

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

December 11, 2006

Those present at 7:30 p.m.:

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

Staff Members: City Manager Carl F. Luft
City Secretary Susan A. Lamblack
Assistant to the City Manager Carol S. Houck
Assistant to the City Manager Charles M. Zusag
City Solicitor Roger A. Akin
Planning Director Roy H. Lopata
Public Works Director Richard M. Lapointe
Parks & Recreation Director Charlie Emerson
Acting Chief of Police John Potts
Acting Finance Director Wilma Garriz

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1. The meeting began with a moment of silence and pledge to the flag.
 2. MOTION BY MR. OSBORNE, SECONDED BY MR. TUTTLE: THAT THE AGENDA BE AMENDED BY ADDING THE FOLLOWING NEW ITEMS: 9-C-1, REQUEST FROM COMMERCE BANK FOR AMENDMENT TO SUBDIVISION AGREEMENT; 10-A-3, 2006 BUDGET AMENDMENT – STATE BOND BILL; AND 10-C, ADD LABOR NEGOTIATIONS TO EXECUTIVE SESSION; AND THAT ITEM 10-A-1 BE HEARD AFTER ITEM 2-A.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

3. **2. CITY SECRETARY'S MINUTES FOR COUNCIL APPROVAL**
 - A. Regular Council Meeting of November 27, 2006

It was pointed out on page 7, that the correct spelling of the owner of Scott True Value was "Rocco Curro."

The minutes were received as amended.

4. **10-A-1. PRESENTATION OF 2005 AUDIT REPORT**

Pam Baker, Barbacane Thornton and Company provided a brief presentation on the 2005 audit report. She explained that Council received draft reports and although her firm still had a lot of internal quality review procedures to complete, she did not anticipate any significant changes to the reports. Ms. Baker further explained that pages 1 and 2 represented the independent auditors' report, the conclusion her firm reached as part of looking at the financial statements that were presented to them by the City's management. It was their opinion that the financial statements were fairly presented, no changes were needed, and they

were consistent from one year to the next in terms of applying accounting principals which was very important. It was one thing they looked at to make sure how things were recorded in one audit period did not change significantly from how they were recorded the next audit period.

Ms. Baker continued by saying that those who were on Council prior to 2003 would have seen a significant change from the 2002 report to the 2003 report because the standards for reporting for governments changed dramatically by the standard setters for financial reporting. Part of the new requirements said when there was a completed audit report or a completed set of financial statements, there should be a narrative discussion of the results of the financial statement called the "management discussion and analysis." Auditors don't audit a management's discussion. They do, however, read it and make sure the numbers presented were the same as the numbers in the financial statement. She advised that management elected not to prepare the management discussion and analysis for the 2005 year, and she believed that was because the City's Finance Director was no longer with the City. Although it was not completed, it did not affect the unqualified opinion of the City's financial statements.

Ms. Baker pointed out a few things in the financial statements. First, on page 4, all the expenses of running the City government were listed for 2005. Against all of the expenses, she was able to generate certain revenues to cover some of the expenses. For instance, municipal street aid and some grants could be charged to offset those expenses. She pointed out that the expenses of all governmental activities totaled \$20,946,920 for 2005 and \$2.9 million under "charges of services" offset that cost. The City also received some grants of a little over \$2 million to offset expenses. Once you subtracted the revenues for very specific expenses, the City was left with \$15.9 total expenses from which the City generated revenues from local taxes, etc.

On page 5, Ms. Baker pointed out for the year ending December 31, 2005, that the general fund had an accumulated deficit of \$50,000. Having done the audit for the City for a number of years, Ms. Baker knew the general fund was budgeted to sort of break even. She recommended getting the deficit above the negative line. In talking with management, Ms. Baker said, for 2006, it was anticipated that the general fund would be back to a more positive position.

Ms. Baker referred to page 10, which accumulated all assets and liabilities of the net equity of all the proprietary funds. In the total net assets section, in 2004 the net assets were \$51.3 million. In 2005 that decreased to \$42.3 million and she explained the reasons for the big swing. One was because the City completed the reservoir--the net assets went down but the equipment and capital assets went up. The City had debt to offset the capital assets and the City's equity goes down. In 2004, the City had a lot more investments so that money sat in equity waiting to be put into capital. Another reason for the big swing was because the electric fund, as reflected on page 11, decreased overall by almost \$8.2 million in 2005. That was addressed in the 2006 budget. Ms. Baker asked if anyone had any questions regarding the financial statements.

Mr. Clifton referred to Ms. Baker's earlier statement that the audit was based on the financial statements provided by the City, and asked what the checks and balances were and if the assets were verified.

Ms. Baker explained that in the process, management drafted the financial statements from the City's internal system and presented them to the auditor. It was the job of the auditor to understand the control environment. They understood the statements from the City's internal system and were responsible to understand how that system worked. For instance, who put the cash into the bank, who did the deposit tickets, who made sure it got into the record, who made sure the bank account was reconciled, etc. They look at major control cycles and test those cycles to make sure there were checks and balances that went into the culmination of the reports. The second thing they did when applying auditing procedures, was

they looked to verify certain things with external parties. Cash investments was a perfect example. They would confirm how much money the external parties were holding in the name of the City of Newark. With regard to capital assets, they would actually do some physical inspections. For example, if the City purchased a new truck, they may ask to look at the truck. They look at the cycles of control and test those cycles to make sure what was represented to them was actually happening.

Mr. Clifton said it sounded like the auditors don't look at something from cradle to grave, but took a sampling to which Ms. Baker said they sampled transactions within a cycle. For example, they might look at the disbursements cycle and document it from "cradle to grave." They would start with the person who issued the purchase order and follow it through to the payment. They did not look at every check that was written or every single purchase order, but they would test the process. They might take a sample of actual documents and make sure what management said they do was actually what they did.

Mr. Clifton remembered receiving a memorandum stating that the auditor was told it was not necessary to appear before Council and present the audit. Ms. Baker responded by saying historically when they completed an audit, they always made themselves available to make a presentation. She pointed out that because Council hired her firm, it was their responsibility to tell Council they looked at what management was doing and independent of anything else going on in the City of Newark, it was their job to independently tell Council that the information was fairly presented and control cycles were in place and working effectively. When recommendations for improvement were needed, their firm made them.

Mr. Luft said in the future the auditor would be making a presentation each year. Ms. Baker explained the timing for the 2005 audit was very fast paced and she gave credit to the City's staff, especially the Finance Department. It was a real challenge to get it completed because they could not start it until 2004 was completed. The 2003 and 2004 reports had some delays and that was unusual. Her firm has been the City's auditors for a long period of time and up until 2003, the audits were always finished within six months of the end of the City's fiscal year and management was always very good about meeting that deadline, and by June 30th of each year the statements were completed. Then the new reporting format came about and the City lost a key person in their Finance Department. Ms. Baker thought both issues contributed to things getting behind. She emphasized that the new reporting format was huge and a lot of their clients struggled tremendously learning it. She believed the City's management went above and beyond the call of duty and Ms. Baker complimented Ms. Garriz. She saw no reason why Council should not receive the audit report for 2006 in June of 2007.

Mr. Clifton pointed out that the last audit was presented to Council in September 2003 for 2002. He thought the yearly audit report should be presented to Council no later than September of each year. Ms. Baker interjected that there should be no reason why Council should not receive the report six months after the end of a fiscal year. She noted that up until 2003, the City of Newark was a recipient of the Government Finance Officers Association Award every year since Barbacane Thornton and Company became the auditor. The City cannot submit for that award unless their audit was completed by June 30 of each year.

Mr. Pomeroy commented on the fact that the management's discussion and analysis was not a required part of the basic financial statements, and asked Ms. Baker if it was a best practice to provide that and give the auditor the opportunity to review such a report. Also, he asked for an explanation as to what exactly that document was and the benefit of such a document.

Ms. Baker clarified that the management's discussion and analysis was required in accordance with GASB Statement 34, and required the auditor to be able to opine. Therefore, the accounting standard would say that a complete set of financial statements was everything that was before Council and a management's

discussion and analysis. She claimed it was very similar to what you would see in the corporate world. If you looked at an FCC company's financial audit they would have a discussion in front of it prepared by management and very specific things would be required to be included—nine specific things must be in the management's discussion and analysis. It was designed to tell what was in the 50 some pages and it was the responsibility of the auditors to make sure management's discussion and analysis had the nine specific elements and that it was factual.

Mr. Pomeroy said he brought up the audit report issue about a month ago because not only had they not seen an audit, but Council did not have an outside perspective on what sort of recommendations were needed in order for the City to manage its finances. He asked Ms. Baker to comment on her recommendations, in particular, those most pressing that the City should be particularly attuned to and whether the City has kept up adequately with the recommendations made in past years. Also, if there was anything that may have become chronic in nature that someone who wasn't a CPA would not necessarily be able to extract from this document.

Ms. Baker explained that there were three types of recommendations. The first type, the lowest level, was the recommendations on pages 48, 49 and 50. Those recommendations would not have a significant impact on the City's financial statements, but were pointed out because the auditor thought they might make the City's control system stronger. She believed that Ms. Garriz was working on those recommendations. As for the recommendations that were outstanding for more than one or two years, some related to the fact that it might involve a policy change, which would take more than a year cycle to put into effect. It was not uncommon to see a recommendation take longer than one cycle. In the City's case, she thought it was the 2003, 2004 and 2005 audits that got into that delay process. Ms. Baker said she was well aware that Ms. Garriz and Mr. Luft were working to provide their response to the recommendations and provide an action plan. On pages 45 and 46 were recommendations she called reportable conditions or the second level. Those recommendations could potentially upset financial reporting. The City should seriously look at those recommendations. The third level of recommendations was the highest level and they were called a material weakness. A material weakness would indicate there was a good possibility that something could be wrong and go undetected. The City had no material weaknesses and that was a good thing.

