

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**September 22, 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  
Finance Director Dennis McFarland  
Interim P&D Director Maureen Feeney Roser  
Chief Paul Tiernan, NPD

---

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

2. **1-B. PROCLAMATION TO AMERICAN CANCER SOCIETY**

Mr. Clifton said it was an honor for him to read the proclamation since his wife, Linda, was a breast cancer survivor since December 1999. Representing the American Cancer Society were Sandy Baldino, Lois Capone, and RoseMarie LeNoir. They appreciated the City's support and noted that Newark was the first community in New Castle County to become a "hot pink" town, a program designed to raise awareness and funds in conjunction with the walk held in Wilmington on October 12<sup>th</sup>.

3. MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE AGENDA BE AMENDED BY MOVING ITEM 10-A-1, APPROVAL OF 2007 AUDIT REPORT, TO BE HEARD UNDER ITEM #9 AND REMOVING ITEM 10-C, FINANCIAL STATEMENT.

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 September 8, 2008

Mr. Athey corrected the spelling of Amy Roe's name on page 5 and on page 11.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: TO APPROVE THE MINUTES OF THE REGULAR COUNCIL MEETING OF SEPTEMBER 8, 2008 AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

**A. Public**

Jeff Lindeke, 97 St. Regis Drive, noted some statements were made at the July 14<sup>th</sup> Council meeting by the District 5 Councilman regarding the 203 New London Road project which he said were not factual. He asked that the public record reflect the following statements to allow the public an opportunity to make an informed decision on the project.

**VIOLATIONS:**

- Trash – No record of any such violation.
- Roofing problems – No record of any such violation.
- Gutter and downspout repairs – A downspout strap issue was noted on the previous year's annual inspection and was repaired at that time.
- Sanitary condition of vent and duct work – Inspected by the Building Department and determined to be a housekeeping issue.
- Rodent infestation – A squirrel had eaten through the soffit and gained access into the attic. The problem was repaired immediately.
- Plumbing fixtures – A drain in the kitchen sink had been stopped up by a plastic bottle cap. The solution was to reach into the standing water and remove the cap from the sink strainer.
- Repairing and painting a small hole over the electrical panel – The hole was an inch or less in size and was repaired in minutes.
- Missing cover plate over a box for cable television – It was installed by the cable company and repaired by them.

Mr. Lindeke said the Councilman stated that in the previous ten months, the Police Department had received five calls for loud music, disorderly conduct, a loud party in May 2007, and another call a week later. The owners received a report from the Police Department of all violations for the subject property for the time period mentioned. Mr. Lindeke stated that the five offenses referenced in the July 14<sup>th</sup> meeting were the result of two calls. He asked that the following statements be entered into the public record to better reflect the facts.

- Loud music 5/1/07 – Warning issued, no further action.
- Loud music 5/24/07 – Warning issued, no further action.
- Warrant attempt 9/20/07 – Officer stopped by the property to look for someone who may or may not have been a resident.
- Public relations 10/16/07 – A resident of the building called the Police Department with a question.
- Sexual offense 7/19/07 – Offense took place in the proximity of the building. The address was the closest address used when entering the incident into the data base. The person involved was not a student or a resident.

**6.** Amy Roe, 19 Sunset Road, expressed concern about the 2.4 cent per kilowatt hour electric rate increase announced on August 26<sup>th</sup>. Her concern was that the increase was retroactive to July 30. Ms. Roe stated residents of the City had no choice in their electric provider and were not protected by the regulatory oversight of the Public Service Commission. Further, it was her understanding that retroactive rate increases were unlawful in state-regulated utilities. Ms. Roe felt this situation highlighted the need to revisit the implementation of rate increases and a number of other energy policies in the City. She hoped the City would take leadership on energy policy issues to insure that retroactive rate increases would not occur in the future and that residents were given reasonable notice of rate increases. Further, she suggested improvements in the estimated billing procedure process to aid residents who made significant reductions in their

energy usage. Mr. Funk said Council had not anticipated that the rate change would be retroactive when it was adopted and stated they would be more careful in the future to establish an implementation date on such ordinances. Mr. Athey said it was difficult for the City to keep up with rising power costs, and delaying the rate increase would have forced the City to impose a greater increase in the future. Mr. Lopata added that staff was working on a policy statement that covered future budgeting approaches (including electric rates). Mr. Pomeroy heard from a tremendous number of constituents on the issue and asked Mr. McFarland to explain what could be anticipated over the next several months.

