

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**September 8, 2008**

Those present at 7:30 pm:

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

Staff Members: Interim City Manager Roy H. Lopata  
City Secretary Patricia M. Fogg  
City Solicitor Roger A. Akin  
Assistant to the City Manager Carol S. Houck  
Interim P&D Director Maureen Feeney Roser  
Chief Paul Tiernan, NPD

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

2. MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE AGENDA BE AMENDED BY ADDING ITEMS 2-C, SPECIAL COUNCIL MINUTES OF SEPTEMBER 2, 2008, 9-B-2, PLANNING COMMISSION MINUTES OF AUGUST 5, 2008, AND 10-C, REQUEST FOR EXECUTIVE SESSION RE PERSONNEL WHICH COUNCIL AGREED TO DISCUSS AT THIS TIME.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

3. **10-C. REQUEST FOR EXECUTIVE SESSION RE PERSONNEL**

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Council entered into Executive Session at 7:33 pm and returned to the table at 7:58 pm. Mr. Funk said they spoke with Kyle Sonnenberg to determine if he was willing to accept the City's agreement in principle. Mr. Sonnenberg announced that he accepted the agreement with the City and would commence employment on November 1, 2008 pending completion of his contract.

Mr. Funk said hiring a new City Manager had been a difficult task and a long process. He felt Council should be commended for taking the deliberations very seriously and putting a lot of energy into finding the best candidate. Council

recognized that Mr. Lopata performed admirably in the position of Interim City Manager, and they were very proud of his accomplishments and his service to the City.

Mr. Lopata read the following statement.

“I have appreciated the opportunity to be considered for the position of the City Manager of Newark. Of course, I have also enjoyed having the experience serving as the City’s Interim City Manager over the past six months. Although I am disappointed in not having been selected, I recognize that the Mayor and Council had a very difficult task making a decision from amongst so many qualified candidates. Now that the selection process is complete and Kyle Sonnenberg has been selected as City Manager, I look forward to again focusing on the serious planning and development projects you will be considering in the near future.

Again, I wish to thank the Mayor and Council for the opportunity of being considered. In the immediate future, I will do all I can to assist Kyle in transitioning to his new position as City Manager and will continue with those projects that can be appropriately considered before he arrives in Newark. I also look forward to working with you and Kyle in responding to the problems, challenges and opportunities that Newark faces as we move forward into our community’s exciting future. Thank you.”

MOTION BY MR. CLIFTON, SECONDED BY MR ATHEY: THAT THE OFFER OF EMPLOYMENT OF CITY MANAGER BE EXTENDED TO KYLE SONNENBERG OF FAYETTEVILLE, NORTH CAROLINA, CONTINGENT UPON THE ACCEPTANCE OF THE CITY’S CONTRACT.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

4. **2. CITY SECRETARY’S MINUTES FOR COUNCIL APPROVAL**  
A. Regular Council Meeting of August 25, 2008

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

5. **2-B. SPECIAL COUNCIL MEETING OF AUGUST 26, 2008**

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

6. **2-C. SPECIAL COUNCIL MEETING OF SEPTEMBER 2, 2008**

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

7. **3. ITEMS NOT ON PUBLISHED AGENDA**  
A. Public

Brian Dunigan, 422 Orchard Road, expressed his gratitude to City Council and staff for their constructive efforts in handling illegal peddling and solicitation in the City. He said that although many of these incidents were nuisance-type crimes, he commended the action being taken and hoped the City would continue their enforcement in this area.

8. Eve Buckley, 227 Orchard Road, lived on the corner of Orchard and Winslow Roads and drew Council’s attention to the armed robbery of a UD graduate student that occurred in front of her driveway. Ms. Buckley was

concerned, as were her neighbors, for many reasons including the fact that there were a number of young children who lived in the immediate vicinity. She had spoken to University administrators and Police Department officials about this incident. They were sympathetic and commented that this was a random event. While she understood that the particulars of the crime were random, she felt there was an increase in the level of violent crime in Newark in recent months. As Council moved toward fall budget discussions, she encouraged them to seriously consider the question of public safety which might involve additional police presence and greater cooperation between NPD and the University.