Mr. Funk pointed out that the recommendations on pages 45 and 46 were also in the 2003 and 2004 audits so that meant in three years things had not changed which was not good. Ms. Baker believed the reason for that was because the audits came on top of each other because they were so far behind.

Mr. Pomeroy asked if there was an acceptable timeframe as to when the recommendations in the second level needed to be addressed. Ms. Baker said it was her job to report to Council, which gave them the opportunity to help management set that timeframe. If Council received an action plan from management before they started the next audit, it would be perfectly acceptable for Council to say they wanted to send it to the auditor to see if the timeframe was reasonable. The next year the auditor would ask management about their game plan and gauge what that response was in terms of determining if it was reasonable to say something had to be done that might take longer than a year's cycle; or did it look like management just was not responding for whatever reason.

Mr. Pomeroy asked if there was a plan to deal with the recommendations prior to the next budget. Mr. Luft asked Ms. Garriz to comment in which she said she was currently preparing recent year-end procedures that addressed page 46. That would make it clear to the finance staff the year-end procedures as far as recording expenses in the proper year. Mr. Luft added that for years the City had been accounting for the accruals and expenses in a certain way and that was changed. As for the prior year findings that were still current, Ms. Garriz said they

would work on that. Mr. Pomeroy asked if Council would be able to address them before they became material weaknesses. Mr. Luft said they would be addressed. Mr. Pomeroy thought it was vitally important to do this yearly and it was Council's responsibility to make sure that happened. Ms. Baker said she was available anytime and stressed that the timing was important from the perspective that the standards the auditors lived under were constantly changing.

Mr. Pomeroy thought it was important to have this information prior to making final budget decisions. Ms. Baker said the audit should be finished by June 30th of each year.

Mr. Markham asked Ms. Baker if there were any findings that would be difficult for the City to implement or fix before the next audit. Ms. Baker said with 2006 ending in a couple of weeks, Council would not have an opportunity to address all of the findings. She stressed that her firm has been working with the City and understood where it has been for the past two years, and ideally they would be working with the City in the next fiscal year. She did not think any of their findings would be elevated to the material weakness perspective. She also pointed out that there were recommendations that Council could simply say, "we'll do it differently." The recommendations were thought provoking and some thought needed to go into making any changes. The fact that the City was searching for a new finance director also had to be considered and that new person could help the City come up with a game plan.

Ms. Baker felt confident the City would address several of the recommendations, but she did not think they would get rid of all of them. Mr. Markham asked what were the most difficult recommendations to address. Ms. Baker said the most difficult were listed on page 45, Finding #1—budgeting interfund transfers which the City does not do, and that was a philosophical way that Newark budgeted and it would not be an easy change. It would involve Council looking at the budgetary process, which was why having the right Finance Director on board would help with that recommendation.

Mr. Luft interjected that what Ms. Baker was addressing was the transfer of electric revenues to help fund other operations, which was not uncommon for many cities that sold electric. Sometimes it became an issue of property tax revenues versus utility fees. He further explained that Ms. Garriz's statement about the accrual and expenses was an accounting measure and that was done internally and could be changed fairly quickly. The City's current policy on interfund transfers has been done this way for decades.

Ms. Baker added that a budgetary document would say that general services would be funded with "x" number of dollars from real estate taxes, and "x" number of dollars from electric funds, but the City does not budget like that now. It was budgeted to a point and then everything else was just a transfer.

Mr. Funk said what surprised him was the fact that the auditor raised each year that journal entries were not approved on a routine basis, and he thought that should have been addressed the first time it was recommended. Ms. Baker thought that recommendation probably came about under one of the new auditing standards in 2003. Ms. Baker said the Assistant Finance Director left and he was needed to work with the Finance Director to implement that recommendation.

Mr. Luft advised that this was the end of the three-year contract with Barbacane and Thornton, and he would be making a recommendation for next year.

Ms. Baker asked Council to try to make their decision as timely as possible and hoped Council would consider at least a one-year extension because it would be difficult for the City to make another transition.

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: THAT COUNCIL RECEIVE THE 2005 AUDIT REPORT.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

5. 3. ITEMS NOT ON PUBLISHED AGENDA:

A. Public

Jim O'Neill, 504 Lark Drive, addressed the \$35 million judgment against the City, and asked where was the accountability. He was concerned, not as a former member of Council, but as a resident because he felt the City had to look at what the implications were for the residents of Newark. He thought for the judge and jury to make a judgment of \$35 million, that there must have been some reason the judge was upset with the quality and substance of what the City presented. He reiterated that he wanted to know where was the accountability and why should the residents pay, at a minimum, \$1000 per household, due to whomever was responsible.

6. Richard Menton, II, owner of MPI Mechanical, said he was a contractor who was contracted to install piping underneath the dam for the reservoir. He said he was a member of the American Society of Mechanical Engineers and was very familiar with the plans and specifications for that project. He had the opportunity to sit through several days of testimony at the Court and listen to some of the testimony from the expert witness for the plaintiff. During the break, Mr. Menton talked to that witness in depth about the reservoir and the design, and was told it was a very unusual design that was approved. Part of the expert's witness testimony was that the initial design was for two liners—a primary and a secondary liner. If the first liner failed, the second liner was there to take care of any leaking in the reservoir. For whatever reason, Mr. Menton said that did not come up in the original bid specification, scope or plans. It was deleted and he was told it was strictly because of money. He also claimed the reservoir was not constructed per the plans and specifications. On Zone 4 material, there was suppose to be 18" of cover on the liner. Studies were done that showed only 55% of that cover had an 18" of cover. There were photographs presented at the trial that showed that sloughing occurred on the side slopes, which meant that material slid down the slopes to the bottom of the reservoir. At the present time there was no evidence to that effect and nobody has sent a diver down to the reservoir to check it out and confirm what took place, but he said there were pictures as it was being filled.

Also, the inlet and outlet structure was suppose to be placed on rock according to the data in the new specifications. When they went down there to install that inlet/outlet structure, there was no rock and other means and methods had to be accomplished to install that structure. Mr. Menton said around the wetlands there was a system of water to go around the perimeter and there were suppose to be metallic couplings on that system. He claimed they used a rubber type gasket, which he thought reinforced the idea that the reservoir was not built to plans and specs.

Mr. Menton claimed he went to the reservoir last week and found an area roughly two feet by two feet that was wet and uplifting was occurring with the soil, exactly what the geo science confirmed what happened in that soil condition. He further claimed the soil itself, by the original specifications, contained more mica than was in the original specs. He took a 24-1/2" ruler and put it down through the hole. If someone were to step into that hole, it would only go up to his or her knee, and he questioned what was happening underneath the reservoir now if that was just coming to the surface. He also questioned where was the leak detection system. He claimed there were three lines and one underneath the reservoir itself to detect leaks and there was a monitoring station downstream with instrumentation recording the flows. He asked if anybody knew anything about that. Mr. Menton

concluded by saying there were some serious issues with the reservoir and he thought it was his duty to present them to Council. He thought the City needed to establish an independent commission to investigate the safety of the reservoir because there was the potential for catastrophic failure, loss of life, and loss of property and he wanted to make sure Council was aware of that.

7. Jean White, 103 Radcliffe Drive, referred to her remarks at the September 25th meeting in regard to the special use permit for an alcohol establishment at the Shoppes at Louviers. At that time she claimed bars were not allowed within 300' of protected uses (including residentially zoned properties) and proposed that no bars should be allowed in that restaurant because it was less than 300' from the residents at the Woods at Louviers. Later she learned she had not measured correctly and the restaurant was more than 300' from the homes in the Woods at Louviers. Ms. White apologized for her mistake and the statements she made on September 25th that were offered without qualifications. She also thanked Council for their careful consideration of conditions for that special use permit, including the prohibition of beer towers and the restriction on hours of operations. She believed the applicants appeared to be responsible and cognizant of the elements that could negatively affect the surrounding community. and was confident Council would give equal scrutiny to future applications for similar special use permits.

8. **3-B. UNIVERSITY**

1. Administration

There were no comments forthcoming.

9. **3-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

10. **3-C. COUNCIL MEMBERS**

Mr. Pomeroy said he thought everyone had a great time at Winterfest, an event that was well done by the City. He also noted that this was his first full calendar year on Council and it was certainly an interesting one with a collection of important and significant challenges. He thought it was important to keep looking forward on what Council needed to do to always act in the best interest of the residents of Newark. He enjoyed this past year, looked forward to everything that lied ahead for the next year and wished everyone Happy Holidays.

11. Messrs. Osborne and Funk had nothing to bring up at this time.

12. Mr. Athey complimented Winterfest and thought Main Street looked great with all the lights. He wished everyone Happy Holidays and looked forward to seeing everybody in January.

13. Mr. Markham complimented Winterfest and thought it felt like winter for a change.

14. Mr. Tuttle said he just returned from attending his first National League of Cities meeting with about a dozen other representatives from municipalities in Delaware. He planned to provide information about what he thought were some of the important and significant events that were conducted.

