

**CITY OF NEWARK
DELAWARE
COUNCIL MEETING MINUTES**

October 27, 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: Assistant to the City Manager Carol S. Houck
Assistant to the City Manager Charles Zusag
Deputy City Secretary Alice Van Veen
City Solicitor Roger A. Akin
Chief Paul Tiernan
Finance Director Dennis McFarland
P&D Interim Manager Maureen Feeney Roser

Secretary's Note: Due to a malfunction with the audio recording system, the minutes are summarized as completely as possible; actions taken by Council have been accurately reported.

1. The meeting began with a moment of silent meditation and pledge to the flag.
2. MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THE AGENDA BE AMENDED BY REMOVING ITEM 5-B, HIGH SERVICE PUMP REPLACEMENT/CURTIS WATER TREATMENT PLANT, AND ADDING ITEM 10-A-2, DISCUSSION OF RESOLUTION OF PENDING WORKER'S COMPENSATION CLAIMS AND 10-C, FINANCIAL STATEMENT, TO THE AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

3. **2. CITY SECRETARY'S MINUTES FOR COUNCIL APPROVAL**
 - A. Regular Council Meeting of October 13, 2008

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

4. **3. ITEMS NOT ON PUBLISHED AGENDA**
 - A. Public – There were no comments forthcoming.
5. **3-B. UNIVERSITY**
 1. Administration – There were no comments forthcoming.
6. **3-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

7. 3-C. COUNCIL MEMBERS

Mr. Clifton thanked Chief Tiernan, Mr. Sciulli and others who participated in the meeting with Old Cooches Bridge Road residents to discuss enforcement efforts at Howard Johnson's.

8. Messrs. Pomeroy and Athey thanked Ms. Roser for an excellent job in setting up BRAC Delaware Day. In spite of a low turnout, there seemed to be favorable response to the City by participants. Mr. Funk learned that most of the BRAC visitors came as a result of enthusiastic comments from past participants. Mr. Markham noticed that several businessmen representing 100-200 employees remained for the discussions which he thought was a positive sign.

9. Messrs. Pomeroy, Markham and Funk enjoyed the annual Halloween Parade which appeared to be one of the longest and best attended in recent years.

10. Mr. Pomeroy referenced a letter from Gerald Kauffman regarding Newark water rates. One of the points made by Mr. Kaufmann's was that residents were subsidizing water rates for non-residents. In relation to other municipalities, Mr. Pomeroy said the City's rates were very reasonable. He said Council would have some difficult choices to make in this tough budget year, including an adjustment in water rates. As opposed to an increase in taxes, he felt residents had the ability to control water consumption and thereby control their costs.

11. Mr. Markham acknowledged Mr. Lopata's memo about bike sharing, and he would like the City to further explore the future possibility of a cooperative effort with the University. Mr. Athey noted a past committee chaired by Willard Kempton which Mr. Lopata said was a sub-committee of the Traffic Committee. Mr. Athey would like to consider re-invigorating this group in the future.

12. Mr. Tuttle offered commendations to the University's professional theater training program and encouraged residents to patronize one of their events.

13. Mr. Temko reported that a meeting was held with DeIDOT regarding traffic issues on New London Road. Solutions were discussed, and he will provide future updates.

14. Mr. Temko reminded residents of the election on November 4th, and noted the website www.pollingplace.delaware.gov provided useful information on voting locations.

15. Mr. Athey thanked Chief Tiernan for the police presence during homecoming celebrations which helped to prevent any real issues in his neighborhood.

16. Mr. Athey thanked Mr. Lopata for serving as Interim City Manager and appreciated his efforts during that time.

17. **4. ITEMS NOT FINISHED AT PREVIOUS MEETING:** None

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

A. Selection of Auditor for 2008-2010

Ms. Houck summarized her memo to Council dated October 17, 2008 and said the RFP was issued to allow for the selection of an auditing firm. Five sealed proposals were received, and Clifton Gunderson LLP received the highest ranking. Following the review of the proposals and the ranking outcome, it was recommended that the contract be awarded for a three-year period for the three-year pricing that was listed in the recommendation to Clifton Gunderson as

outlined in the RFP NO. 08-01. Funds were available in the proposed operating budget for totaling \$70,000.