Mr. Clifton asked Chief Tiernan to speak to the issue and some of the Police Department's initiatives. Chief Tiernan said the NPD and the University Police Department maintained a close working relationship. While robberies were at about the same level as last year, any robbery was one too many. The NPD developed a fall crime initiative, and after analyzing where the robberies have occurred and the timing, they used this information to focus their resources. Chief Tiernan reported they have announced their aggressive patrol plan publicly and have some good leads on the robberies.

Mr. Funk said the City had one of the best police departments in the state, and the relationship between the University and the Newark Police Department had greatly improved in recent years. Mr. Lopata added the NPD's crime prevention plan, targeted to begin in September, had been in place for many months and was based on crime trends over the last several years. The Chief himself participated in it which he thought was important to recognize, and everyone in the department was mobilized for the effort which had already achieved good results.

**9.** Miranda Wilson, 329 Orchard Road, wanted Council's reaction to the crime that occurred in her neighborhood. She was heartened to learn there were plans in place and that 14 additional officers will be forthcoming from the University. She agreed with Ms. Buckley's suggestion to find out what the neighborhood could do to support police presence in the area and emphasized there were many young families living there.

Mr. Funk suggested resurrecting a neighborhood watch which existed in the area about ten years ago. Ms. Wilson felt that was an excellent idea. Mr. Funk also felt the lighting could be improved. Ms. Wilson hoped to see an increased push from the community to support more law enforcement. Mr. Funk noted that several years ago the City added five police officers and had plans for additional officers. Mr. Clifton said that happened in late January or February 2005, and was acted upon in April or May 2005 at Council's directive. At that time Council discussed that once the new officers were functional (about a year and a half) Council would again review staffing levels. Mr. Clifton said Newark needed to become known as a town where police officers were readily available to deal with crime. He felt public safety was priceless and without it, there would be no community. Mr. Lopata said staff would propose an increase in police officers during the budget process.

Mr. Pomeroy agreed that the crime was wholly unacceptable. He said the strength of the City was based upon the safety of the community, and it was time to seriously consider whether the City was providing adequate resources to the Police Department to address the safety issues. He added that the public's concerns were shared by Council.

**10.** Catherine Ciferni, 334 E. Main Street, said she was followed home three times in the past 18 months and suggested improved lighting at her end of Main Street. On another topic, she stated it was sometimes difficult to hear Council members speaking and requested they speak directly into their microphones and speak outward as opposed to the side. She also asked Council members not to talk over one another.

11. J. P. Laurenceau, 216 Orchard Road, was pleased to learn efforts had been made to address crime in the City. He noted there were six children under the age of seven that lived near the intersection of Orchard Avenue and Winslow Road and about 15 children under the age of ten in the neighborhood. He was interested in crime statistics which Mr. Funk reported had been fairly consistent during the past five years. Chief Tiernan added that the Police Department's Administrative Report was updated weekly on the City's website and compared 2007 crimes to 2008. Mr. Laurenceau complained about the number of traffic violations at the intersection of Orchard and Winslow. Mr. Funk was concerned about speeding in the area and agreed the intersection warranted attention.

12. Betsy Chan, 41 Townsend Road, expressed concern about the recent crime and said there were a lot of elderly neighbors in addition to the small children in the area. She felt it was a good idea to have additional police presence to help maintain safety in the neighborhood.

13. Brian Dunningan, 422 Orchard Road, echoed Mr. Clifton's point that Newark should become known as a city where crime would not be tolerated. He asked if it was possible to have a weapons checkpoint. Mr. Funk said probable cause was required and reported that two armed people who were dealing drugs were picked up at the DUI checkpoint last weekend.