15. Mr. Clifton thanked Rich Lapointe for his efforts with trashcan issues in White Chapel Village.

16. **4. ITEMS NOT FINISHED AT PREVIOUS MEETING:**

A. Consideration of the Status of a Special Use Permit Granted on September 11, 2006 to Ms. Sheryl Perfinski in Order to Operate a Family Day-Care Facility at 816 Hilltop Road with a Maximum of Five Children at Any One Time

Frank Perfinski, 816 Hilltop Road, advised that this item was continued from the November 13th meeting at which time he submitted a five-page rebuttal to the letter from the Celestes that answered all of their statements and accusations.

Mr. Perfinski said that he and his wife have lived in the 19711 zip code area since 1982 and at 816 Hilltop Road since June of this year. They operated an income daycare service for working parents since 1983 and were licensed by the State of Delaware. When they purchased their home in June, they were not aware a special use permit was required to operate their daycare now that they were living within the City limits. Due to an anonymous complaint, the property maintenance inspector for the City made a visit to their residence and informed them about the requirements. They submitted an application to the City and Council approved a special use permit on September 11th. Prior to that meeting, the agenda was advertised in the Newark Post. Nobody attended the September 11th meeting to speak against their application. If the Celestes or anyone had an opinion or objection, he felt they should have voiced their concerns at that time. Whether the letter written by the City Solicitor was blatantly incorrect or accidentally misguided, Mr. Perfinski said the statements and accusations were not true. They took offense to the false accusations and characterization that the information submitted and presented at the Council meeting was falsified and incomplete. They believed the operation of the daycare did not adversely affect the health or safety of persons residing or working in the neighborhood, nor would the use be detrimental to the public welfare or injurious to property or improvements in the neighborhood.

Mr. Perfinski pointed out that the childcare was for young children ages 14 months to 4 years of age who followed them from their previous residence. They intended to continue the daycare up until the current children leave or until the age when they would attend school on a full-time basis. He pointed out that none of his neighbors had asked him about the daycare, and he questioned why the Celestes did not go to him and express their concerns. Mr. Perfinski responded to the following statements in the City Solicitor's letter, dated November 28th.

That certain neighbors in the vicinity of your residence were not asked whether there were objections to the continuation of the operation of your childcare licensed home. Mr. Perfinski said that after the visit from the City inspector and receiving information from the Planning Department, he discussed the daycare with neighbors but was not given any guidelines from the City. Nobody informed them to contact all or poll all of the residents on their street and in the neighborhood. He claimed his wife did not go house to house, but he spoke to a few of the neighbors, some of which were at this meeting. He hoped they would say that he spoke to them briefly about the daycare and no one opposed or voiced any objections at that time. He talked to both families on each side of his residence and across the street (where their driveways met).

Mr. Perfinski pointed out that there was no sign in front of his house advertising the daycare, and no ads were placed in a local newspaper advertising the daycare. His home looked just like any other home on the street. He added that he attended other Council meetings and always heard that Newark was promoted as a community for raising children and families. He asked if it was a bad thing to have a daycare available in a neighborhood? He did not think so but guessed that his neighbors believed that to be true.

That deed restrictions pertaining to 816 Hilltop Road preclude the operation of a business as well as activities which may create an annoyance or nuisance. Mr. Perfinski reiterated that there were four young children between the ages of 14 months and four years old and one was his grandson who lived with him. Sometimes the children were there from 12:30 pm to 2:30 pm. There was not a lot of traffic or activity generated other than when the children played outside. He asked how those young children could be considered a nuisance and thought perhaps those in the community who objected were just not children friendly. He pointed out that the City maintained a park in Fairfield and the playground more

than suggested that children lived in the community and were welcomed in the community.

That your licensed facility has provided care for in excess of five children, and that the number of children in care may increase in summer months. Mr. Perfinski emphasized that there has never been more than five children in the house, and if the Celestes or anybody else had other information, he would appreciate seeing it because it would be a blatant lie. He also emphasized that his grandchildren have always been included in the count. He noted that his six-year old granddaughter has been mentioned in the complaint, yet she attends Pike Creek Christian School during the day.

That you failed to disclose to the Planning Department upon the acquisition of the property that you intended to conduct a business on the premises. Mr. Perfinski said nobody had to tell him that 816 Hilltop Road was residential. He reiterated that they were unaware that they needed a special use permit until the inspector visited their home. They immediately applied for the permit and received it after their request was appropriately advertised in the local newspaper. He claimed when they purchased their home nobody informed them they needed a special use permit for a daycare. Neither the sellers nor the real estate attorney, Fred Funk, mentioned a special use permit was required at the day of settlement. Had they known about the need for a special use permit, they would have placed a contingency on the sale and settlement of the property. He pointed out that prior to settlement they were on vacation and Mr. Welch, who they purchased the house from, sent an e-mail to Ms. Pat Celeste that said: "Pat, here's the email I just sent to the Perfinskis. We would not bring up the City of Newark daycare issue yet. We think they should know soon." Mr. Perfinski thought the sellers intentionally hid that information from them.

That the operation of a licensed childcare facility may adversely affect the value of residential properties in the vicinity of 816 Hilltop Road. Mr. Perfinski pointed out that Ms. Celeste stated that the value of the homes had diminished and people did not want to buy homes with home daycares next door. He requested that Council not admit her statements into the record unless backed by documentation accepted by the real estate community as a whole. He claimed that the in-home daycare did not affect the sale of any surrounding homes. In fact, at times surrounding homes have sold within days of being placed on the market. He recently contacted a realtor from Prudential who claimed there was no information available to support the allegation that operating a daycare reduced the property values in a community. In fact, communities welcomed daycares because there was a need for that service.

That the issuance of a special use permit in this case has essentially resulted in a rezoning of the property. Mr. Perfinski said operating a daycare was not a multi-million operation. He reiterated that the appearance of their home was like any other residence in the area where there were children. Their yard was neatly maintained and the backyard was fenced in with play equipment.

In summary, Mr. Perfinski reiterated that the special use permit was approved September 11th, they met all the requirements, and followed the procedures in the Code. The permit did not adversely affect the health and safety of anyone in the neighborhood and the activities did not present a nuisance or annoyance in the community, nor did it affect the property values in the area or any area where there was a home daycare. He welcomed visitors from Council and/or City staff to stop by their house to verify what he said was true. He thought the four children were the victims of this situation and they don't pose a threat to anyone in the community.

Mr. Funk noted that the owners of 814 Hilltop Road spoke at the previous meeting and was told they were in attendance. The owners of 818 Hilltop Road did not attend but told Mr. Perfinski they opposed the daycare because they didn't want a business in their community. However, initially they were in favor of the daycare.

They changed their mind because the Celestes told them that a business in the community would affect their property values. Mr. Funk asked if the people directly across the street opposed, and Mr. Perfinski said they were present and could answer that. Since this situation has come up, Mr. Perfinski said none of his neighbors would talk to him. Mr. Funk explained that the reason Council was reconsidering the request was because of the difference between what was represented. Mr. Perfinski said he initially spoke to three neighbors but now there was other information and/or other people who have come forward to place an opinion after the fact.

Mr. Clifton asked when the Perfinskis purchased their home and was told it was June 15th. The inspector came to his house on July 19th. Mr. Clifton asked if there was any conversation concerning the need for a special use permit from the date they purchased their home to when the inspector arrived. Mr. Perfinski said he had no idea he needed the permit before the inspector arrived. Had he known, he would have followed up on that. Mr. Clifton advised that Council received an email from the Welchs that said, "This is to inform you that prior to finalizing our sales agreement, we informed the buyers, the Perfinskis, that Newark had restrictions on operating a home daycare. We advised them they needed to get approval from the City if they were going to use it for a daycare. Mr. Perfinski said he did not recall that conversation. Mr. Funk said he was surprised the realtor did not write a contingency in the contract.

Mr. Athey asked if he understood the Perfinskis bought the house without an agent, to which he answered yes, and explained he had an attorney for the paperwork. The house actually never went on the market.

Mr. Osborne commented on the fact that the previous owners claimed the Perfinskis were notified about the daycare situation and asked if that was true. Mr. Perfinski said the Welchs knew the Perfinskis had a daycare but as far as going through the process, he did not recall a conversation about the daycare being prohibited. He also pointed out that the Celestes provided information that said "deed restrictions in the community did not allow trade, business, commerce, industry or occupation conducted on any residential building plot or in any building erected thereon, except that a doctor of dentist may use a portion of the dwelling in which he resides as an office." That paragraph would preclude a daycare. The Celestes also pointed out that their deed restrictions said, "No pigs, chickens, poultry, rabbits, horses or cattle shall be kept or placed on any residential lot. No noxious or offensive trade or activity shall be carried on upon any residential lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood." Therefore, Mr. Osborne asked if a daycare must be considered a nuisance. He asked if the maximum number of children was five, to which Mr. Perfinski said their state license allowed them a maximum of five children. Mr. Osborne asked what hours were the children at the daycare and was told the latest they would be there was 5 pm and the earliest was 8:00 a.m. Mr. Osborne said one of the concerns from the neighbors was the noise from the cars when the children were delivered or picked up.

The chair opened the discussion to the public.

Rick Celeste, 815 Hilltop Road, asked if Council had any questions regarding the survey they provided for their review. Twenty-one people in the neighborhood were surveyed and no one had been advised that the Perfinskis intended to open a daycare. Fifteen of those who responded requested that the permit be rescinded. He claimed the survey had no written accusations and only contained facts.