Mr. McFarland said the rate increase was generated by an increase in wholesale power prices beginning in June and July. The rate put into effect would get the City's electric operating margin budget back on track for the entire year. The assumption was made that power prices would tend to moderate starting about October 1<sup>st</sup>. Wholesale prices must be monitored through the fourth quarter to determine whether the increase could be taken off at the end of the year, although there was a real possibility of future increases in the very volatile market. Mr. Pomeroy thought the City locked into a wholesale rate at some point. Mr. McFarland advised the City generally bought power from DEMEC, who had a portfolio of supply contracts. About 70% of the overall portfolio is under fixed-price contracts, and 30% was bought as spot power, or short-term contracts. The volatility in the spot market caused the volatility in electric rates. Mr. Pomeroy agreed that the retroactive rates were a valid concern. Mr. Markham asked how far in advance the City would be aware of DEMEC rate changes, and Mr. McFarland said due to spot pricing, the information was not known until the City was billed.

## **7. 3-B. UNIVERSITY**

### **1. Administration**

Mr. Armitage referenced an executive summary of a DeIDOT plan presented to Council in 1996–1997 recommending Elkton Road be changed to a two-way road between Delaware Avenue and Main Street. He detailed the University's concerns about pedestrian and bicycle safety and reported there were about 175 pedestrian/bicycle accidents in the area over the past four years. Another concern was the truck traffic on South College Avenue and their difficulty in turning movements and inability to stop and start quickly. Council previously voted not to adopt the plan based on citizen and Traffic Committee recommendations since there was no indication of improved traffic flow. In light of DeIDOT's major rework of Elkton Road, he requested that Council and the community reconsider the issue.

Mr. Athey remembered one of the issues was putting a light at the intersection would cause backups on West Main Street. Mr. Armitage said a light would be needed at the Deer Park intersection, and there were over 400 pages of documentation about traffic impacts on Main Street.

Mr. Lopata thought consideration should also be given to having consistency at the crosswalks and possibly signaling them at the green on Delaware Avenue. Mr. Athey recalled a conversation that one crosswalk would be much safer there than two.

Mr. Armitage explained that part of the long-range capacity study by the University's consultant recommended trying to make the core part of campus more pedestrian friendly while continuing to push employee and student cars to the edge of the campus which would lessen congestion downtown.

Mr. Clifton believed the project would start at the Deer Park/Main Street intersection in 2009 and suggested the City needed to move quickly with any changes. It was therefore agreed to put the subject on the next agenda.

Regarding the University Police, Mr. Armitage said by the end of the calendar year, there would be 50 full-time officers. Twelve officers were still in the transition period of field training with supervisory officers. He introduced Skip Homiak, the new Executive Director for Public Safety at the University.

**8. 3-B-2. STUDENT BODY REPRESENTATIVE**

Teagan Gregory, a senior at the University, and a Newark native, said he looked forward to working with the City during his term as Student Government Association President. He felt the most important issue for students was safety on campus and in the surrounding community and was pleased to hear there would be more officers on board in the next several months. Mr. Clifton asked Mr. Gregory to be sure he provided Council with contact information for next year's student representative in May as this had not been done in the past.

**9. 10-A-1. APPROVAL OF 2007 AUDIT REPORT**

Pamela Baker, Audit Partner with Barbacane, Thornton & Company, summarized the results of the audit for the year ended December 31, 2007. She presented an overview of the results of the audit.

The audit was planned in December 2007 with the City's administrative staff. Management and the auditors were slightly ahead of schedule until the reservoir litigation was settled, resulting in a \$3.6 million adjustment. The actual completion date of the audit was July 8<sup>th</sup>. Ms. Baker explained that as of December 31, 2007, there was a new set of standards by which the audit had to be conducted.

Page 1 of the report contained the auditors' opinion and was the most critical portion of the audit. The City had an unqualified or a clean opinion reflecting the fact that the financial statements were fairly presented for the year ended December 31, 2007. There were relatively few proposed audit adjustments in the process which spoke very well of the quality of the financial controls in place.

Pages 3 through 11 represented management's discussion and analysis which addressed what happened with the City last year in terms of the ups and downs.

The City was able to end the year with positive fund balances or positive equity positions in all of their funds. The general fund overall added to the fund balance and stayed positive based on revenues exceeding budget projections. One of the largest areas where the City exceeded budget was in the transfer taxes. Other major funds – proprietary operations which included sewer, water and electric – managed to add to their retained earnings position. The water fund took a significant hit when the reservoir liability was recorded and paid out at the end of the year.

Ms. Baker noted the City had unfunded liabilities in the pension plans which was not catastrophic in that a number of pensions have some unfunded liabilities. However, going forward the auditors will look at market conditions and what the pensions were predominately invested in, while assessing risks that were higher and looking at the unfunded liabilities. She explained that next year, the City would begin to record the liability for other post-employment benefits provided to retirees which would drive the liability up and the net assets down.