14. **3-B. UNIVERSITY**

1. Administration

Mr. Armitage reported that the University's website under the Department of Public Safety tracked crime data. He appreciated the discussion about the cooperation between the City and the University Police Departments and will have University staffing level information at the next Council meeting.

15. **3-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

16. **3-C. COUNCIL MEMBERS**

Mr. Pomeroy thanked the residents who attended the meeting to discuss their concerns about crime. He felt it was not just the major crimes, but also the nuisance-oriented crimes such as speeding, graffiti, etc., that created a culture the City wanted to avoid. He felt Newark was fortunate to have a proactive Police Department and said the City was taking the situation very seriously.

17. Mr. Pomeroy remarked that Kyle Sonnenberg had his support and felt confident that he would challenge Newark to live up to its full potential. He said Mr. Sonnenberg learned that Newark was a special place during the interview process, and Mr. Pomeroy felt what made it special was the level of civic engagement. He thanked members of the public who played a role in the process for helping to shape the future of Newark and noted Mr. Sonnenberg would need the support of the entire community. Mr. Pomeroy applauded Mr. Lopata for performing admirably in the role of Interim City Manager and said he represented himself and the City well through the experience he gained over the years. Mr. Pomeroy said Mr. Lopata's contributions in shaping the City deserved special recognition. He also commended Ms. Roser for a job well done while carrying an extra load as Interim Planning & Development Director.

18. Mr. Athey recognized the residents of the Fourth District who attended the meeting, and stated their presence sent a powerful message about their feelings towards crime and police presence in the City.

19. Mr. Athey announced the Council workshop on 9/16/08 at 7:30 p.m. to discuss the Comprehensive Plan.

- 20.** Mr. Athey recognized Amy Rowe from the Newark Housing Authority Board. He noted that the recent assessment from the Housing Authority showed an enormous rating improvement and was very pleased with the direction in which the organization was going.
- 21.** Mr. Athey respected Mr. Lopata for being an interim manager who understood and took stock of what was needed, added new initiatives and brought new energy to the City. Mr. Athey appreciated Mr. Lopata's willingness and desire to work with Mr. Sonnenberg. He felt they would make a great team and was confident and optimistic about the City's future. He recognized Ms. Roser for stepping in as Planning Director and commended City staff for their support. Mr. Lopata emphasized that the accomplishments of the last six months would not have been possible without the staff's assistance.
- 22.** Mr. Clifton remarked that in his role as Interim City Manager, Mr. Lopata was a true friend to him and, more importantly, was a true friend of the City. He did not know anybody who deserved the title of "Mr. Newark" more than Mr. Lopata, and thanked him for all the help he provided to residents of District 2.
- 23.** Mr. Clifton praised the Police Department for their efforts in bringing closure to the major and minor crimes around the City, and he hoped more assistance could be provided to them in the future.
- 24.** Mr. Funk said he talked to Susan Eggert of the Newark Housing Authority, and she asked for information about the Cleveland Heights landfill. Mr. Athey reported Tetra Tech was doing remedial investigations, and the NHA had their own consultant from Brightfields working on their side of the project. Mr. Lopata was asked to provide details for Mr. Funk to convey to Ms. Eggert.
- 25.** Mr. Tuttle commended the City's street crew for improvements made in the Ritter Lane/College Avenue area.
- 26.** Mr. Tuttle appreciated input from the community on the importance of public safety and support for potential budget changes where needed. He hoped the City would be successful in reducing the level of crime and would gain a reputation for not tolerating crime. He urged continued support and awareness of the issue which needed to address not only staffing but also technology and information sharing. He agreed that community watch programs were a very useful tool and stated that the University of Delaware website was an excellent resource for crime information in the community.
- 27.** Mr. Tuttle explained that when a City Manager leaves, a number of municipalities go through turmoil with a lot of divisive opinions about the direction in which to proceed. He said the City was fortunate not to have such problems under Mr. Lopata's leadership. He appreciated Mr. Lopata's service and felt he stepped up to the plate and made the transition a very positive experience for the City.
- 28.** Mr. Markham thanked the Crimes Prevention Unit which he visited and said they were hitting quite a few areas within his district which he appreciated.
- 29.** Mr. Markham felt stop sign violations were a chronic issue throughout the City.
- 30.** Mr. Markham offered accolades to Mr. Lopata for always being responsive and coming up with answers. He also thanked Ms. Roser for her assistance in dealing with his requests.
- 31.** Mr. Temko thanked the members of the public who shared their concerns about crime. Since growing up as a child in Newark, he felt it was a safe community and was concerned when these types of incidents occurred. He hoped Ms. Ciferni's concerns about lighting would be looked into. Mr. Temko