Mr. Celeste expressed his appreciation to Council to reconsider the application. He pointed out that subsequent to the survey, Council received many letters in opposition to the daycare. He said it was nothing personal and it was pretty much business—it was a decision people made regarding the quality of life and they had an expectation of living in a residential area. He said that Jim Hawk,

who lived next door at 818 Hilltop Road, recently sent an email to Council stating his opposition. Several neighbors sent letters or emails stating their opposition. He claimed that contrary to opinion, he and his wife did not spearhead a movement one way or the other for or against the daycare. Their intent was to let the community know that this permit had slipped through the cracks and nobody was advised of the request for the permit except for one neighbor. He believed that was contrary to the guidance given by Mr. Lopata to the Perfinskis.

Mr. Celeste explained the opposition. He felt each neighborhood was a little bit different. There was a demographic that went with a neighborhood that helped set the stage for what residents had an expectation for the neighborhood. He claimed the opposition was not specifically to a daycare, whether it be one or two children, one or no cars coming in; rather, it was specific to a business being operated in a residential area. Mr. Celeste brought up a similar situation that occurred in Evergreen several years ago. He thought the demographics in Evergreen were very similar to Fairfield V – to the age and complexion of the residents of both communities. They had a request for a permit to allow one part-time secretary for a business in a home. The residents of Evergreen objected to having a business in their community. Both communities believed there was a negative effect to having a business in a residential area where there were expectations that it be only residential. He thought there was an additional underlying concern about the doctrine of laches that if this was allowed to go through (and there was a deed restriction covenant against that) it would lose some weight in court in the future. If someone else wanted to open a business, the community would have less of a defense in defending the deed restrictions.

In this particular case, Mr. Celeste reiterated that the community had an expectation that before an activity was contemplated that the residents would be contacted and there would be an open and fair disclosure, not a little bit of information given here and there. He believed it was that kind of misinformation that set the stage for this kind of situation. Everyone expected full disclosure as prescribed by the Planning Department, but Mr. Celeste said that did not happen. When he surveyed the community, nobody came forward and said they were contacted.

Mr. Celeste thought a daycare was a nuisance to a certain degree. He agreed there were neighborhoods where there was a younger population that wanted to have the daycare opportunity afforded to them. He thought everyone was sympathetic to families that needed home daycare, but he felt there were appropriate locations for home daycares and some that were not. The demographics of their neighborhood pretty much dictated there would not be a lot of opportunity for most of the folks to use a daycare. Many of the residents were either retired or getting ready to retire so they would be home during the day. A daycare has children who make a lot of noise. He claimed his community was not unfriendly to children and in fact many families had grandchildren. They raised their children in a safe environment and had that same concern for their grandchildren. In some cases, their grown children with their children have moved into their community. He claimed the residents were trying to insure that the environment for their grandchildren was the same quality of environment they had for their own children. It was the duty of the residents to protect their neighborhood from deterioration and it was the government's responsibility to help support that. He pointed out that courts tend to hold up deed restrictions and covenants if they were rational, reasonable and not prejudicial. Deed restrictions were a tool to ensure that a residential community stayed a residential community and a lot of residents in this community believed those restrictions should be considered. He reiterated that the City should take the deed restrictions into consideration.

Mr. Celeste continued by saying in case there was any question on his position, that he did not want a business across the street from him and he did not care whether it was a daycare with one or two people or whatever. He did not want to have to worry about that business expanding or some other business saying since the daycare was there why couldn't they come in. He opposed the issuance

of the special use permit not because it was a personal issue, but because it did not make sense in their residential community with their demographics.

Mr. Clifton pointed out that one of the properties contiguous to the back of the property was not listed. Mr. Celeste said they were not home but the houses on each side were included in the survey. He said they did the survey to find out who the “few and the chosen” were and they were not able to find them. They attempted to identify those people to find out what they were told by the Perfinskis. He believed the survey was written in an unbiased way.

Pat Celeste, 815 Hilltop Road, a licensed realtor, retired since 2004, said she had no control over what the previous owners (Welchs) did or did not do. All she told them was to fill out the disclosure and tell the truth. She claimed she did not know the date on the email. She also acknowledged that her husband did, publicly, sign a document as a witness for the Welchs’ 25 years ago. Ms. Celeste said she opposed using a residential property to run any kind of daycare. She did not attend nor was she informed of the Council meeting when the special use permit was granted in September. She received a letter on November 9th from the Perfinskis asking anyone who objected to the daycare to contact them. However, there was no phone number listed and she did not think most people would respond to something like that. She viewed it as almost confrontational. She thought if the Perfinskis had contacted the neighbors before buying the house they would have been aware of how the residents felt about a daycare. She stressed that it was not that they did not like kids. In fact, she took care of her granddaughter. Her problem was the fact that a daycare would affect their tranquility and there were deed restrictions so she felt secure that there would never be a business in her neighborhood. She thought it was unfortunate that Council did not have the advantage of having that information when they granted the special use permit. She believed the real measure of how people felt about a business in their neighborhood was evident in the survey given to Council. She said she might have spearheaded in that way by knocking on doors. She acknowledged she talked to Mrs. Harrington but it was prior to her going door to door with the survey. She claimed Mrs. Harrington had concerns about the noise level. The majority of the people on the petition did not want a business on their street and the neighbors who signed the petition asked Council to rescind the permit. Everyone who signed the petition either lived next door to the daycare, near it or behind it. She did not go to every single house.

Ms. Celeste continued by saying the Perfinskis contend they did not know they could not run a daycare when they bought their home, but she disagreed for the following reasons. Prior to settlement they had to go to the Planning Department and were told the zoning, and it was obvious to her they never asked whether they could run a daycare. She did not know whether they just did not know to ask that question. Second, the law dictated prior to signing an agreement of sale, the buyers needed seller’s closure and a question on that closure was “Are there deed restrictions in this community?” and the answer to that would be yes. It would be up to the Perfinskis or their lawyer to review those deed restrictions especially if they wanted to run a business in their home. Third, the Welch’s claimed in an email that they told the Perfinskis prior to entering a contract they needed to get permission from the City. She did not know why the Perfinskis did not pursue that and because Council was misled and the community was not informed of the request for a special use permit, were the reasons they were discussing this again with Council. In addition to that, her 20 years experience as a realtor told her people don’t like a business next to their home. If this business was allowed to continue, and the deed restrictions were negated by Council’s action, she felt they would have to disclose the daycare and people wouldn’t want to live next door to it. She believed it made the value of her house a little bit less and it would take longer to sell her home. People wanted to be able to sit in their backyard and have coffee and not have a lot of commotion. She emphasized that this was not a personal issue and she was very sorry if that was how the Perfinskis felt. She was simply trying to protect the value of her home.

Ms. Celeste continued by saying there were more cars coming and going. Fairfield V consisted of three dead end streets and the only people going in and out were the people who lived there or their guests. She would not like to see the deed restrictions negated and be worried about how many people might decide to want a business out of their home. She would not want to have to move because she liked the tranquility of her very tight knit community. She felt badly that the Perfinskis might feel left out because this has been difficult on everybody. She knew of no other business in the community and hoped it would stay that way.

Colleen Jordan, 339 Stamford Drive, advised that she received a letter dated November 8th from the Perfinskis on November 9th, and would have had to respond by the 11th but there was no phone number in the letter. She opposed the daycare and said she would not knock on the Perfinskis door but that was the only option they gave her to respond to their letter. Now that she was more educated on deed restrictions she realized they protected property values. Ms. Jordan grew up in this neighborhood and when she got married she stayed in the neighborhood. She and her husband stayed because it was very quiet and peaceful and very community oriented. They organized a block party every year. They have spent a lot of money updating their home, they take tremendous pride in all the work they have done to their home, and they would not want to lose any of its value. It was her understanding the Perfinskis were informed of the deed restrictions prior to final sale, but ultimately when you purchased a home she said it was your responsibility to get the facts about the property you wished to purchase. If the Perfinskis had done that, they could have eliminated purchasing a home that restricted them from continuing to run their daycare business.

Frank Gillespie, 819 Hilltop Road, received the same letter the Jordans received. He agreed there was no opportunity to respond other than to walk across the street and have a face-to-face conversation, which he chose not to do; rather he chose to attend the meeting. He has three grandchildren and loved children. He believed Hilltop Road was a very residential, quiet neighborhood and he would like to keep it that way.

Jeff Jordan, 820 Hilltop Road, thanked Council for the rehearing and for their patience regarding this matter. This was his first Council meeting. With regard to disclosure, the first inkling he had about the daycare was the November 9th letter. After that, his next-door neighbor, Jim Hock at 818 Hilltop Road, told him what was going on. He had no other contact from anyone until the City letter of November 27th, which brought him to the meeting. He has a 5-year old and a 6-year old and recently removed the training wheels from one bike because they were learning to ride their bikes. The daycare has brought five more cars in and out of the neighborhood twice a day bringing his children exposed to ten more cars. Having lived in his house for 10 years, he did not expect to be exposed to a business in his neighborhood. He found that very troubling and did not support the daycare. With regard to the policy, he said he did not know the facts but gathered there had to be publicity in the *Newark Post*. He did not think that was sufficient and Council should revisit that issue.

Mr. Funk interjected that in January that policy could change.

Mr. Jordan thought because there had not been disclosure there was now animosity. He believed the burden of proof should be on the petitioner. If a system was in place where all parties were informed, then the level of hostility and animosity were likely to be lower in the future.