Mr. Pomeroy asked if reference checks were done, and Ms. Houck replied they were. She also verified that the firm had previous experience with municipalities.

Mr. Temko questioned if the new company was made aware of some of the City's past issues. Ms. Houck said they were, and one of the reasons they were ranked higher was that they had stronger information and plans for some areas where the City had concerns.

Mr. Clifton appreciated the spreadsheet but felt that the weight factor on the price did not seem to have the same weight as other factors. Ms. Houck said it was not supposed to as the RFP process followed by the City in hiring professional services was the same as the state's process, and the ranking occurred before the separately sealed fee proposals were opened. The firms were ranked on quality of service first. She said all the firms knew the qualifications when preparing their proposal, and they should be hitting all those marks.

Mr. McFarland said the price was broken down farther than the gross price. They looked at the "unit cost", and those costs were about the same across all bidders. He felt the City was getting about twice the amount of audit work with Clifton Gunderson, with an increase from 32 days of audit work to 58 days of audit work. Although the gross price appeared higher, the unit price became very close based on that increase.

MOTION BY MR. MARKHAM, SECONDED BY MR. POMEROY: THAT RFP NO. 08-01 BE AWARDED TO CLIFTON GUNDERSON LLP FOR AUDIT SERVICES TO THE CITY OF NEWARK FOR THE FISCAL YEARS 2008 (\$52,900), 2009 (\$55,500) AND 2010 (\$58,900)

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. McFarland added that a significant reason for selecting a firm other than the incumbent was the value of bringing in a new auditing firm with a fresh perspective who would be asking different questions and looking at different processes. He felt that close to sixty days of audit work were needed to get a solid audit with the kind of recommendations Council wanted and looked at the audit as a tool that helped the City get better.

Mr. Tuttle expressed concern about the raw scores. Assuming that the top score was 100%, then the second-ranked firm got a 99%, there was only a 1% difference if the scores were standardized. The three-year cost commitment ranged between \$94,300-\$167,300 which was a significant expense, and he felt the importance of the decision on choosing a firm could not be over-emphasized.

Mr. Pomeroy asked if the contract was for one year with an option for two more years. Ms. Houck said it was for three years but there were options in the contract if either party wanted to get out, provided certain policies were followed.

Question on the Motion was called.

MOTION PASSED: VOTE: 6 to 1.

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

19. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING

- A. Bill 08-28 An Ordinance Amending Ch. 11, Electricity, By Amending the Computation of Purchased Power Cost Adjustment Clause

According to Mr. Lopata, the ordinance insured that any increases or decreases in the Purchased Power Cost Adjustment would only apply prospectively, that is going forward, from the date of implementation. Concern was expressed about the “retroactive” increases enacted by Council during the rate increase adopted in August.

MOTION BY MR. POMEROY, SECONDED BY MR. ATHEY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 08-28.

Amy Roe, 19 Sunset Road, was relieved that Council acted on this issue so quickly. However, she had some concerns that she still felt needed to be addressed about implementation. She asked how she would be informed of a rate increase and how far in advance a notice would be provided. Although Mr. McFarland explained the process to Ms. Roe personally, she thought for the benefit of open meetings that everyone should have a good understanding of how the changes to the ordinance would be implemented.

Mr. McFarland explained that the City would announce on a given day that 30 days from that date, a new rate increase would go into effect. The announcement would be made in the form of a news release, statements on bills, in the City’s newsletter, website and on Channel 22. With the PPCA, most of the rate changes required would not approach the 17.5% range, but would be more in the vicinity of 3-5%. Thus, the impact on a customer over several days should not be that great. Major rate increases would likely be base rate increases and would be discussed at public hearings.

Mr. Athey asked if the City could commit to a 30-day time period, since the longer that lead time, the less an issue pro-rating would be. Mr. McFarland said a time period more than 30 days would complicate the issue of recovering costs, so the rate would have to be effective over a longer time or the rate would have to be increased. Messrs. Athey, Pomeroy and Clifton felt a 30-day notification period was adequate.

