dettwyler, 1 Orchard Avenue, was the author of the e-mail sent to Mr. Clifton. In the situation when her car was towed it was dark and cold, the parking garage was closed, and the metered spots and City lots were plowed full of ice and snow. She parked in a vacant lot when the business was closed. She said the better solution to towing would have been to ticket her car for the same fine. She said certain cases involved the safety of the students and residents who live in the City. Ms. Dettwyler noted that the Code required a towed vehicle to be transported without interruption from its parked position to the lot listed on the sign. Ms. Dettwyler's vehicle was towed and driven around for more than three hours before she could get it back. She said the regulations as written were not being enforced and implored Council to improve the parking situation and urged the use of common sense before towing.

Robert Bruner, 382 S. College Avenue, was disturbed with the provision in Amendment 4 about the property owner being required to be on the site for a non-consensual trespass tow. He felt a considerable amount of time could be spent waiting for the tow operator to arrive.

Thomas Jeandell, 1122 Wagoner Drive, New Castle, was a small towing operator who sometimes worked in the City. He asked if the license requirement applied solely to operators who towed illegally parked cars. Mr. Lopata said the license requirement applied only to non-consensual tows (private tows on private lots) in the City.

Raymond Otlowski, Esquire, 224 E. Delaware Avenue, representing Mr. Ewing, urged Council to re-think the ordinance. He pointed out that non-consensual towing also involved repossessed vehicles. From what he heard, and the Mayor alluded to it, it seemed there were some unfortunate horror stories related to towing incidents. However, he felt when comparing all those instances to all the cars that were towed, they were most likely a minor percentage. He felt enforcement might create unforeseen problems for the City and urged Council to reconsider the ordinance before opening a Pandora's box. Mr. Funk was surprised that repossessions were considered non-consensual tows. Mr. Akin said with a repossession, the holder of an encumbrance on a vehicle or his agent was asserting a property interest in the vehicle for non-payment, and he felt those cases fit in a different category than a trespass non-consensual tow.

Saskia Geisel, Hessler Properties, 916 N. Union Street, Wilmington, owned several properties in the City. She said they employed towing only as a last resort. The Hessler Properties were on Main Street where Starbucks, Hollywood Tans, the Post House, and Innovative Consultants were located and on Haines Street and Delaware Avenue at the Simon Eye building. Both were large parking lots. Ms. Geisel read a letter she received regarding towing from the Simon Eye lot where the individual agreed they should have used a municipal lot or metered parking. Ms. Geisel sent the individual, a senior citizen, a check for \$100 to help defray part of the \$180 fine. She emphasized that their lots were operated for the benefit of the businesses and the patrons, and they paid for maintenance, taxes and insurance. Ms. Geisel said it was not physically possible for her as an owner to be at the lots when a vehicle was towed. She said towing was done as a last resort, and unfortunately was the only way to teach people not to park there.

Kate Watson, 19 Haines Street, and President of Simon Eye Associates, said from a business operational perspective, they located their office in Newark because the City had done a wonderful job in attracting businesses and people to the downtown area which had become a destination. The parking availability for clients played a large part in choosing their location. Ms. Watson said there was a viral communication line in the City about parking availability and lots that were not being towed. She said they spent months giving consistent verbal warnings and putting notes on cars that they would be towed. Later, they put up signs, and numbered and initialed all their spots to make it obvious the parking was private and intended for their clients. In spite of this effort, when employees

drove into the lot in the morning almost every spot would be taken. Once they started towing, the message finally got across that the parking area was for the use of their businesses. Ms. Watson believed if they stopped enforcement, the word would get out again that their lot was not being towed, and the parking problem would resurface. It seemed to her this was not a gray area, as this was clearly a private lot operated by a private business for the benefit of their customers. Further, in fairness to everyone, towing had to be enforced. She wanted to be a good neighbor and was willing to work with the City on making the lot available for special events when there would be large crowds. Ms. Watson's primary objection was to Amendment 4 which required the owner/agent being present for tows.