Judy Gardner, 353 Stamford Drive, thought any small business, even a daycare (and she was not equating children with pigs and cows) because of the close proximity would affect their neighborhood because they were so close to downtown. They were trying very hard to keep their residential neighborhood that way and keep the businesses in the City where they belonged. She thought to go to the person applying for the special use permit was confrontational and they weren't that kind of neighborhood. She claimed the Welchs, before they sold their

house, informed the Perfinskis that a daycare was not legal in their neighborhood, and she assumed the City government would take care of it. She thought since nobody showed up for the hearing when the special use permit was granted, it was logical for Council to assume that nobody really cared, but that was not the case.

Janet Spina, 814 Hilltop Road, said she spoke at the September 11th hearing on the special use permit. She thought that she and her husband were the only people in the room who did not object to having a small home daycare in their neighborhood. She felt three small preschool children did not pose any problem to them. The daycare was fully licensed and inspected by the State of Delaware. While Mr. Perfinski is her supervisor at her place of employment, after hours he was also her next-door neighbor. She took offense to the Celeste attacks on her character in their letter to the City. She did not deliberately withhold any information on September 11th. She pointed out that Mr. Perfinski was the Delaware Children's Department Employee of the Year in 2005. Among the many other honors Mr. Perfinski has received, he was awarded the Angels in Adoption Award, a prestigious national award given to one person from each state in the nation for his work in the adoption of Delaware's children who were waiting for families. One was not rewarded with such honors by showing a lack of honesty, integrity and truthfulness. Ms. Spina brought this to Council's attention because she did not believe the Perfinskis misrepresented themselves to Council in September. Since the facts have been brought out that property values have diminished because of the daycare in the neighborhood, she also had a concern regarding her property values. Therefore, she contacted a real estate agent to inquire about property values in her neighborhood. The agent explained the rise and fall of marketing and included a market analysis of property in Fairfield and the 19711 zip code for the past two years, which she distributed to Council for their review. She quoted from the analysis: "I would like to address the claim that a small in home daycare is causing property values in your neighborhood to decline. I can only say that any decline in property values can only be attributed to the real estate market in New Castle County. The market has now adjusted from a severe seller's market to a buyer's market. I also cannot find any research that supports the claim that small in-home daycares have a negative impact on property values." In conclusion, Ms. Spina sincerely believed that having a small daycare next door to her home has not harmed her property values. There have been other businesses in their neighborhood in the past such as Jan's Healthy Kids at 323 Stamford, Mr. Gene Banoff's in-home business before he passed away at 326 Stamford, and the house at the corner of Hilltop Road, 811, that appears to have an in-home business as UPS delivered many large boxes there on a monthly basis. Those boxes are stored in their garage and were marked "Acucheck" which are diabetic supplies. She did not oppose any of those home businesses and requested Council not to rescind the special use permit that was granted.

Mr. Perfinski said he wanted to follow up about contacting neighbors. He talked to his three neighbors behind him and it was with the gentlemen who were outside raking leaves on Veteran's weekend. It was Messrs. Cannon and Harrington and Danoff. Mrs. Danoff contacted his wife and said they were not opposed to it. Since he sent letters, he did not go any further contacting any other neighbors and everyone was advised of the public hearing to voice their opinions. He also noted that anybody who was computer savvy could go to 411.com and find out if there are businesses in your neighborhood by plugging in your address. He questioned how other businesses in Fairfield V could legally operate businesses. He concluded by thanking Council for their time. He hoped they would think about all the information that was provided to them and make a decision at a later time.

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

Mr. Markham asked if the Zoning Code placed daycares in residential districts. Mr. Lopata said by and large that was correct but there were also some other areas such as in limited business districts. Mr. Markham asked if there was any notification requirement at the time the special use permit was granted. Mr.

Lopata said the notification requirements have worked for 30 years but there was now a proposal to change the notification process. Normally, he suggests to applicants that they contact their neighbors and discuss their plans, but “neighbors” was not defined.

Mr. Osborne pointed out that when the special use permit was originally granted, the process was to publish the agenda in the local newspaper and individuals did not have to be notified. When the September 11th meeting was held, if people hadn’t read the newspaper, they would not have known. However, the City satisfied the legal requirement. This would not happen in the future because Council would be considering an ordinance next month to change the notification process.

Mr. Akin suggested since Council was sitting more or less in a quasi-judicial capacity, each member should state the reason for his vote.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: TO RESCIND THE SPECIAL USE PERMIT TO ALLOW A DAYCARE WITH A MAXIMUM OF FIVE CHILDREN AT 816 HILLTOP ROAD.

Mr. Clifton said this was a tough decision for him because he always supported daycare centers and years ago his wife had a daycare in their home. He saw no evidence that suggested property values were diminished. If people saw children next door playing while looking at a house, he did not imagine a realtor would say that was a “business” versus a “daycare” which was a little more palatable. He thought daycares like this were needed in the community. When he first got involved in running for Council ten years ago, there was a request for an in-home daycare around the corner from his house, which was ultimately approved. Most recently, Council approved a special use permit for a professional business around the corner from his house on Stafford Avenue. They had two clients a day and nobody noticed the office at that location.

Mr. Clifton said the email sent from the Welchs on November 13th made him uncomfortable. He strongly believed a community had the right to dictate what was in their community. He saw a special use permit as a land use issue that was independent of the deed restrictions. He said he would support rescinding the special use permit.

Mr. Tuttle said when this first came to Council he was sitting in the audience as a candidate for Council, and he recalled the procedure that evening fairly clearly. Ms. Spina was the only resident who spoke and there was a representation by the applicants that they had consulted with the neighbors and nobody had any opposition. It was clear to him, based on the information he received since and the testimony that was provided at this meeting, that a significant proportion of the neighbors had a problem with the daycare. They believed, although the City may not be the entity that should be enforcing the deed restrictions, that they could rely upon those deed restrictions to preserve the character of their community. Therefore, he planned to vote to rescind the special use permit.

Mr. Markham believed the notification at the time was proper and concurred that the City did not enforce deed restrictions. If the turnout from the community on September 11th had been the same as the turnout at this meeting, he would have voted differently. Based on the fact that the community did not support the daycare, he would support rescinding the special use permit.

Mr. Athey said he would vote to rescind the special use permit as well. However, he thought in hindsight it would have been nice if the neighbors had gotten together to figure a way by perhaps by limiting the number of hours, the number of outdoor time, or something else to make it work. He found the Welch email a little disturbing and perhaps due diligence was not done on the applicant’s part. He believed it was up to the applicant to demonstrate the value of the permit.

Mr. Osborne said he gave a lot of thought to this situation. He had no objection to a few small children in the neighborhood. However, because of the email Council received from the previous owner that they had told the Perfinskis in advance that the daycare was not a permitted use, and because of the opposition of the neighbors, he would support rescinding the special use permit.

Mr. Pomeroy said he would support rescinding the permit. He agreed with Mr. Athey about due diligence. He said it was a difficult decision because he had no doubt the Perfinskis had the best of intentions in what they were doing. He thought the folks who spoke tonight made a statement about what they wanted and expected their neighborhood to be and for that reason he would vote to rescind the permit.

Mr. Funk said he would vote in support of rescinding the permit. Initially he was concerned about the legality of the whole process but having found out that two of the three people who did not have any opposition were not present to confirm that, it was clear to him they had jurisdiction to revisit the issue, and because of the concerns of the neighborhood he would vote to rescind the permit.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0

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

17. 5. RECOMMENDATIONS ON CONTRACTS & BIDS:

A. Recommendation to Waive Bid Process for the Purchase of a Forensic Video Assessment System

Ms. Houck summarized her memorandum to the City Manager, dated December 4, 2006, wherein she recommended waiving the bid process for the purchase of a forensic video assessment system. Approval would provide for the purchase of an assessment system that would enable the Police Department investigators to recover, store and enhance video evidence from a variety of recorded formats. They did not currently have such a system. The Police Department completed an evaluation of two systems and a thorough research concluded that the Dynamic Technologies/Ocean Systems product offered a greater benefit to the department. One of the highest components was the interoperability and peer sharing between other agencies. To date, the City has been fortunate to utilize the services of the University of Delaware Police Department as well as the State Police, both of whom have this system.

Ms. Houck recommended that Council waive the sealed bid requirement and authorize the purchase of the Ocean Systems “dTective” forensic video assessment system for the total cost of \$44,520.

MOTION BY MR. OSBORNE, SECONDED BY MR. POMEROY: THAT COUNCIL WAIVE THE BID PROCESS AND PURCHASE THE OCEAN SYSTEMS DETECTIVE FORENSIC VIDEO ASSESSMENT SYSTEM FOR A TOTAL COST OF \$44,520.

Mr. Tuttle said he was a supporter of advances in technology for the Police Department as well as other aspects of the City. However, he reminded Council that they were considering a contingency plan for significant budget reductions among all operating departments in the coming year. The unit was currently in use by four other agencies in the State, including the University of Delaware Police. It was his opinion that deferring the purchase would not materially affect the ability of the Police Department to conduct their investigations. They could continue to do what they were doing now. He suggested deferring the purchase at this time and using the money to fund the seasonal police officers, which might otherwise be curtailed if the proposed contingency plan was used.

Mr. Funk asked how often this equipment would be used. Cpt. Potts indicated that the last time they would have used it was for the street-racing incident on Elkton Road when they needed to enhance a video. The State was going to process the video for them, but other suspects were developed prior to that so it did not get done right away. He claimed sometimes there was a problem with delay when other agencies were assisting Newark police because Newark was not the top priority. The department felt strongly that this equipment should be in house to serve the citizens of the City. He would not be opposed to delaying the purchase, but he did not want to see the purchase fall off the radar screen.