There were two new recommendations this year that involved implementation of the new risk-based standards. The recommendations were reviewed with management, and Ms. Baker was confident they would be able to move forward with implementing changes there as well.

Mr. Clifton said the City was 78% funded for the pension plan and questioned whether the new reporting standard would drive the percentage down. Ms. Baker said the current market was what would drive the percentage down because pensions were long-term investments. She said the City would take a double hit from the market and the accounting treatment on post-employment benefits. The saving grace for the City would be that even though the actuarially-determined liability would be great, the requirement was to book only a year's worth at a time, so the City would grow into the liability rather than have a huge hit on the balance sheet in the year of implementation. Mr. Clifton asked the date of the City's most recent actuarial audit, and Ms. Baker believed it was 1/1/07.

Mr. Markham requested Ms. Baker to provide the audit report electronically which she will forward to the Finance Department. Mr. Markham questioned why the June 2008 reservoir settlement was included in the December 2007 report. Ms. Baker explained accounting rules required them to report a probable liability that could be estimated within reason.

Mr. Markham referenced page 32, note 3, which mentioned investments in Freddie Mac and Fannie Mae and asked if the City had exposure. She pointed out that on page 32 regarding the credit risk, those securities were rated AAA as of December 31, 2007 and that may change as of December 31, 2008. Mr. Markham felt this should be a task for the Finance Director to look into. Ms. Baker noted that cash management would become increasingly important for governments because historically they had a tendency to stay with investments that were considered fairly safe without a lot of risk. Mr. McFarland interjected the City had two different investment policies, one for the pension plan that was revised several months ago and a separate investment policy that addressed how the City's cash position was handled on a day-to-day basis. Mr. McFarland said the City had minimal exposure to Fannie Mae and Freddie Mac and most of the City's short-term investments were in CD's which were always at limits that were insured. Mr. Markham requested that future audit reports be provided well in advance so there would be adequate time to review the report prior to discussing it at the Council meeting. (Council received the current audit report Friday prior to the meeting.)

Mr. Pomeroy offered congratulations to staff and the auditors for their hard work and the good audit report.

Mr. Clifton asked Mr. McFarland what the City's bond rating was and how the reservoir settlement impacted future bond ratings and the City's ability to borrow money. Mr. McFarland explained the payment of \$3.6 million weakened the City's financial position. The good news was that the uncertainty hanging over the City was now in the past, and the bad news was that it came at a price. His opinion was that the City should not ask for a ratings evaluation at this time and the City needed to develop a financial plan for the next few years to regain its financial strength. It might then be an appropriate time to look at a ratings re-evaluation. One of Mr. Clifton's concerns was the City's ability to borrow money if necessary. Mr. McFarland said there were two issues which involved access to capital and the cost of the capital. He felt the City's concern was about the cost of the capital should there be a need to borrow as he was fairly comfortable the City still had access to capital.

Mr. Tuttle congratulated Barbacane, Thornton & Co for their report which was completed in July. He felt it would have been helpful for Council to see the report sooner in order to formulate cogent questions during the auditor's presentation. Ms. Baker said they were always agreeable to a second meeting for any additional questions.

Mr. Lopata advised the presentation had been scheduled for this evening taking into account other items on the Council agenda. He agreed with the point

about the limited review time and indicated improvements could be made in the future.

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THE AUDIT REPORT DATED DECEMBER 31, 2007 BE APPROVED AS RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

Messrs. Pomeroy, Athey, Markham and Temko felt Community Day was a tremendous event and showcased what was great about the City.

**11.** Mr. Pomeroy felt the two recent shootings, one in the core downtown district, highlighted the importance of public safety in the community. He said the Police Department was doing a phenomenal job and their close rate was admirable. He emphasized that the department needed more resources to combat these issues. He thought this was a community-wide issue which had to become a priority across all departments. Mr. Clifton agreed and thanked Chief Tiernan for allowing him to ride with Captain Potts. He said 28 officers were deployed in a four-hour window throughout the City which was almost half of the non-staff police force. He was proud of the dedication of the City's police force but noted that could only last so long. He felt all the good work by staff and the business community to strengthen Main Street could be negated by one ugly incident, and it was time to move forward, either through staffing or whatever means necessary, to address the problem. Mr. Athey did not disagree with his two colleagues but would like to see the effects of the Chief's saturation policy which was only recently implemented.