Mr. Clifton noted that the City was still \$1.6 million dollars behind budget, and he assumed at some point the increased cost would catch up. However, he said as long as the City had instantaneous rate increases for purchased power, bumps in the road would continue from time to time. Mr. McFarland said the bumps should not be as big, and he felt what happened in July and August was almost unprecedented in terms of how fast those increases occurred.

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

Mr. Pomeroy thought the ordinance was a step in the right direction, and it covered the basic issue of fairness in alerting residents to rate increases prior to implementation.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(ORDINANCE NO. 08-25)

20. 6-B. BILL 08-26 AN ORDINANCE ADOPTING A NEW COMPREHENSIVE DEVELOPMENT PLAN TO BE KNOWN AS THE COMPREHENSIVE DEVELOPMENT PLAN IV FOR THE CITY OF NEWARK

Mr. Lopata explained that the process of adopting a new Plan began about 17 months ago with numerous public workshops held by the Planning Commission and Council. The Plan was formally reviewed by the Planning Commission on July 1st and recommended to Council for adoption. Mr. Lopata noted the Plan was available in print and on the web. Mr. Funk complimented Mr. Lopata for an excellent job in putting the Plan together.

MOTION BY MR. ATHEY, SECONDED BY MR. POMEROY: THAT THE COMPREHENSIVE DEVELOPMENT PLAN IV BE ADOPTED BY THE CITY OF NEWARK.

Mr. Athey noted that he and Mr. Lopata started laying the ground work on the Plan almost two years ago. From his perspective, a Plan such as this one was never totally finished as there would always be additions and comments made. Other than some minor tweaking to the plan, Mr. Athey was pleased with the final product. He believed it should be put on the new City Manager's list for the first year in order to get his input since he would be largely responsible for implementing the Plan.

The Chair opened the discussion to the public.

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

Mr. Pomeroy, recommended an editorial amendment on page 15 related to the Curtis Paper Mill replacing "short term" with "a consensus for open space."

Mr. Pomeroy credited Mr. Athey for his assistance with the Plan. He felt the two basic goals of the Plan were setting the priority for land use and dealing with discrepancies between zoning and planning.

Mr. Lopata acknowledged the members of the Planning Commission and residents who spent a lot of time working on the document.

Mr. Temko felt the Plan represented more than five years of improvement over the City's last Plan. He emphasized, in terms of homework, (for example under housing affordability programs) workshops may be necessary and Council should be mindful that steps must be taken to implement the Plan going forward.

Mr. Tuttle joined in the commendations for the great work and, in particular, for the colored maps. As mentioned in the workshops, he said at some point the next step had to be taken and assumed there was no reason to wait five years to develop the capability to adopt the color codes typically seen in these plans.

Mr. Clifton acknowledged Messrs. Lopata, Athey and Planning Commission members for their efforts and also thanked Mr. Temko for providing other comp plans which he found to be a big help. He would like to see the Plan continue to be a living document (in particular relating to affordable housing and other issues brought up by residents of the east-end area.)

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(ORDINANCE NO. 08-24)

21. 6-C. 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 E. MAIN STREET

(NOTE: The following is the public hearing for the rezoning, subdivision and special use permit.)

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 08-25.

Jeff Lang, 13 Springwater Way, said the project was zoned BC and was a long, thin parcel which abutted a residential community on Tyre Avenue. The plan was for a mixed-use project on the site with a shared entrance with the owners of Bing's Bakery, a long-time business on Main Street. The owners were very concerned about access to their property and said they would benefit from additional parking. The proposal originally went to the Planning Commission with 20 units and approximately 12,500 square feet of retail space. It did not meet with favorable support from the Planning Commission based on the size of the project, but there was support for a project of this type on a smaller scale as recommended by the Planning Department. After the Planning Commission meeting, Mr. Lang met with Councilman Clifton and local residents to discuss their concerns and ideas on the size of the project. A reduction of the building length from 250' to 180' resulted. The smaller project greatly reduced the impact on the adjacent residential owners on Tyre Avenue. Mr. Lang also agreed to a buffer with an 8' fence and landscaping. In addition, a number of large trees on the site will be saved with the reduced size of the project. The site will have about 4,000 square feet of green space, and the residential units were reduced from 20 to 14. The original design had 11.42 units per acre, which was now down to less than 8 per acre.