Mr. Funk thought the tradeoff was either the City got seasonal police or this equipment.

Mr. Luft said that administratively he would treat the contingency plan as if it were going to occur and evaluate it every couple of months because he did not know what the City would be faced with financially until the lawsuit was finalized. The one thing that could be done was to continue the recruitment of the seasonal police in the beginning of the year, and if, in May or June when they would be retained; if the contingency plan were in effect, the City would not hire the seasonal officers at that time.

Mr. Tuttle said with regard to recruitment, if you don't start quickly, you don't have a program because you have to have an extended recruitment. If anything, the recruitment would be more time consuming because of certain standards than it was the first time. If, for whatever reason, the seasonal police program did not happen this year, then the City would have lost the momentum it started to build. He has not heard anything negative about the program, it was still growing, and it still needed some refinement, but he would not like to lose that initiative.

Mr. Luft interjected that the City had committed to recruitment.

Mr. Clifton agreed with Mr. Tuttle to defer the purchase since there were other options at the department's disposal. He thought the seasonal police program was important and would like to know that the program would be there in May or June.

Mr. Pomeroy did not think now was the time to be penny-wise and pound foolish on public safety matters, and said he was not implying that other members of Council were doing that. The big issue for him was he did not see it as being an either/or trade-off. The recommendations for the contingency plan were based upon what could be done to address future budgetary issues. He did not agree with eliminating the seasonal police program and that was an issue he thought they could take up at a separate time. He did not see them denying this purchase or the seasonal police program.

Mr. Osborne asked since the equipment was at the University of Delaware, how important was it for our Police Department to have it. Cpt. Potts said it was a matter of priority and Newark's priorities were not necessarily the University's priorities. When they needed to get things done, they needed to be done and when they had to go elsewhere sometimes that equipment was not available to get it done quickly.

Mr. Funk asked how many times in the last six months the police asked to use this equipment. Cpt. Potts believed it was several times but he did not know the exact number of times and the requests were usually made to the State Police. Mr. Funk asked why weren't we asking the University to which Cpt. Potts said they have used the University this past year. Mr. Funk said he had an excellent relationship with the University Police Department and if there were problems, just let him know. Cpt. Potts said it was not a matter of the University not assisting Newark Police. If we had our own equipment, we would have control and things would be done in a timely manner.

Mr. Osborne said he would agree to defer the purchase at this time because of the economic situation of the City with the pending legal matters.

Mr. Athey said he was a huge fan of the seasonal police program and would not want to see that go away.

Mr. Tuttle said his concern was if they set the seasonal police program aside, and then changed their minds, we wouldn't have a successful recruiting program.

Mr. Markham asked if this purchase would fill the hole in the recovered property figures as well. Cpt Potts said no. Mr. Markham said he did not see this situation as an either/or but his concern was the timeliness. The Police Department was pushed for results and if they weren't given the tools, he did not see how they could "hold them to the fire" at times.

Question on the Motion was called.

MOTION FAILED. VOTE: 2 to 5.

Aye – Pomeroy, Markham.

Nay - Osborne, Athey, Funk, Tuttle, Clifton.

18. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING

A. Bill 06-36 - An Ordinance Amending Ch. 16, Garbage, Refuse & Weeds, By Banning Yard Waste from the Refuse Collection Program in the City of Newark

Ms. Lamblack read Bill 60-36 by title only.

MOTION BY MR. OSBORNE, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 06-36.

The chair opened the discussion to the public.

Millman Prettyman, 19 Long Needle Court, questioned Amendment 5. With the questions taking place on the State and County level, he was in favor of doing something, but was concerned with the City's timing for planning this change. The change in Amendment 5 stated the City "may" require the preparation of refuse, trash and/or commercial refuse by segregation of certain materials such as newsprint paper, yard waste, plastics, junk mail, cardboards, etc. but it did not say when and there was nothing in the budget for such a program. He asked how the program would be paid for if it was not in the budget. Last, but not least, he asked what defined "junk mail."

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

Mr. Luft explained that this ordinance brought the City's current refuse and weeds ordinance into compliance with the new DNREC requirement for banning yard waste. The City's plan was to implement a special pickup to deal with the yard waste, and Mr. Lapointe and his staff plan to evaluate that to see what impact it would have on the budget.

Mr. Markham asked if there was any anticipation for recommendations from the Conservation Advisory Commission in terms of curbside recycling. Mr. Funk said his office had curbside recycling. Mr. Luft said that was also done in City Hall at the present time.

Mr. Lapointe said that since he was making a revision to the Code to address the State's new guidelines, he did not want to deal strictly with yard waste. He claimed junk mail, cardboard and plastic were not listed in that section of the

Code but were currently collected at the Recycle Delaware Centers. Therefore, he took this opportunity to include those products in the Code along with yard waste.

Mr. Luft asked if residents could put those items in their refuse. Mr. Lapointe answered yes and said the City could require the segregation of those products so if for one reason or another the City started a mandatory curbside-recycling program, it could select the items they wanted segregated from the regular refuse.

Mr. Osborne pointed out that if you didn't currently subscribe to the Delaware Solid Waste Authority, you could still take all the recyclable items to the igloos. Mr. Lapointe said that was correct.

Mr. Funk thought the City was in compliance with the law right now because we never have more than 10% yard waste mixed in with our trash. Mr. Lapointe disagreed and said the City was not in compliance. The City now took care of leaf and grass clippings but all brush, garden materials, and clippings go to the landfill.

Mr. Pomeroy asked if the language in Amendment 5 was enabling language or foresight. Mr. Akin said it gave the lawful authority of Council to the department to make a determination when volume got to a certain point to start segregating certain materials. He assumed property owners would be advised that another category of material needed to be segregated.

Mr. Pomeroy asked if they were essentially approving a recycling program with this change, or would it have to come back to Council for approval. Mr. Akin said the word "may" meant we might require it. Mr. Lapointe said the Amendment permitted the City to start a recycling program.

Mr. Athey thought it would have been appropriate in the summary of the bill to include language in Amendment 5 since the title only addressed yard waste.

Mr. Markham asked if anything changed with the State since things were still up in the air with haulers. Mr. Lapointe said he attended a meeting with haulers, DSWA and DNREC and they were forging ahead January 1st when they start enforcing the demand on the landfill. DNREC and DSWA will have inspectors at the landfill. They will not fine municipalities or haulers for the first three months but would give written warnings. On April 1st, they will begin a \$500 penalty fee for trucks that deliver more than 10% of yard waste to the landfill.

Mr. Lapointe asked for clarification before Council voted on the ordinance. He advised that he took advantage of changing as much as he could within this ordinance. He brought to Council's attention that the Code now had a clause that allowed the City to pick up refuse that was not in compliance with the Code, if it so chose to do so, and then bill the resident for the cost of the pickup. Right now there were a lot of areas of noncompliance in the Code, such as putting trash out too early, leaving carts out, etc. He took the liberty to correct that problem on a fee basis. That language was in Amendment 8.

Mr. Osborne asked what would happen if the residents were renters and they put their garbage out early or leave cans out. Who would be responsible? Mr. Lapointe said the assessed fee would go to the owner of the property and he/she would have to get reimbursed from the tenant.

Mr. Luft pointed out that the City had that flexibility now except it came under the procedure for tickets. Mr. Lapointe disagreed and said they don't have the flexibility for doing it without a fee right now. They have a clause in the Code if trash was left out, the City could pick up the trash instead of leaving it and charge a fee for that collection. But with regard to correcting a violation, the only avenue he had now was to go through the Court system which to date he has not done. To take somebody through the court system now would leave that person with a criminal offense for a garbage violation and that did not make much sense to him.

Mr. Osborne emphasized the fact that if the City was found having more than 10% of yard waste in their garbage, each truckload would be fined \$500.00. Therefore, it was important for the residents realize there would be a cost to the City if they violated this provision. He thought it was very important to get that information to the residents.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(ORDINANCE NO. 06-34)

**19. 6-B. BILL 06-37 - AN ORDINANCE AMENDING CH. 2,
ADMINISTRATION, BY REVISING THE PAY PLAN
FOR MANAGEMENT EMPLOYEES, EFFECTIVE
APRIL 1, 2006**

Ms. Lamblack read Bill 06-37 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 06-37.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(ORDINANCE NO. 06-35)

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: TO AUTHORIZE THE CITY MANAGER TO GRANT AN ACROSS-THE-BOARD INCREASE OF 3.0% TO THE ANNUAL BASE SALARY RATES FOR MANAGEMENT EMPLOYEES, EFFECTIVE APRIL 1, 2006.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

20. 6-B-1. 2006 SALARY INCREASE FOR CITY SECRETARY

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT THE CITY SECRETARY'S BASE SALARY BE INCREASED TO \$78,835 EFFECTIVE APRIL 1, 2006.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

21. 6-B-2. 2006 SALARY INCREASE FOR ALDERMAN

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THE ALDERMAN'S SALARY BE INCREASED TO \$33,261 EFFECTIVE APRIL 1, 2006.

Mr. Funk pointed out that the Alderman has been performing the duties of Deputy Alderman and asked if he should be paid an extra compensation for his additional services performed over the last four months. He suggested an extra \$5,000.

Mr. Athey said the dollars saved by not paying two salaries over four months was greater than \$5,000, so awarding that bonus would still have the City coming out ahead. He thought it was reasonable to reward the Judge since his workload doubled.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THE ALDERMAN BE GIVEN AN EXTRA ONE TIME \$5,000 TO COMPENSATE FOR THE ADDED WORKLOAD.