**12.** Messrs. Athey, Clifton and Markham congratulated Mr. Funk on another very successful Taste of Newark.

**13.** Mr. Clifton thanked Tom Sciulli, Captain Potts, and officers DeGhetto and Bryda who attended a community meeting in response to concerns about Howard Johnson's on South College Avenue. Mr. Clifton appreciated the effort of the Building and the Police Departments to try to bring problems under control. The Attorney General's office has provided tools to address nuisance properties, and he really hoped the City would stay on top of this because the hotel has been used as a base for recent crime activity and has presented serious quality of life problems for surrounding property owners.

**14.** Mr. Funk thanked everyone who attended the Taste of Newark which he felt showcased the community in its best light.

**15.** Mr. Funk said based on the crime statistics with the additional enforcement action, the last three weeks have gone well, and the police have done an outstanding job.

**16.** Mr. Tuttle said the University of Delaware police also deserved kudos because when they make a stop on the street, it does not generate a City press release. Two hours prior to the shooting on Main Street, the University Police made a DUI stop and arrest near the intersection of South College and Delaware Avenues. Therefore, the City benefitted from having more than one police agency.

**17.** Mr. Tuttle welcomed Mr. Gregory and said he appreciated his comments on safety being an important issue with UD students.

18. Mr. Tuttle commented on the need to educate skateboarders on the proper traffic patterns to be followed in the City.

19. Mr. Tuttle agreed from a policy perspective that future utility rate changes should not be retroactive.

20. Mr. Markham advised he was at a recent sobriety checkpoint on Kirkwood Highway and was surprised at the number of over the limit offenses.

21. Regarding crime issues, Mr. Markham felt the Police Department was doing a great job, but thought the City would need more officers to maintain an increased presence.

22. Mr. Markham reported that Paper Mill Partners started developing fund raising plans for saving the stack at Curtis Paper Mill.

23. Mr. Temko clarified that the next Comprehensive Plan workshop would be held at 7:00pm on October 16.

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

- A. **Bill 08-17** - An Ordinance Amending Ch. 20, Motor Vehicles & Traffic, By Revising Article XVIII, Towing & Impounding Vehicles Generally (**Tabled 8/25/08**)

MOTION BY MR. POMEROY, SECONDED BY MR CLIFTON: 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.

(Secretary's note: The following motion (made August 25, 2008) was lifted from the table.)

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

Mr. Tuttle pointed out changes that were needed on Page 3 under the text of Amendment 4, subsection e where "parked for" was repeated twice and prior to "being" towed should replace "be towed".

Mr. Temko asked in setting a maximum towing fee whether a storage fee was also being set. Mr. Funk thought that was avoided because there was no storage fee for the first 24 hours.

The Chair opened the discussion to the public.

Bud DuPlessis, 51 Hidden Valley Drive, was looking for fair play in the legislation and wanted to eliminate any conflict of interest for persons who benefitted from the towing business. He asked for an explanation of the ordinance. Mr. Funk explained that a business license would be required for companies engaging in non-consensual tows in the City, and the maximum charge permitted was \$80. Further, no storage fees could be charged during the first 24 hours, and vehicles could not be towed without the request of an owner or agent. A one-hour grace period past closing time would be instituted. Mr. Temko added that the conflict of interest was addressed by requiring the property owner to be involved during business hours and with the after hours grace period. He claimed Blacksburg, VA required tow operators to take and retain photos and/or video recordings of vehicles in the location from which they were towed. He thought photos were worthwhile in the event of towing disputes. Mr.

Funk thought such a requirement would put an incredible burden on the tow company and that the changes implemented were a good first step.

Robert Bruner, 382 S. College Avenue, asked if he had to wait one hour before towing from his rental units. Mr. Lopata's interpretation was that business hours did not apply in his situation, and that Mr. Bruner was handling the towing situation properly. Mr. Bruner also expressed concern about parking variances for all the new building going on in the downtown area.

Jean White, 103 Radcliffe Drive, thought the changes looked good. At a previous meeting she gave an example where the owner came along as her car was in the process of being towed from Main Street, and the tow operator did not permit her to claim her car during the towing process. She asked if public towing by the City would allow this as she felt it was the decent thing to do. Mr. Lopata said he had to look at the City's contract to determine how such situations would be handled.

Amy Roe, 19 Sunset Road, felt having a license requirement for a certain type of business might be discrimination against tow truck operators. Mr. Funk said a variety of business licenses were required for people coming to perform services in the City which was a good point of control. In the case of non-consensual towing, he felt the licensing procedure provided the opportunity for the City to insure that residents and visitors were protected. Mr. Tuttle noted that licensing applied to contractors as well which he felt gave residents peace of mind in knowing businesses had been checked out for proper insurance.