Mr. Clifton said if the project would go forward, he would add some amendments to further delineate responsibilities for buffering with the fence. The larger building extended behind the first residential property on Tyre Avenue and that was changed so it was designated for handicapped parking. He wanted assurances that the building would end no further than the northernmost side property line of 20 Tyre Avenue and would not extend behind any of the homes. He thought the most important community concern was the access to Tyre Avenue. Opening an access to Tyre Avenue would bring a litany of problems, including traffic becoming a thoroughfare, and opening up the property to parties, etc. After discussions with Lang Development, the plan called for an access through the back parking lot for City vehicles only which he felt was a good place to have the access. He also suggested the option for a continuation of the privacy fence between the northernmost property line at the first house on Tyre Avenue at their discretion,

The Chair opened the discussion to the public.

Larry Bangarter, 23 Tyre Avenue, President of the East End Civic Association, thanked Lang Development for meeting with the association. The association would like to have more owner-occupied units in their area and were concerned about the proximity of the project to the East End Café which was already noisy. He said the proposal stated a minimum of four unrelated people and "minimum" needed to be changed to "maximum" of four unrelated people.

They agreed with Mr. Clifton on no access to Tyre Avenue and would also like restrictions on the height of the lights so they would not shine into the back yards on Tyre.

Jean White, 103 Radcliffe Drive, did not think there should be more than four unrelated tenants per unit. Mr. Lang said one of the issues was in developing the floor plans, they hoped to create diversity in units throughout the building to avoid a cookie-cutter type of building. Thus, they might have five people in one unit and less in other units, and a restriction hampered design flexibility. Mr. Lopata noted that the total number of people on the site was the factor that impacted the community. Mr. Pomeroy said it seemed to be a bit of a departure from the normal approach as the City was trying to keep untenable situations from being created in apartment complexes. Mr. Lang said he could agree to no more than 5 in any one unit with 56 being the maximum number of tenants. Mrs. White thought that there was too much impervious surface and too much parking. She felt parking should be decreased and that macadam should not be placed all the way back to the "S" turn. In regard to the style of the building, Mrs. White felt the roof line was too long and uninteresting. She requested when tree pits and tree grates were installed, they be put in flat with the surface of the sidewalk to avoid becoming a tripping hazard. She also felt that the 8' stockade fence along the east side should be included in the agreement and resolution.

Carla Gussi, owner of Bing's Bakery, 253 East Main Street, addressed Mrs. White's comments about the 25 parking spaces allocated to Bing's. Bing's currently had 19 employees, excluding the two owners, and with the proposed two apartments upstairs, the 25 spaces were not excessive as Mrs. White suggested.

Frank Talameo, 24 Tyre Avenue, commented that the proposed building appeared to be attractive, and his concern as an adjacent property owner was about parking lot lighting. He suggested down-lighting and said a good example of that lighting was at the intersection of Haines Street and Delaware Avenue. The parking lot there had 12' high lights and boxes, and the light was angled straight down, yet the parking lot was well lit. He also suggested wall washes on the building where it faced resident's homes.

Mrs. White recommended a deed restriction against alcohol sales or service, as she felt the front part of the building could eventually be "condominiumized."

Mr. Lang replied while he was not an advocate for unruly bars, he felt too many restrictions were being put on small operators, and the City needed to consider how downtown businesses associated with alcohol were being disincentivized. In relation to this parcel, as a developer he did not see the need to impose further restrictions in light of the special use processes within the City. Mr. Lang agreed to restrict the back parcel of the property adjacent to the residential area from the sale of alcoholic beverage.

Mr. Clifton thought there was some value in having a good restaurant on the site, and he felt restricting an entire site was not necessary with the controls available through the special use permit process.

Tina Jackson, 119 Tyre Avenue, had previously requested deed restrictions for alcohol. She understood Mr. Lang's point of view, and agreed that restricting the back half of the property was an acceptable solution. However, if a restaurant was approved in the front of the building, she was opposed to any outdoor alcohol service. Ms. Jackson did not think the proposed project met the City's Comprehensive Plan, but felt it was the best project that would be offered for the site.