Mr. Temko asked Ms. Watson if a person patronized their business and left their vehicle parked in the lot while they went to lunch, would that be a problem. Ms. Watson said she was fine with that.

Mr. Funk said image was everything, and Newark's image downtown was very good which was why more people were coming into the City. Mr. Funk said perhaps the City and the property owners could work together so the lots could be operated by the City after business hours.

Steve Purvis, 9 E. Mill Station Drive, said if a business was not open and the lot was empty, why would anyone get upset about allowing parking there, particularly in light of the tight parking downtown. Mr. Purvis felt the current situation was not a good welcome to Newark.

Tom Mergenthaler, Hockessin, was at the Iron Hill Brewery for an hour and twenty minutes and had parked behind the Post House which was closed. He said he did not notice the signs, his vehicle was towed, and he was charged \$180 -- \$30 of the fee was for storage of approximately one hour. In light of his experience, he did not feel very welcomed in Newark.

Jane Woolsey, Manager of the Post House Restaurant, replied that Iron Hill Brewery had their own parking lot, and customers should not take a chance by parking elsewhere. She said the downtown businesses had to be consistent with towing or the business would be taken advantage of.

Sam Pierson, 1133 Old Lancaster Pike, Hockessin, a towing operator, felt the requirement of having owners/agents on site during towing was not a good idea. He said the City should be aware that potential situations involving alcohol or other problems might be dangerous and require police intervention. He did not feel the towing operators employed predatory towing but rather were keeping private lots cleared at the request of the owners.

Jean White, 103 Radcliffe Drive, asked the cost for a towing company license. Mr. Lopata said the amount would be set based on the business license system currently used and would be between \$100 and \$200. She clarified that a business license was required only for non-consensual tows. Mrs. White suggested changing the wording in Bill 08-18, Amendment 1 (4), second sentence to read, "The license shall (replace would) stipulate that the holder of said license shall (replace would) charge a fee not to exceed an amount established by the city manager for private nonconsensual tows." Mrs White thought the issue of allowing parking in unused private lots was an important topic for future consideration.

Mr. Akin agreed to replacing the word "would" in the third line with the word "shall", but in the fourth line he believed the word "would" should be replaced by the word "may" (at Council's discretion.)

In Bill 08-18, line 5, Mr. Funk recommended removing the provision where the fee was established by the City Manager. Instead, he suggested a fee of \$80 to be adjusted annually on January 1st based on the Consumer Price Index.

Lisa Kopolovic, 113 Register Drive, owner of Cold Stone Creamery, said between her business and Pita Pit next door, they had eight parking spots. She felt there was no choice except to tow when all of the parking spots were filled with vehicles unrelated to the business. Mr. Temko asked if there was anything in the ordinance that would restrict towing. Ms Kopolovic said it would be impractical to have a representative of the business present for towing.

Angela Tsionas-Matulas and her family owned commercial properties throughout Main Street. Her only objection to the ordinance was that it would be difficult to have someone on call at night for towing.

Mr. Funk suggested the ordinances be tabled in light of the concerns expressed by the public.

Mr. Tuttle had no objection to further revisions. He noted in October, 2007, the State of New Jersey passed the Predatory Towing Prevention Act. Before that, the State of California passed consumer rights legislation aimed at dealing with predatory towing. New Jersey required written authorization from the property owner or their agent and that they be present when a vehicle was towed during business hours with a provision for a blanket clearance after business hours. California required that a vehicle be illegally parked for at least an hour before being towed unless it blocked an exit or entrance or was next to a fire hydrant. Mr. Tuttle felt the City could put together an ordinance to provide for immediate towing when a business was open and the agent was there with perhaps a one-hour grace period after hours. California also specified that if an individual showed up while the operator was preparing to tow a vehicle, the person could get their car back for half of the towing fee. He thought more work was needed to find common ground.

Mr. Markham suggested the Delaware Online comments be read to get a sense of where some of the complaints and anger were coming from.