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

22. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS:

A. Request of the Rohm and Haas Electronic Materials CMP, Inc. for a Special Use Permit for Construction of Drainage Improvements Within the Open Floodway District of the Christina Creek at the Rohm and Haas Site on the North Side of Bellevue Road Near Old Cooch's Bridge Road

Mike Munson, project engineer manager at the Rohm and Haas site at 451 Bellevue Road, said that he and Stephen Johns from Vandemark & Lynch, Inc. put together the design of the drainage improvements at the site to which Mr. Johns reviewed.

Stephen Johns, Vice President of Engineering, Vandemark & Lynch, Inc. said they planned to place an existing roof drain system underground and provide positive drainage for areas that continually have standing water after rainfall. Portions of the proposed construction area lied within the floodplain of the Yorkshire Ditch. Therefore a special use permit was required. He claimed they would not be impacting the floodplain elevation with the improvement. The present runoff would remain the same.

Mr. Osborne asked if there would be any storage of water, and Mr. Johns said only in the pipes underground, which would run into the drainage ditch and eventually to the Christina Creek.

Mr. Athey said from his perspective this was running counter to what stormwater principals were today and to be frank, if the project was brand new today, the stormwater would be handled a lot differently. They would be getting away from using pipes and getting more into infiltration. In this case the soils really weren't conducive to the infiltration. Mr. Athey asked if any thought was given to be greener in their approach.

Mr. Johns said they did not really consider any extra design because of the heavy soils. There would still be a swale and some runoff onto that swale because of the poor drainage in the back area. They really wanted to get rid of that problem. Mr. Athey would have preferred something different but acknowledged the Code did not address a retrofit situation such as this.

Mr. Clifton said the Yorkshire Ditch has always been an issue to the neighbors between Anita Drive and Douglas D Alley Drive. Each case he was involved with was a matter of maintenance of the ditch and not the issue of capacity. He asked how much this construction would increase the flow through that ditch. Mr. Johns's response was not audible.

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

Mr. Tuttle said he agreed with Mr. Athey but the proposal addressed the site problem with the standing water and the mosquito infestation so he saw no reason not to support it.

MOTION BY MR. CLIFTON, SECONDED BY MR. POMEROY: THAT THE SPECIAL USE PERMIT BE GRANTED TO ROHM AND HAAS ELECTRONIC MATERIALS CMP, INC. FOR CONSTRUCTION OF DRAINAGE IMPROVEMENTS WITHIN THE OPEN FLOODWAY DISTRICT OF THE CHRISTINA CREEK AT THE ROHM AND HAAS SITE ON THE NORTH SIDE OF BELLEVUE ROAD NEAR OLD COOCH'S BRIDGE ROAD.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

23. **8. ORDINANCES FOR FIRST READING:** None

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

A. Council Members: None

25. **9-B. COMMITTEES, BOARDS & COMMISSIONS:**

1. Appointment to Downtown Newark Partnership (Mayor's Appt.)

MOTION BY MR. FUNK, SECONDED BY MR. POMEROY: THAT MIMI SULLIVAN-SPARKS, OWNER OF BLOOM, 92 E. MAIN STREET, BE APPOINTED TO THE DOWNTOWN NEWARK PARTNERSHIP; SAID TERM TO EXPIRE JULY 27, 2009.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Pomeroy thought this was an excellent choice on the part of the Mayor. Mr. Funk said Ms. Sullivan-Sparks has an extremely good marketing ability that was sorely needed on the DNP.

26. 9-B-2. APPOINTMENT TO PROPERTY MAINTENANCE APPEALS BD.

MOTION BY MR. ATHEY, SECONDED BY MR. POMEROY: THAT EDWARD GLIWA, JR., 278 BEVERLY ROAD, BE REAPPOINTED TO THE PROPERTY MAINTENANCE APPEALS BOARD; SAID TERM TO EXPIRE DECEMBER 13, 2011.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

27. 9-C. OTHERS:

1. Request from Commerce Bank for Amendment to Subdivision Agreement

William Manning, Esquire, representing Commerce Bank, apologized to Council for this last minute application. When the project was approved on September 11th, Commerce Bank expected to complete their branch on Chapel Street and complete the widening of Chapel Street before the end of this year. Commerce Bank has made a commitment to open 65 branches this year and this branch would be ready to open by the end of the year. They have committed to doing nine weeks worth of construction in 4-1/2 weeks. Last week he was advised that the widening of Chapel Street would not be completed by the end of the year.

Mr. Manning explained that when Council approved the subdivision, the Planning Department recommended that the only movement to be permitted on Chapel Street was movement coming south from Main Street into the site. There would be no rights out and no lefts in. Both recommendations were prompted because of the congested conditions on Chapel Street. Commerce Bank preferred to widen Chapel Street rather than live with those conditions. Council imposed a condition that the drive-thrus associated with the bank not open until the street widening was completed in light of the congestion on Chapel Street. Commerce Bank was committed to widening the street, but that won't be done in time for Commerce Bank to open before the end of the year.

Mr. Manning continued by explaining that since September 11th, there have been nine meetings and/or communications including plan submissions to DeIDOT regarding the widening of S. Chapel Street. DeIDOT approved the widening of the street and now it was a question of approval of the construction drawings, the dimension of the radius on Delaware Avenue, etc. The approval process has not gone as quickly as Commerce Bank had hoped. Because of that, Commerce Bank went back to the entrance that was recommended by the Planning Department immediately after their application was filed. In a letter to Mayor and Council dated December 8th, they proposed to block off the other movements that would now be prohibited with barriers, but has since decided not to do that because it would not look very nice. Now they thought it would make more sense to build in a permanent fashion the entrance that would only permit the rights in and then when the street widening occurs, that entrance would be reconfigured to permit left turns in and right turns out.

Mr. Manning reiterated that the primary reason for the delay was getting the plans approved by DeIDOT. Now they were also at the point where the hot mix plants were closing down, and if there were several days like last Friday, it would be very difficult to find hot mix in New Castle County. He assured Council that they would find the hot mix to pave the parking lot. DeIDOT required a mean temperature of 45 degrees whenever you perform street improvements in a public right-of-way. Therefore, they won't have the option to do anything to Chapel Street until the good weather returned. Mr. Manning reiterated that he was asking Council to modify their approval so that the full service intersection not be permitted until the street be widened with limited access and the drive-thrus be permitted to open.

Mr. Manning also noted one other issue associated with the widening of the street. They reported that the right-of-way was 50', which was sufficient to widen the street. However, a question has been raised about that and Mr. Lapointe brought that to their attention. There was also the matter of Seasons Pizza who has parking in the right-of-way. Their business will be impacted by the widening of the street. Mr. Lapointe has arranged for a meeting with the owner, Gus Tsionas, and Commerce Bank after the first of the year to see what could be arranged. From a technical point of view, City Electric Director Rick Vitelli has approved a plan that relocated the power lines without requiring anything from Seasons Pizza. Mr. Manning said there was a feasible alternative, assuming Commerce Bank was correct that the right-of-way was 50'. Mr. Manning was confident they were correct and would be able to demonstrate that. If the drive-thrus don't open, that would only contribute to congestion in the parking lot and increase the time each car would spend on the site.

Mr. Manning thought the City might want to direct Commerce Bank about when the street widening should occur. The hot mix plants would re-open in the spring but given the current congestion on Chapel Street, the City may want that project done when students were not in town. There was a 10-day window for spring break but that may not be enough time to complete the widening of the street. Commerce Bank will await the City's direction regarding the timing and in order to make the City completely secure financially that the project would be done, Commerce Bank was willing to post a bond in whatever amount was required by the City (he thought 150% of the cost of the project was expected).

Mr. Clifton said he previously spoke with Mr. Manning and thought it was a solid proposal especially in light of the posting of the bond. Mr. Clifton agreed that the 10-day spring break might not be enough time even though Commerce Bank has had a crew working around the clock on this project. Mr. Clifton would like to see the road widened as soon as possible, and not have Council reviewing the project every three months. He suggested putting a sunset date of June 30th to get the widening of the road completed. Mr. Manning thought that date was a luxurious deadline.

Mr. Funk asked if the bond amount would be set by Mr. Lapointe and was there an estimate on that cost. Mr. Manning said they would get an estimate of the cost to widen the street and provide that to Mr. Lapointe.

Mr. Athey asked, in the worse case scenario, what would happen if Commerce Bank never reached an agreement with either Seasons Pizza or DeIDOT to widen the road.

Mr. Lopata said they would come back to Council to decide what to do. He also suggested giving them until August 30th to widen the road because he was pessimistic, DeIDOT was very slow with their projects, and he would not want to see Commerce Bank have to come back to Council for another extension.

Mr. Manning said there was no question about what DeIDOT would approve for the widening of the road. With respect to the right-of-way needed for the poles, there was insufficient right-of-way for the guy wires. If the pole closest to Main Street remained in the right-of-way adjacent to Seasons Pizza, Commerce Bank would need a guy wire easement from Seasons Pizza for that particular pole. They would also need one from the folks at Burger King and they have already agreed to that. Mr. Tsionas from Seasons Pizza has not agreed. Mr. Manning was trying to solve those issues. If that can't be solved, Mr. Vitelli has approved, from a technical point of view, taking the pole in the Seasons Pizza right-of-way and moving it to the Burger King property. So the only circumstance where Commerce Bank might be up against a legal hard stop would be if the right-of-way was 45' and not 50'. He has looked at the latest recorded site for Seasons Pizza and it showed the right-of-way in front of that property was 50'. If they should find out that the right-of-way was 45', there was still room to widen the street, but the hitch would be that rather

than a 5' sidewalk there would only be room for 4-4-1/2' of sidewalk and widen the street. He was confident there was a feasible solution for the pole relocation regardless of the width of the right-of-way and regardless of whether anything could be reached with Seasons Pizza. He was very confident the problem would be resolved.