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

Mr. Lopata detailed the following amendments to the resolution and major subdivision agreement for the property:

- Subsection 5 should be revised to remove the word “stucco.”
- Subsection 7 should be revised by inserting the words “a maximum of five tenants per unit or.” These words should be inserted after the words, “therein occupied” and before the words, “by more than.”
- A new subsection should be added specifying that, “The developers agree to install a solid 8' high fence separating this site from adjacent properties to the east fronting on Tyre Avenue and, install a similar fence on the property at tax parcel 18-021.00-046 between that parcel and the adjoining parcel to the north fronting on East Main Street subject to the approval of the owner of that property.”
- A new subsection to be added indicating that, “Outdoor lighting on the plan should be designed so it does not impact adjacent properties.”
- A new subsection to be added, “The developers agree to restrict the portion of the site to remain zoned BC and a 90' portion of the proposed new building measured from its southern end to the north, for its full width, so that the sale of alcoholic beverages for public consumption shall not be permitted. The exact wording of such restriction shall be approved by the City Solicitor prior to the issuance of the first building permit and said restrictions shall be recorded in the Office of the Recorder of Deeds deeded for New Castle County prior to the issuance of the first certificate of occupancy on this site.
- A new subsection to be added reading that, “The developers agree that prior to its recordation, the rezoning, special use permit and record major subdivision plan shall be revised to show a “denial of access” prohibiting vehicular traffic between the BC zoned portion of the site and the adjoining Delaware Circle 50' wide right-of-way to the east of the property.”

Mr. Athey was disturbed with the apparent circumvention of the process in which this project was handled during the Planning Commission’s review with the developer asking the Commission not to table his project. While he understood Mr. Lang’s time frame and his desire for a vote by the Planning Commission, he was concerned that other developers would try to push through projects in an unrealistic time frame based on this situation. The issue bothered Mr. Athey purely on principle, and he felt Council did not have a recommendation from the Planning Commission or the Planning Department. Mr. Lopata said Council essentially had a recommendation from the Planning Department in favor of the project as their report acknowledged the plan was an improvement over the previous submission.

Mr. Lang said he understood Mr. Athey’s concerns. He mentioned the time sensitivity of the project in relation to the contractual obligations and the lengthy amount of time spent to get through the approval process. He explained if he thought the project would get to this point and then be sent back to the Planning Commission, he would have stayed at the Planning Commission in the first place. He thought the project included the necessary modifications resulting from the Planning Commission’s suggestions and believed he would receive their support. Mr. Lang said following the Planning Commission’s review, he did move through the process in a vacuum, but sought feedback from Mr. Lopata and Ms. Roser.

Mr. Markham asked Mr. Lang in regard to the timing issue whether a one month wait would be an issue if the plan was sent back to the Planning Commission. Mr. Lang said with advertising requirements, it would take two months, and he did not see any merit to going back to the Planning Commission.

Mr. Clifton said he agreed with the concept that timing issues for developers were not Council's problem. Where he disagreed was the Code clearly stated that the Planning Commission was an advisory body to Council, and in this case they did just that based on the first plan given. He did not think there was a reason to send the new plan back to the Planning Commission since it was modified to be less impactful on the community. The new plan had been discussed at length by Mr. Clifton and the community, and he preferred that it come to a vote before Council rather than go back to the Planning Commission.

Mr. Temko agreed with Mr. Athey on principle but said he was not sure he wanted to push the project back to January since the Planning Commission recommended support of the proposal with certain conditions. He planned to discuss this situation with his appointee on the Commission.

Mr. Funk felt Mr. Lang should have let the Planning Commission table the project.

Mr. Clifton spoke with his Planning Commission member and felt very comfortable that what was presented to Council met the intent of the Commission and the desire of the community. He felt the City was getting the best possible project with the concessions that were agreed to and appreciated the efforts by Lang Development to make the changes. Mr. Clifton applauded the community's involvement in the project and in the Comprehensive Plan process as well. He planned to support the project.