Mr. Temko appreciated the language about not charging a storage fee while the towing company lot was not open. He related an incident where a student who went to Starbucks to study, stayed there four hours until it closed at 10pm, then went to a nearby restaurant and returned half an hour later to find his car towed. He felt it was important that the one hour window was added after businesses closed. Another constituent parked in the Newark Shopping Center and was eating breakfast with friends in the coffee shop when their truck was towed. The business owner called Ewing to explain their mistake. However, Ewing would not do anything about the situation and said their towing contract was with the shopping center owner and not with individual businesses. The business owner gave the person cash from the register to pay for the towing and said they would work it out with the owner of the center. The patron was able to get their truck back and received an apology for the inconvenience but became wary about parking downtown. Mr. Temko asked Council members to comment on the Polaroid photo issue.

Mr. Clifton felt adding a photo requirement was an extreme measure to put tow operators under for the number of times it would have any value. He said there was always a means of resolution through the Court system if needed.

Mr. Athey thought the photo requirement was a good idea that would not be a burdensome requirement and could be revisited if the need became apparent in the future.

Mr. Tuttle said New Jersey law, which was looked at in modeling the City's ordinance, required a photograph be taken to prove the vehicle was in violation. Thus, there was clear precedent if Council wanted to make the change to require that at some future time.

Mr. Funk felt a lot of changes were being made, and it would be better to hold off on another requirement for the time being.

Mr. Markham preferred to move forward with the ordinances as proposed and discuss the photo requirement, if needed, at a later time.

Mr. Pomeroy said the City wanted to do something that would be proactive and bring down the hammer on the towing issue. He felt the ordinances provided a series of amendments that would have a significant impact on predatory towing and felt the photo requirement could be revisited after Council saw how the other changes played out.

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

Question on the motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(ORDINANCE NO. 08-20)**

**25. 4-B. BILL 08-18 AN ORDINANCE AMENDING CH. 13, FINANCE, REVENUE & TAXATION, BY REQUIRING OPERATORS OF TOWING VEHICLES TO OBTAIN A BUSINESS LICENSE**

(Secretary's Note: This item was lifted from the table under Item #24.)

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 08-18.

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(ORDINANCE NO. 08-21)**

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

None

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

A. Bill 08-23 An Ordinance Amending the Zoning Map By Rezoning from AC (Adult Community) to RD (Single-Family Semi-Detached) a .5757 Acre Portion of the Phillips Mill Property, Located at 708 & 712 Nottingham Road

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

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 08-23.

(Note: The public hearing was held for both Bill 08-23 and the minor subdivision requested for this property [Item 28].)

Lisa Goodman, Esquire, of Young, Conaway, Stargatt & Taylor, represented Bale Properties. The applicant requested the rezoning of a portion of the Phillips Mill development from AC to RD which involved two buildings and a total of three units. The Planning Commission unanimously approved the rezoning request for the property which was located on Route 273 just west of the intersection with Casho Mill Road. The site was annexed into the City in

February 2006 and was approved for 17 units. It was assigned AC zoning because the intent was to build an active adult age-restricted community. Mr. Bale did not own the project at the time but acquired it in April 2006. The rezoning request was for the two historic buildings known as the Phillips House and the Joshua Mill House. Ms. Goodman stated that although renovations would make the two buildings partly accessible for adults over 55, neither could be made completely accessible and changes would disturb the historic appearance of the house and come at a very high cost. While there were active adults who could handle the steps, the idea was people wanted to buy the units and stay there and age in place. The properties have been on the market as active adult for over a year, and the request was to modify the zoning for these two houses so they could be marketed to people who were not over 55.

Mr. Clifton clarified that no additional units were being added and this was the original plan with no changes. Ms. Goodman added that the two units would still be in the condo association.

Mr. Temko noted that the Planning Commission recommended this not set a precedent for any future rezoning at Phillips Mill or any other AC zoned properties in the City.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(ORDINANCE NO. 08-22)**

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

- A. Request of the Bale Group, Inc. for the Minor Subdivision of a .5757 Acre Portion of the Property Located at 708 and 712 Nottingham Road In Order to Establish Parcel Boundaries for Said Site to Coincide with the Requested New RD (Single-Family, Semi-Detached) Zoning (**Agreement & Resolution Submitted**)

(Note: The public hearing was held under Item #27.)

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(RESOLUTION 08-V)**

**29. 6-B. BILL 08-24 – AN ORDINANCE AMENDING THE ZONING MAP BY REZONING FROM RM (MULTI-FAMILY DWELLINGS—GARDEN APARTMENTS) TO BLR (BUSINESS LIMITED RESIDENTIAL) A .3513 ACRE PROPERTY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF CHOATE & NEW STREETS**

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

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR BILL 08-24.