Mr. Pomeroy did not see anything in the ordinance that restricted a business owner's right to protect their property or a tow operator's right to work within the City. In regard to Amendments 1, 2 and 3, he thought the City should set the fee as opposed to leaving it open. He thought Amendment 4 was broad enough for an agent to be designated and would not require an owner to be on site.

Mr. Funk felt an owner or representative should not be physically present during the tow due to safety concerns.

MOTION BY MR. ATHEY, SECONDED BY MR. TUTTLE: TO TABLE BILL NO. 08-17 AND 08-18.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

27. 6-B. BILL 08-18 AN ORDINANCE AMENDING CH. 13, FINANCE, REVENUE & TAXATION, BY REQUIRING OPERATORS OF TOWING VEHICLES TO OBTAIN A BUSINESS LICENSE

Ms. Fogg read Bill 08-18 by title only.

(Discussed under item #23).

28. 6-C. BILL 08-22 AN ORDINANCE AMENDING CH. 20, MOTOR VEHICLE & TRAFFIC, BY REVISING SCHEDULE II, SPEED LIMITS

Ms. Fogg read Bill 08-22 by title only.

MOTION BY MR. TUTTLE, SECONDED BY MR. ATHEY: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR BILL 08-22.

Mr. Markham thought the speed limits previously agreed to be removed from schedule 2 (lines 9, 22 and 30) were still listed. Ms. Fogg verified that the three subject roads had been removed from the schedule.

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

Mr. Markham recommended installing signs to indicate the change in speed limits.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

(ORDINANCE NO. 08-17)

29. 6-D. BILL 08-20 AN ORDINANCE ANNEXING & ZONING TO RH (SINGLE-FAMILY, DETACHED RESIDENTIAL) A 5.0 ACRE PROPERTY LOCATED SOUTHWEST OF PATRIOT WAY BETWEEN ELKTON ROAD & THE NORTHEAST CORRIDOR RAILROAD RIGHT-OF-WAY (CHARTER SCHOOL)

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

MOTION BY MR. TEMKO, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR BILL 08-20.

Alan Silverman, 23 Wakefield Drive, said by annexing the property, the Newark Charter School would benefit by eliminating problems with proposed improvements in the area that currently straddled the City-County property line. He said it was technically difficult and costly to develop a project split in two jurisdictions that had different development standards.

The second reason for the annexation request was timely police response. For the kinds of trespassing mischief calls generated, the site was an extremely low priority with New Castle County police.

In addition, they wanted to provide lighting on the site, and the school hoped to purchase its electric from the City. Mr. Silverman explained they also wanted to eliminate the problems associated with maintaining both the City and County stormwater retention basin and the water quality system. By having both basins in the City, there would be one agreement and one set of standards, and this would ease maintenance.

Mr. Greg Meece, School Director, said the current site was fully developed as a grass playing field, was landscaped and bermed, and there was mature vegetation. Access was controlled entirely through the school property, and parking for the field was provided on the existing school site. The site also contained a quarter-mile loop with an all-weather fitness and walking trail. Improvements anticipated for the site included an all-weather play area which

currently straddled the City-County line. Also proposed was a shelter, (much like those located in the City's parks) and a storage building for play equipment.

With the future development of the site, green technology would be employed and bio swales would be used to filter water running off the impermeable surfaces and proposed roof areas into the retention basins. Future development anticipated for the site was less than 6-7% of the total five-acre site area. The annexation would add an additional five acres to the City's open space.

Mr. Athey asked why the annexation was not done previously. Mr. Meece said the land was not available and was only purchased within the last two years.

Mr. Markham asked if there was an agreement with Parks & Recreation to use the school's recreational space. Mr. Meece said the Parks & Recreation Department used the gymnasium facilities quite often as did the Newark Police Department.

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

Mr. Temko felt the annexation made sense with the Comprehensive Plan and had no negative impact on the City, so he would vote in favor of the annexation. He thanked Newark Charter School for their service to the community.