said the National Night Out was a positive effort and that neighborhood watch programs should be implemented and expanded in the City.

32. Mr. Temko was pleased the City Manager search was over. He was excited about working with Mr. Sonnenberg whom he felt would bring a lot of good experience and perspective in addition to being committed to civic engagement and the environment.

33. Mr. Temko thanked Mr. Lopata for his responsiveness, his competence, his help and his service to the City during his time as Interim City Manager.

34. Mr. Temko commented that the Film Festival continued through September 11<sup>th</sup>.

35. Mr. Temko noted September 9<sup>th</sup> was the date for Delaware's primary elections, and polling information could be found at [www.pollingplace.delaware.gov](http://www.pollingplace.delaware.gov)

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

- A. **Bill 08-14 -** An Ordinance Amending the Zoning Map of the City of Newark, By Rezoning from RM (Multi-Family Dwellings – Garden Apartments) to BLR (Business Limited Residential) .56 Acres Located at 203 New London Road **(TABLED 7/14/08 – See Item 4-B)**
- B. Request of H. G. Young & Jeff Lindeke for the Minor Subdivision of 203 New London Road In Order to Add a Three-Unit Apartment Building & An Upgraded Parking Area **(Agreement & Resolution Submitted) (TABLED 7/14/08 – See Item 4-A)**

MOTION BY MR. CLIFTON, SECONDED BY MR TUTTLE: THAT ITEMS 4-A AND 4-B BE LIFTED FROM THE TABLE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Jeff Lindeke, 397 St. Regis Drive, reported after concerns were aired at the July 14<sup>th</sup> Council meeting, he met with Mr. Temko and had a community meeting where most of the issues were reviewed and addressed. The two biggest concerns were the parking lot and the exterior building design. They resubmitted a new rendering of the front of the building and the project engineer worked out stormwater management issues with Public Works. Mr. Temko extended his thanks for the community meeting.

The Chair opened the discussion to the public.

Donna Means, 40 Fremont Road, opposed the three-unit apartment building. According to the plan it was a half-acre property, and she felt the existing house combined with another dwelling was over-crowded for the property size. Also, she felt the number of cars at the existing apartment added a tremendous amount of congestion on New London Road, and more traffic was unacceptable. Mr. Funk explained New London and surrounding roads were state roads and were not in the City's control.

Jean White, 103 Radcliffe Drive, was opposed to adding a second building on the site that was zoned RM. Based on her feeling that it was likely to be rezoned BLR, she made the following comments. She said it was an improvement for the porch to be saved at the present 203 New London Road building because of the redistribution of the parking. She understood the second

building would have a front door for one of the units, and regarding changing the front façade to brick, she thought it should remain siding. She felt the developer was sensitive to comments made at the Planning Commission and community meeting.

Mr. Funk asked what was the distance between the two buildings. Mr. Lindeke believed it was 15 feet. Mr. Tuttle asked for clarification about the parking design. Mr. Lindeke explained the new lot would be paved, lined and numbered for the individual apartment units and would provide two parking spaces per apartment. There would be no additional capacity for parking, and there would be a maximum of 14 spaces. Thus, he said they were not increasing the vehicular traffic flow in spite of increasing the population.