(Note: The public hearing was held for both Bill 08-24 and the minor subdivision requested for this property [Item 30].

Shawn Tucker, Esquire, represented Jim and Karen Lisa of Choate Street, LLC. Mr. Tucker said the street was crying out for redevelopment with the homes on it being 50 years or older. The City's 2003 Comprehensive Plan and the downtown Newark economic enhancement strategy referenced in the Comp Plan specifically called for redevelopment of this area. The density along Choate and New Streets was currently about 13.7 units per acre and the proposed project density was about 4.8 units per acre.

The site consisted of four parcels, and two had existing dwellings on them. Originally the site was divided into three parcels, but the County re-established the fourth parcel line. Mr. Tucker suspected some, if not all of the parcels, were non-conforming. By deed they had .3658 acres, and by survey .3513 acres. Four units were proposed and Mr. Tucker reviewed an architectural rendering of the units. He pointed out the use of brick and other features that provided an enhanced architectural product. He also pointed out that the 2003 Comp Plan talked about encouraging owner-occupancy, and he suggested superior design with additional costs involved would help encourage people to want ownership in this type of building. Although his client would rely on a rental stream to cover the cost of the project, he agreed as a condition of any approval to insure that the units were designed in such a way that they could be sold off in the future if the opportunity presented itself. The property was zoned RM, and the proposed rezoning was to BLR, with both districts indicating a maximum of 16 units per acre. The reason they did not proceed under the RM zoning was because the site was non-conforming and did not meet the one-acre requirement for RM. At the time of the original application in 2006, Mr. Lisa satisfied the requirement for BLR, which had no minimum requirement, but had since been changed while they were in the process. As a result, Mr. Lisa made application to the Board of Adjustment and received a variance. The 2003 Comp Plan in addressing the economic enhancement strategy plan clearly earmarked the area for housing redevelopment. Reference was made to providing a maximum level of assistance, support and feasible incentives for redevelopment. Encouraging owner occupancy was referenced in that plan, but also market rate rental units. In reviewing July Council minutes, Mr. Tucker saw that Mr. Charma had made a presentation on another application in the Main Street area, and he noted the neo-traditional planning model that seemed to be part of Main Streets around the country with the idea that people could work, shop, go to school and eat within walking distance, and that generally it was ideal to concentrate populations in the downtown areas. Mr. Tucker felt the proposed redevelopment would fit nicely within those types of planning goals.

James P. Lisa, Jr., 211 South Pond Road, Hockessin, advised he has been a landlord in excess of 20 years in the Newark area and prided himself on his reputation and working proactively hand-in-hand with the City. Mr. Lisa spoke to and met with neighbors of surrounding properties who supported the project. Mr. Lisa thought it was a high-quality project with brick and high quality vinyl siding and trim. He was willing to incorporate landscape changes that had been previously suggested. He also provided a proposed set of special conditions he would agree to apply to the site by way of deed restrictions to try to address concerns about parking and partying. One was a requirement for one car per renter, and the car must be parked within a designated parking space with no parking in the open area. A total of four parking spaces per unit were designated. Gatherings on the property were addressed by a restriction that outside areas of the property could not be used for any type of gatherings where alcohol was consumed by any tenant or third party. Violations of these restrictions would result in termination of the lease, and conviction of a crime

related to activity on the property would be a mandatory eviction situation. Mr. Lisa required a 3.0 or better GPA from the students he leased to and also gets guarantor clauses from their parents.

Mr. Tucker referenced the Planning Department's report of May 21, 2008 and noted the department found no negative impact upon adjoining property owners and recommended approval of the rezoning and the minor subdivision plan. When they appeared in front of the Planning Commission, some concerns were discussed such as partying and parking which has been addressed. The Planning Department report did not recommend any type of limitation in the number of renters under BLR. The proposal was submitted with a limit of four tenants based on department comments, and it was Mr. Tucker's understanding this condition was in the development agreement based on the recommendation by the Planning Commission. Mr. Tucker did not feel that condition was something his client could live with financially based on the expense of improved architectural features. With that limitation there would be 16 total occupants which was lower than they felt was economically feasible. To minimize the impact of that cap, Mr. Tucker suggested the possibility of a fifth unit in exchange.

Mr. Markham thanked the applicants for tackling this area which he agreed needed rehabilitation. He thought it was a good plan but noted Council has made the area a priority area in terms of owner occupancy. He saw an opportunity for that but not necessarily in the plan as shown. He felt four units in a row did not encourage owner occupancy and would rather see the units split and located on Choate Street. By placing a fifth unit on New Street, he felt rehabilitation would be provided to that street and gave the applicant the number of occupants he wanted.