Mr. Athey thought it was fantastic that Commerce Bank offered to widen the road but he had a problem because he believed a change to an agreement like this should be done if there were unforeseen circumstances. When they came to Council in September, they needed to get easements, relocate some utilities, complete a roadway design and get it approved by DeIDOT, and get the road built within about three months. From a principle point alone, Mr. Athey did not see these as unforeseen circumstances and questioned in September whether they could get everything done. He said he would not support the change purely on the principle of it because these were known circumstances coming into it and he did not think they should be changing a subdivision agreement just because the timing did not work out.

Mr. Manning agreed with some of what Mr. Athey said. Nothing has changed with DeIDOT since September and their optimism about getting DeIDOT to move quickly was perhaps unrealistic. Some of the problems that arose only occurred last week, according to Mr. Manning. He continued to believe there was a 50' right-of-way and it wasn't until last Thursday that anybody suggested the right-of-way might only be 45'. He saw that as an unforeseen circumstance. They already had the easement from Burger King. He thought people would prefer they find a solution that provided Mr. Tsionas with a little more of what he wanted.

Mr. Markham asked if the timeframe to widen the road should be spring break and it was pointed out that spring break was in March and there could be bad weather at that time.

Mr. Lopata suggested that Council request that the widening of the road be done when the students were not in session which would more likely be in the summer.

Mr. Tuttle thought it was fair to say that Commerce Bank's goal would be to do it as quickly as feasible so they could have the entrance they wanted in the first place and provide better access for their customers.

Mr. Manning agreed and said the entrance would not have been acceptable. However, they agreed under the circumstances they should severely restrict movements and it was a situation they would not want to live with any longer than they had to.

Mr. Lopata suggested a motion saying Council approved an addendum to the subdivision agreement that extended the time limitation for completion of this project until August 30, 2007, which closes the access to S. Chapel Street as recommended by Mr. Manning to right turns in only from S. Chapel Street to the site.

Mr. Pomeroy asked if the bond issue would also be included and was told it would be.

Mr. Clifton added that the motion should include the restriction for the drive-thru as well.

MOTION BY MR. POMEROY, SECONDED BY MR. TUTTLE: THAT COUNCIL APPROVE AN ADDENDUM TO THE SUBDIVISION AGREEMENT TO EXTEND THE TIME LIMITATION FOR COMPLETION OF THE PROJECT UNTIL AUGUST 30, 2007, RESTRICT TO RIGHT TURNS ONLY FROM S. CHAPEL STREET TO THE SITE; AND TO INCLUDE THE BOND REQUIREMENT AS DISCUSSED.

MOTION PASSED. VOTE: 6 to 1.

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

28. 10. SPECIAL DEPARTMENTAL REPORTS:

A. Special Reports from Manager & Staff:

(Note: Item 10-A-1 was heard at #4.)

29. 10-A-2. APPROVAL OF 2007 GENERAL OPERATING BUDGET & SETTING TAX RATE

Mr. Luft explained that he was recommending that the Legislative Department's 2007 operating budget be increased by \$250,000 to cover attorney fees related to the appeal of the reservoir judgment. The increase would be funded from 2006 carryover surplus of \$250,000 resulting from savings in the Electric Department's capital project, automatic switching, which would be deferred to 2008.

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT COUNCIL APPROVE INCREASING THE LEGISLATIVE DEPARTMENT'S 2007 OPERATING BUDGET BY \$250,000 AS RECOMMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Clifton asked if they deleted the seasonal police officers in the budget, how would it affect the recruitment and implementation of the officers. Mr. Luft said the message was clear to leave the seasonal police officers in the budget and move forward with the recruitment process. Mr. Clifton asked if it was necessary to remove that line item from the contingency plan submitted by the City Manager to which Mr. Luft felt it was not necessary to do that.

Mr. Pomeroy asked if Council was being asked to adopt the contingency plan to which Mr. Funk said they were adopting the 2007 budget as proposed with the amendment to increase the Legislative Department's budget. Mr. Funk asked if they were moving forward with filling the parking enforcement position (the present employee was on sick leave). Mr. Luft said they were moving forward with hiring a couple temporary part-timers to fill that position. The full-time employee has been absent since an injury in June and she will continue to be off and re-evaluated by her doctor in February

Mr. Funk said he was surprised on the refuse side to see rental properties that have eight to ten cans out that were picked up for free by the City. Mr. Luft said the City has always picked up the trash of the rentals that were single-family type dwelling units. Mr. Funk said that meant it was costing the City more than the City could collect from taxes for those dwellings. Mr. Luft pointed out that charging for those pickups was part of the contingency plan and was not included in the adoption of the budget. He stressed that there were some measures he would take that he was not asking for Council's action, such as the 2% reduction in operations. That would be done in January and later in the year if those cuts weren't needed, the City would plan accordingly.

Mr. Pomeroy asked if the City would continue, for instance, with the seasonal police officers until the red flag goes up or did it mean we stop any planning process. Mr. Luft reiterated that he definitely got the message to proceed with the seasonal police officers and he planned to do that. As for the contingency plan, Mr. Luft pointed out there was a certain degree of judgment involved. For example, the Finance Director position which could be delayed for a few months. It would definitely be a judgment call. That being said, there were

certain things that have to be implemented and the contingency plan would go into effect January 1, by and large. The departments would begin reducing their operating expenses by 2% beginning in January.

Mr. Pomeroy asked if the reductions would go into a special fund that could not be touched. Mr. Luft said the contingency plan items were included in the proposed 2007 general operating budget. The reductions he was implementing meant the departments had to come in under that 2% reduction. He pointed out that it was similar to the 1% reduction that occurred mid-year. Department heads complied with that request which was needed because the cost of wholesale power was going up at that time. He claimed those transfers would not be made on January 1, but the money would not be spent until he said it could be spent -- they would be treated as if those transfers would be made.

Mr. Pomeroy gave everyone credit for the belt tightening process in anticipation of what may or may not come down the line. He thought the point was for the City to have a ready plan and a ready pool of funds from which to draw upon should the time come when and if they needed to tap into it. He just wanted to be sure that those funds were not reductions that go into play in order to fund other projects, rather they were funds intended to be there if needed. Mr. Luft said that was correct; and he was not going to use the money to buy something else.

MOTION BY MR. CLIFTON, SECONDED BY MR. OSBORNE: THAT THE 2007 GENERAL OPERATING BUDGET BE ADOPTED AS PRESENTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: THAT THE PROPERTY TAX RATE BE SET AT \$.5233 PER HUNDRED DOLLARS OF ASSESSED EVALUATION.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

30. 10-A-3. 2006 BUDGET AMENDMENT – STATE BOND BILL

Mr. Luft explained that state legislators allocated, through the 2006 Bond Bill, \$36,000 in additional funds to the City for street maintenance projects. Those additional funds made current budgeted funds available for the Newark Senior Center parking lot improvements. The following amendments were recommended for Council approval:

1. Increase lines for 2006 Bond Bill revenues and 2006 Bond Bill expenditures for Street Maintenance by \$36,000 to reflect additional funding. This increased both revenue and expense line items from \$326,000 to \$356,785.
2. Increase 2006 Legislative Department expenditures by \$36,000 for disbursement to the Newark Senior Center for their parking lot improvements.
3. Decrease Capital Project No. H0603 Annual Street, Curb and Catch Basin Maintenance, by \$36,000 to reflect the transfer to Legislative Department.

Mr. Clifton pointed out that adding \$36,000 in Item 1. would increase that line item to \$362,000. Ms. Garriz explained that the original budget allocation was \$320,785 and by increasing it \$36,000, it increased to the actual allocation of \$356,785.

MOTION BY MR. CLIFTON, SECONDED BY MR. OSBORNE: THAT THE 2006 BUDGET BE AMENDED BY \$36,000 AS RECOMMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

31. 10-B. ALDERMAN'S REPORT

MOTION BY MR. OSBORNE, SECONDED BY MR. MARKHAM: THAT THE ALDERMAN'S REPORT DATED DECEMBER 7, 2006 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

32. 10-D. REQUEST FOR EXECUTIVE SESSION RE PENDING LITIGATION (DURKIN V. NEWARK) & LABOR NEGOTIATIONS

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT COUNCIL ENTER INTO EXECUTIVE SESSION WITHOUT THE PRESS TO DISCUSS PENDING LITIGATION & LABOR NEGOTIATIONS.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Council entered into Executive Session at 11:00 pm and returned to the table at 12:01 am. Mr. Funk advised that a motion was needed to approve the CWA tentative contract agreement.

MOTION BY MR. TUTTLE, SECONDED BY MR. ATHEY: THAT COUNCIL APPROVE THE CWA TENTATIVE CONTRACT AGREEMENT.

MOTION PASSED. VOTE: 6 to 1.

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

With regard to the discussion on the reservoir litigation, there was no action needed to be taken by Council.

33. Meeting adjourned at 12:04 am.

Susan A. Lamblack, MMC
City Secretary

/pmf