Mr. Markham asked what could be built on the property if BLR zoning was not granted. Mr. Lopata said because of the size, the triangular shape of the lot, and the RM zoning, they might be able to put one single-family dwelling there as opposed to the proposed building with three units.

Mr. Markham asked how the developer would limit parties and noise in the future. Mr. Lindeke said there were lease restrictions which included the maximum number of people in an apartment at any time. Every tenant and vehicle was registered, and there was no sub-leasing. The tenants were warned about noise and told there was to be no partying or music outside on the porch or the decks. He said they visited the site two or three days a week to check on the property.

Mr. Athey referenced a project from a year or two ago that precipitated changes in some area requirements for different zoning designations and thought one of those was the BLR. Mr. Lopata said BLR previously allowed a large number of units per acre, but the minimum lot area was decreased to one-half acre with eight units per acre maximum. He explained the BLR was changed because it was being exploited.

Mr. Clifton asked what was the total number of units proposed on the property. Mr. Lindeke said seven units were planned. Mr. Clifton asked what was the density of the CampusSide townhouse units next door. Mr. Lopata thought it was 10 or 11 per acre. Mr. Temko reported the New London Road density with the proposed project would be 12.5 units per acre.

Mr. Pomeroy questioned what sort of projects might be anticipated if the property was not rezoned. Mr. Lopata guessed the land owner might tear down the existing house and completely rebuild. Possibly three single-family dwellings could be built as student rentals with five to seven additional tenants.

Mr. Athey noted if rezoning was not approved and the applicant followed Mr. Lopata's guess and tore down the existing house, there would not be an enormous swing on the number of tenants.

Mrs. White clarified there were three bedrooms per unit, and Mr. Lopata reported they were deed restricted to four tenants. She thought a parking space was added because the City had given permission to put a parking space in the front setback in order to keep the porch. She felt it was important to note that the current building had four apartments with four bedrooms each, and the new building had three apartments with three bedrooms.

Ms. Means understood the developer could have all the rules in the world but he would not be on the site 24/7. She had observed a large party with a beer pong table. She was also concerned with stormwater runoff and felt additional building would make the site more prone to flooding problems.

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

Mr. Temko felt the latest rendering with brick was nicer than the siding, but his vote on the rezoning would not be based on that change. He thought it was fairly easy to get a parking permit to park across the street in the UD lot. A concern had been raised by a constituent about sewer issues on New London Road, although he thought that was a larger City issue. Regarding the overall project, he said the rezoning was not requested because the parcel was improperly zoned, but because the applicant wanted to construct an additional building and add more apartment units in the current side yard. He noted the existing building had problems in the past and did not feel it merited increased density. The density with the added building would be 12.5 units per acre which was greater than CampusSide next door at 10.29. The parcel was the closest on New London Road to Terry Manor, an area that had been encroached upon by student housing into what used to be a family neighborhood. The area was very congested by traffic with the Cleveland Avenue/Hillside Road/New London Road intersection being one of the worst in the City. Therefore, he did not see a benefit to the community of a rezoning and believed it would be detrimental to the community's health, safety and welfare. He received numerous concerns from constituents regarding the proposal about student partying, increased traffic, and the fact that the current property had not been maintained or beneficial to the community. He was also aware that many constituents did not want further growth and development at this location. He received one favorable comment from students who lived at 203 New London, and they favored the project because they wanted the parking lot paved. He appreciated the developer's efforts but believed the proposal still had negative repercussions for his district. He thought the current RM zoning was the appropriate zoning for the parcel and recommended Council not rezone 203 New London Road.

Mr. Markham had initially been neutral on the project but said it was across the street from his district and would have an impact on traffic and safety. He felt the RM zoning fit and would not support the rezoning in light of concerns for his constituents.