Mr. Pomeroy agreed with Mr. Markham and thought this provided an opportunity to think creatively and the project would set the standard for this area for a long time to come. He felt four combined units would have a domino effect for all subsequent projects. The area was targeted by the City for owner occupancy, and he did not feel the proposed project fostered owner occupancy. He did not have a problem with a fifth unit and endorsed splitting the units up into two each. He thought the area was best suited for a downtown renaissance from a standpoint of owner occupancy with a mix of various types of occupants.

Mr. Lopata noted that the units would have to be designed with firewalls if they were separated in the future.

The Chair opened the discussion to the public.

Jean White, 103 Radcliffe Drive, stated that BLR zoning required a minimum of .5 acres. However, the applicant received a variance from the Board of Adjustment with just .35 acres because of the change in the requirements for BLR which had not been conveyed to the applicant until late in his development process. She supported the variance for that reason but did not like the use of BLR to get in under the one acre requirement since there was no business connected to the project. Mrs. White thought the project would tower over the houses on the other side of the street and next to it. She preferred to see semi-detached houses such as those on Prospect Avenue and have them face Choate Street. Second, as a resident she wanted no more than four unrelated people in a unit. She thought the back of the building was very uninteresting and, if approved, asked for some other detailing to break up the expanse of siding.

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

Mr. Tucker said there was a rendering of the 2-2-1 plan under Tab F. He believed Council had the discretion to approve an additional unit as part of the limitation on the number of occupants. Mr. Markham asked if Council had a

desire for a different plan, would the applicant be willing to go back to the Planning Commission. Mr. Tucker responded they were willing to go back to the Planning Commission and hoped it could be done in such a way where the second hearing would address the condition placed on the project with the revised plan and the fifth unit. They would not want to start over at square one because of the expense. Mr. Lopata said the other way to handle this was to have the units separated but not impose the cap. He felt the extra unit created some difficulty as Mrs. White mentioned from the standpoint of the Board of Adjustment and the Planning Commission. The Board of Adjustment reviewed four units on the site which was the plan before Council. Mr. Tucker said the four unit configuration would require extra walls and more expense which would not be desirable even without the cap. In regard to the Board of Adjustment, Mr. Tucker said the cap was not a condition, although four units were presented at that time.

Mr. Markham explained that Mr. Lopata's suggestion was to keep four units with five tenants in each unit to achieve the desired minimum of 20. Mr. Tucker said without the cap, they had the flexibility of six tenants per unit. Mr. Tuttle said if he understood the rendering in Tab F part of the proposal was to get to 20 people. If 20 could be reached by dividing the building in two, he did not see how that would be an economic disadvantage. Mr. Markham's goal was to improve the appearance of Choate Street and make sure some units were separated for owner occupancy.

Mr. Temko asked if the 20 tenants would provide the revenue needed to enhance the back side of the project with more detail so it would look a little more like the front. Mr. Tucker said he would discuss that possibility with Mr. Lisa.

Mr. Athey did not favor having the one additional unit. He cited a development that was approved a year or so ago which had a series of three or four townhouses with one sliced off and built as a separate house. He felt the free-standing building looked odd, like a townhouse with nothing on either side. He would prefer to see some type of transition between a single-family freestanding house and the duplex homes.

MOTION BY MR.L MARKHAM, SECONDED BY MR. POMEROY: THAT BILL 08-24 AND THE MINOR SUBDIVISION BE TABLED AND REFERRED BACK TO THE PLANNING COMMISSION FOR THEIR REVIEW.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

**30. 7-B. REQUEST OF JAMES AND KAREN LISA FOR THE MINOR SUBDIVISION OF .3513 ACRE PROPERTIES LOCATED AT THE INTERSECTION OF CHOATE AND NEW STREETS TO CONSTRUCT FOUR TOWNHOUSE-STYLE APARTMENTS TO BE KNOWN AS CHOATE STREET COMMONS**

---

This item was referred back to the Planning Commission for their review.

(Note: See discussion under Item #29.)