Mr. Markham would vote for the annexation which fit well with the Comprehensive Plan. He thought it would be a good addition to the City in light of the open space.

Mr. Tuttle supported the annexation and thought it made sense to bring it into the City. He understood the concern about dual police jurisdictions.

Mr. Funk was in favor for all the reasons stated, and he recognized the low-priority situation with the County police.

Mr. Athey felt the annexation fit into the Comprehensive Plan and noted the Planning Commission was in agreement. Thus, he planned to vote in favor of the annexation.

Mr. Pomeroy would vote in favor of the annexation and was pleased to have the entire property in the City.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

(ORDINANCE 08-18)

30. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS
None

- 31. 8. ORDINANCES FOR FIRST READING**
- A. Bill 08-21 An Ordinance Amending Ch. 21, Peddlers, Vendors & Solicitors, By Amending the Definition of Peddler, Prohibiting Certain Conduct & Restricting Certain Days & Times of Peddling & Soliciting

Ms. Fogg read Bill 08-21 by title only.

MOTION BY MR. POMEROY, SECONDED BY MR. TUTTLE: THAT THIS BE THE FIRST READING OF BILL 08-21.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

(2nd READING 9/8/08)

32. **8-B. BILL 08-23 AN ORDINANCE AMENDING THE ZONING MAP BY REZONING FROM AC (ADULT COMMUNITY) TO RD (SINGLE-FAMILY SEMI-DETACHED) A .5757 ACRE PORTION OF THE PHILLIPS MILL PROPERTY, LOCATED AT 708 & 712 NOTTINGHAM ROAD**
-

Ms. Fogg read Bill 08-23 by title only.

MOTION BY MR. TEMKO, SECONDED BY MR MARKHAM: THAT THIS BE THE FIRST READING OF BILL 08-23.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent - Clifton

(2nd READING 9/22/08)

33. **8-C. BILL 08-24 - AN ORDINANCE AMENDING THE ZONING MAP BY REZONING FROM RM (MULTI-FAMILY DWELLINGS-GARDEN APARTMENTS) TO BLR (BUSINESS LIMITED RESIDENTIAL) A .3513 ACRE PROPERTY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF CHOATE & NEW STREETS**
-

Ms. Fogg read Bill 08-24 by title only.

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT THIS BE THE FIRST READING OF BILL 08-24.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

(2nd READING 9/22/08)

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

A. Council Members:

1. Resolution No. 08-__: Retirement of Lt. Susan K. Poley

(See item #3)

35. **9-A-2. RESOLUTION 08- : RETIREMENT OF LT. THOMAS LeMIN**

(See item #4)

36. 9-B. COMMITTEES, BOARDS & COMMISSIONS

None.

37. 9-C. OTHERS

None.

38. 10. SPECIAL DEPARTMENTAL REPORTS

- A. Special Reports from Manager & Staff
1. Pension Plan Performance Report – 2nd Quarter 2008

MOTION BY MR. MARKHAM, SECONDED BY MR. ATHEY: THAT THE 2ND QUARTER 2008 PENSION PLAN PERFORMANCE REPORT BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

39. 10-B. ALDERMAN'S REPORT

MOTION BY MR. MARKHAM, SECONDED BY MR. TEMKO: THAT THE ALDERMAN'S REPORT DATED AUGUST 20, 2008 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent - Clifton

40. 10-C. FINANCIAL REPORT

In regard to increasing the electric rate, Mr. Funk asked if the City would be able to recoup what they needed or would the City be short at the end of the fiscal year. Mr. McFarland said if the 17.5% increase was in effect for the full year, the City would be on target, provided power prices dropped back to normal as projected in the fourth quarter. However, if they remained at a higher level than projected, the figures might have to be revisited around October 1st.

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THE FINANCIAL STATEMENT ENDING JULY 31, 2008 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

41. Meeting adjourned at 10:40 pm.

Patricia M. Fogg, CMC
City Secretary

/av