Mr. Tuttle said he also started out fairly neutral. He did not see the increase of individuals in the area as having any bearing on traffic in the problematic intersections. He felt a paved and lined parking lot would lend itself to policing much better than the existing unpaved lot. In looking at the Comprehensive Plan and the development expected for the area and the work done to try to be sympathetic to the existing building, he thought BLR was an appropriate zoning and would support the project.

Mr. Clifton was not overly enthusiastic about the proposed project or what could be built there. In his mind there was a difference between having and using cars. In looking at other apartments around town, he felt it was senseless to drive a car from 203 New London to campus when the University had a convenient transportation system. He said because the cars were there, it did not mean they would be used during the hours that were most impactful to the normal business traffic. In considering what was presented, the fact that it blended with what was next door, and clustered students closer to the campus area where they did not need to use their cars, he thought it was a good project and supported it.

Mr. Athey said he gave the project a lot of thought and attended the public meeting where he heard a number of resident concerns. Although he struggled with the density, he said the more he passed the site, the more he felt confident with the higher density. In his opinion the BLR was intended more for a transition between different types of zoning to allow different types of uses. He believed Council should look further at that type of zoning and when it should be permitted. He did not want to set a precedent by this rezoning and would not support it.

Mr. Pomeroy felt if the site was not rezoned, it was unlikely that a single-family home would be built there and highly unlikely that such a property would be owner occupied since the nature of the location attracted student rentals. Given the fact that the Planning Commission supported the proposal and that something similar would come back if this was denied, he would vote in favor of the project.

Mr. Funk did not like the project. The current building was formerly Pal's Ice House where ice was made for the ice cream store on Main Street. It was hard for him to envision a circumstance where somebody would want to take down the historic house and build something else there which he felt would draw community outrage. He received a lot of calls about behavior at the property about a year ago, and it was not a site where he was inclined to give any bonuses. He disliked the close proximity of the two buildings (ten or fifteen feet apart) as he felt it was out of character with the area where there would normally be at least 25 feet between the buildings. For these reasons, he was not in favor of the proposal.

Question on the motion was called.

MOTION FAILED. VOTE: 3 to 4.

Aye – Pomeroy, Clifton, Tuttle.

Nay – Athey, Funk, Markham, Temko.

NOTE: (Because the rezoning failed, no formal action was required on the minor subdivision.)

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

None

**38. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING**

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

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

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 08-21.

Mr. Lopata explained as indicated in his memo of August 15<sup>th</sup>, several changes were made to the ordinance. A definition was added to insure that door-to-door sales and solicitation were included in the provision of services. Peddling or soliciting where property owners displayed "no peddling or soliciting" signs was prohibited. On an administrative level, providing stickers or something similar at a no-cost basis for residents was discussed. The hours were also restricted on weekdays between 9:00 a.m. and 8:00 p.m. and on Saturdays and Sundays between 12:00 and 5:00 p.m. Peddling and soliciting would not be permitted on federal holidays. Mr. Lopata felt trying to maintain an updated "no solicit list for solicitors to use might be difficult.

Mr. Pomeroy thought the burden should be placed on the solicitor instead of on the community. Mr. Temko said some communities revoked licenses of solicitors who went to a house on the "do not solicit" list. Mr. Pomeroy felt allowing residents to opt out of being solicited provided a stronger tool than posting no soliciting signs would. He questioned what punitive measures were in place to penalize solicitors for doing business where they were prohibited.

Mr. Akin advised there were financial penalties for violating sections of the Peddlers, Vendors and Solicitors Chapter, and Section 21-15 permitted the City

to deny, suspend or revoke a license for fraud and misrepresentation and any conduct that created a public nuisance or constituted a danger to public health, safety, welfare or morals.

Mr. Akin believed the fine came under the general penalty provision in Chapter 1 of the Code which was a very modest fine. Mr. Pomeroy said the fines were minimal and Council should consider strengthening them.