**31. 8. ORDINANCES FOR FIRST READING**

A. Bill 08-25 - An Ordinance Amending the Zoning Map By Rezoning from BC (General Business) to BB (Central Business District) a .61 Acre Portion of the Property at 257 East Main Street

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THIS BE THE FIRST READING OF BILL 08-25.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

**(2<sup>ND</sup> READING 10/27/08)**

**32. 8-B. BILL 08-26 AN ORDINANCE ADOPTING A NEW COMPREHENSIVE DEVELOPMENT PLAN TO BE KNOWN AS THE COMPREHENSIVE DEVELOPMENT PLAN FOR THE CITY OF NEWARK**

---

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT THIS BE THE FIRST READING OF BILL 08-26.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

**(2<sup>ND</sup> READING 10/27/08)**

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

A. Council Members:

1. Discussion re the Future of Town and Gown Committee

Mr. Ron Smith, 130 Kells Avenue, Town & Gown Chair, felt the Committee should continue. He saw an opportunity for a rejuvenated Committee with new faces in administration at the University and a new City Manager. He recognized that in the past several years the Committee was lacking in organization and that the loss of a number of dynamic people from the Committee had taken a toll. Mr. Smith felt Town & Gown provided a public forum where issues could be discussed in front of most of the City's stakeholders. He mentioned that Town & Gown was part of the discussion on the Chapelfest issue. He felt some of the Committee's past successes included their support of the Bonistall Foundation in terms of their certification plans for off-campus housing and the Peace-Out movement on campus. He noted they had a good response to Hurricane Katrina with the trip to Pascagoula which was organized by a previous Committee member. Also, the "U Don't Need It?" program was a very successful Town & Gown event. Town meetings held several years ago were very successful, but have been difficult to put together without the help of active members.

Mr. Jim Neal, 50 Bridlebrook Lane, UofD Trustee on Town & Gown for six years. His term as a trustee ended June 28<sup>th</sup>, and the Governor's reappointment did not get confirmed by the Senate. He thought the Committee was struggling and felt part of the reason was that the stakeholders did not receive much feedback from Council. He felt the Committee had been most effective when there was Council involvement and that Town & Gown should function by responding to issues sent to them by Council. He said the neighborhood watch group was a good example of something the group could facilitate with direction from Council. Rather than appointing Committee members from each Council district, he suggested three undesignated members nominated by Council who had a good relationship with the University and the City. He said the present Committee was fairly unwieldy, and Ms. Fogg advised it consisted of the Mayor plus 18 members. Mr. Lopata said the Committee was originally directed to address the specific issue of off-campus housing, and he felt Mr. Neal was recommending that the Committee work on an as-needed basis. Mr. Neal agreed that was a good thought since Town & Gown was not a policy-setting body.

Mr. Temko felt it was important to have the Committee available to respond to Council and hoped the group would become pro-active in forging new relationships. He thought this was a perfect time for an active Committee with the cooperative UD administration. He did not feel 18 members were needed but that it was important to have people with a strong interest in being on the Committee. He suggested continuing the Committee while examining their mission.

Mr. Athey agreed with Mr. Temko that an active Committee was needed. He would like to see weightier issues given to the Committee such as long-term planning and future expansion plans.

Mr. Funk felt the key to changing the make up of Town & Gown was to have higher level representation from the University on the Committee. Mr. Funk spoke to President Harker and Scott Douglass and told them he was concerned there was no high level representative. He stated he wanted the Dean of Students to become part of the Committee. Mr. Funk thought the current representative from the University Secretary's office did not need to be on the Committee because she was not involved in student or town issues. He also agreed the Committee was too big.

Mr. Athey suggested a representative from University facilities planning in light of the University's expansion plans.

Mr. Temko commented that while he was an undergrad, the Dean of Students was a member of the Town & Gown Committee at his college. Based on discussions that originated in their committee, measures were put into place requiring more students to live on campus.

Mr. Tuttle suggested the topic of community transportation needs as a possible item for the Town & Gown Committee to work on.

Ms. Fogg advised that a change in the Committee's membership must be done by ordinance.

Mr. Funk said he would work on the composition of the Committee and bring it back to Council.

Mr. Pomeroy felt there needed to be flexibility in selecting the Committee members, and their position was not as important as was the person.

Mr. Markham agreed the Committee needed people that wanted to be there and said he had been to several meetings when there was no quorum. Mr. Markham felt the University and the City should both bring issues to the Committee to work on.

MOTION BY MR. ATHEY, SECONDED BY MR. TEMKO: THAT THE TOWN & GOWN COMMITTEE BE CONTINUED FOR ANOTHER THREE-YEAR TIME PERIOD.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

34. **9-B. COMMITTEES, BOARDS & COMMISSIONS**  
None

35. **9-C. OTHERS**  
None

**36. 10. SPECIAL DEPARTMENTAL REPORTS**

- A. Special Reports from Manager & Staff:  
1. Approval of 2007 Audit Report

(Note: See Item #9.)

**37. 10-B. ALDERMAN'S REPORT**

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THE ALDERMAN'S REPORT DATED SEPTEMBER 16, 2008 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**38. Meeting adjourned at 10:45 pm.**

Patricia M. Fogg, CMC  
City Secretary

/av  
Attachment