Mr. Lopata suggested that Council proceed with the current ordinance which could be followed with a fine increase proposal. Mr. Funk stated from a business viewpoint, on Main Street 80% of the solicitors do not have licenses, so having a sticker on the door would be much more effective than a list. Mr. Temko thought most people were surprised to find solicitors needed a license. Mr. Clifton noted a number of communities have signs posted at their boundaries stating that a license was required for soliciting. He thought a sticker would be the best way to go with a list available if somebody wanted it but not as a requirement. Mr. Tuttle thought a list raised unfair expectations that nobody would knock on their door, and when somebody did, they would be disgruntled. Mr. Pomeroy said the difference was if a name was on the list and somebody knocked, the resident could call the City to report the violation. Mr. Tuttle felt the police had more important things to do. Mr. Tuttle stated he did not think staff time and money should be spent to maintain a list which would be out of date when it was printed. Mr. Temko agreed with Mr. Pomeroy that the list made sense and felt multiple approaches would be beneficial.

Mr. Akin recommended a small but noticeable sticker that homeowners would place on their doors. He remarked that some solicitors do not come to City Hall but instead go right out in the neighborhoods. He recently read that one of the reasons for the increase in solicitors was due to the economy. Another problem with maintaining a list was that some of the permits were issued for periods of three months to a year, and the list provided to those permit holders could quickly become obsolete as properties change hands. Mr. Akin felt if Council attached significant penalties for approaching a home that was not otherwise identified but was on a list that might be obsolete, it was somewhat unfair to the solicitor. He reported there was no provision in the Code for any specific financial penalties for approaching a home owner who decided not to be solicited.

Mr. Funk said another ordinance was needed for that situation. Mr. Pomeroy thought there should be separate fines for approaching a home that has a do not solicit designation and for soliciting without a permit.

Ms. Fogg stated in the past several months more people came in for permits than at any other time in recent memory. There was also more interest from people asking to solicit door to door.

Mr. Pomeroy asked if it was permissible to place advertisements on doors. Ms. Fogg said that was prohibited under the littering section of the Code, and any type of pamphlets or flyers must be handed to a person.

Mr. Temko wondered if a "Do Not Solicit" list would be a legal action. Mr. Akin said it was lawful for the City to act as the conduit for that information and create lists since the City was the licensing authority. However, he said administratively it would be a burden on the City Secretary's office and would be difficult to assure that the list was 100% accurate at all times.

The Chair opened the discussion to the public.

Jean White, 103 Radcliffe Drive, was opposed to keeping a list in the City. She felt it would be better to do this in the simplest most low-tech way which would be a no soliciting sticker. Mrs. White questioned where the ordinance provided that religious, political and charitable groups could still solicit. Mr.

Lopata said that came under a separate section of the Code. Mr. Akin explained that homeowners had the right to refuse religious, charitable or political solicitation on their private land. Mrs. White asked if criminal background checks and licenses were required for all solicitors. Ms. Fogg reported the proof of insurance was for peddlers (hot dog vendors) but door to door solicitation did not require insurance. However, the Police Department did background checks on peddlers and solicitors. Ms. Fogg said this was recently done for Verizon, who was required to provide the names and birth dates of their reps. Mrs. White thought it was ridiculous that advertisements could not be placed on doors. Ms. Fogg said this situation could create security issues for people who were away from home. Under Amendment 2 which read, "Persons representing a *local* nonprofit organization shall not be required to comply with Sections...", Mrs. White suggested removing the word "local", and Council agreed to this change.

Brian Dunigan, 422 Orchard Road, felt penalties should be applied to address literature being left on private property with at least a \$100 minimum fine that would be increased to \$500 for subsequent offenses. He agreed that putting advertisements on doors when people were away posed a security risk.

Amy Rowe, 19 Sunset Road, commented she signed up for the City Watch notification system via an online form. She received notifications, so she knew the format worked. She felt that door to door solicitation could be a crime issue and said her property had been cased numerous times. She was pleased to hear that she had some rights and could put a sign in her door to prohibit soliciting. Ms. Rowe was not opposed to having her name on a "do not solicit" list.

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

AMENDMENT BY MR. POMEROY, SECONDED BY MR. TUTTLE: TO DELETE THE WORD "LOCAL" FROM AMENDMENT 2.

AMENDMENT PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

Question on the Motion as amended was called.

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

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

**39. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS**

- A. Request of Steve Wheat for a Special Use Permit for the Sale of Alcoholic Beverages in a Proposed Sit-Down Restaurant Located in the Millyard, 100 Elkton Road, to be Known as Buffalo Wild Wings

Ms. Fogg announced the public hearing for the special use permit for Buffalo Wild Wings.

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

Mr. Steve Wheat, the applicant, and his partner, Bobby Pancake, were the area developers for Buffalo Wild Wings. They currently had restaurants located in Bear, Dover, and Middletown with another under construction in Stanton. Their fifth Delaware location would be Newark. Mr. Wheat was available to answer any questions and said he appreciated the Planning Commission's

recommendation for the Special Use Permit. Mr. Funk noted that he spoke with the ABCC last week on another matter and was told Buffalo Wild Wings was one of the most responsible businesses they have dealt with.

Mr. Clifton asked what internal controls were applied to handle underage drinking. Mr. Wheat said they had a strict policy of carding everyone, and if they failed to do so, the corporate response would be greater than the state's response.

The Chair opened the discussion to the public.

Jean White, 103 Radcliffe Drive, asked what was the total number of seats for the restaurant including bar seats. Mr. Wheat replied there were 237. She asked when the Star of India closed. The date was January 15<sup>th</sup>, and Mr. Lopata advised Buffalo Wild Wings came under the grandfathering. Mrs. White asked the restaurant's policy for serving shots of liquor to college students. Mr. Wheat replied that they did not over-serve alcohol, and their intent was to serve alcohol by the letter of the law. He said they discouraged that type of behavior and, in fact, had a track record of suspending bartenders and servers for any over-serves of alcohol.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

**40. 8. ORDINANCES FOR FIRST READING**

None

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

A. Council Members: None

**42. 9-B. COMMITTEES, BOARDS & COMMISSIONS**

1. Appointments to Planning Commission – Three-year Terms (Districts 1, 5 & 6)

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT ROB OSBORNE, 304 KINROSS DRIVE, BE REAPPOINTED TO THE PLANNING COMMISSION FOR A THREE-YEAR TERM; SAID TERM TO EXPIRE SEPTEMBER 12, 2011.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

MOTION BY MR. TEMKO, SECONDED BY MR. CLIFTON: THAT PEGGY BROWN, 188 WEST MAIN STREET, BE REAPPOINTED TO THE PLANNING COMMISSION FOR A THREE-YEAR TERM; SAID TERM TO EXPIRE SEPTEMBER 15, 2011.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: THAT ANGELA DRESSEL, 8 WYNCLIFF LANE, BE REAPPOINTED TO THE PLANNING COMMISSION FOR A THREE-YEAR TERM; SAID TERM TO EXPIRE SEPTEMBER 15, 2011.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

**43. 9-B-2. PLANNING COMMISSION MINUTES OF AUGUST 5, 2008**

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT THE PLANNING COMMISSION MINUTES OF AUGUST 5, 2008 BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

**44. 9-C. OTHERS**

None

**45. 10. SPECIAL DEPARTMENTAL REPORTS**

A. Special Reports from Manager & Staff: None

**46. 10-B. ALDERMAN'S REPORT**

MOTION BY MR. MARKHAM, SECONDED BY MR. TEMKO: THAT THE ALDERMAN'S REPORT DATED SEPTEMBER 3, 2008 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**47. Meeting adjourned at 10:20 pm.**

Patricia M. Fogg, CMC  
City Secretary

/av  
Attachment