Mr. Pomeroy looked at two key factors in determining whether to support the project. He said the proposed changes met the spirit of the intent of the Planning Commission, although he felt the Commission should have tabled the project until all the issues were hammered out. He did not believe the project changed enough to require sending it back to the Commission. He felt the most important item to note was the extent to which Mr. Clifton and the community got involved in this project. He felt infill projects in the core downtown area were beneficial. Given the reality that something would go there and that the neighbors concerns were addressed, he was confident with the direction in which the project was going. He felt the City was at a tipping point with student rentals, and it was time for Council to proactively address setting policy to encourage owner occupants in the downtown area. He planned to support the project.

Mr. Markham would prefer to see the site remain as open space but was pleased with the efforts to preserve Bing's Bakery which was a City landmark. In a number of ways he felt the project should go back to the Planning Commission but acknowledged that the developer's work with the City and the community made the project more acceptable. He was pleased there was more parking than needed and thought "dark sky" lighting should be a requirement. He would support the project but agreed it was time for Council to address the policy of owner occupancy.

Mr. Tuttle planned to support the project. However, he thought the role of the Planning Commission was not fulfilled in this case and hoped future projects would move more conventionally through the approval process. He welcomed the adequate parking.

Mr. Temko was not pleased about losing the open space but saw no reason the site should not be rezoned to BB in view of its proximity to the central business district. Since Mr. Clifton and the community appeared to be satisfied, he would support the project.

Mr. Athey was encouraged by some of Council's comments. He did not have a problem with the project itself and was going to support it. He appreciated the work that was done by Mr. Clifton and the residents on Tyre Avenue. He thought the infill development aspect was good as was preserving Bing's Bakery. Mr. Athey spoke to his representative on the Planning Commission who said she was inclined to support the project.

Mr. Funk said he would vote for the project and thought Mr. Lang went out of his way in making concessions for the community. However, he felt Council had to start paying attention to the marketplace which was no longer student housing. He hoped to see future projects geared more toward attract young professionals.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

(ORDINANCE NO. 08-23)

22. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS

- A. Request of 257 East Main, LLC, for the Major Subdivision of 257 East Main Street in Order to Construct a New 12,125 Square Foot Commercial Building with Fourteen Second and Third Floor Apartments and Preserving the Existing Bing's Bakery Building

(NOTE: The public hearing was held for Bill 08-25, the major subdivision, and special use permit requested for this property under item #21.)

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT THE RESOLUTION BE APPROVED AS SUBMITTED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

AMENDMENT BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THE AMENDMENTS AGREED TO UNDER ITEM #21 BE MADE TO THE RESOLUTION AND MAJOR SUBDIVISION AGREEMENT FOR THE PROPERTY AT 257 EAST MAIN STREET.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(RESOLUTION 08-X)

23. 7-B. REQUEST OF 257 EAST MAIN, LLC, FOR A SPECIAL USE PERMIT AT THE PROPERTY LOCATED AT 257 EAST MAIN STREET IN ORDER TO CONSTRUCT APARTMENTS IN A BB ZONING DISTRICT

(NOTE: The public hearing was held for Bill 08-25, the major subdivision, and special use permit requested for this property under item #21.)

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

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

24. 8. ORDINANCES FOR FIRST READING

A. Bill 08-15 - An Ordinance Amending Ch. 2, Administration, XIV, Town and Gown Committee, By Changing the Membership of the Committee

Mr. Lopata read Bill 08-15 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THIS BE THE FIRST READING OF BILL 08-28.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

(2ND READING 11/10/08)

25. 8-B. BILL 08-27 AN ORDINANCE AMENDING CH. 21, PEDDLERS, VENDORS AND SOLICITORS, BY INCREASING FEES AND ESTABLISHING A MINIMUM AND MAXIMUM FINE

Mr. Lopata read Bill 08-27 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THIS BE THE FIRST READING OF BILL 08-27.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

(2ND READING 11/10/08)

26. 8-C BILL 08-29 – AN ORDINANCE AMENDING CH. 2, ADMINISTRATION, ARTICLE IX, PERSONNEL RULES, BY AMENDING MANAGEMENT EMPLOYEE HEALTH INSURANCE REGARDING EMPLOYEE CONTRIBUTION FOR DEPENDENT COVERAGE EFFECTIVE JANUARY 1, 2009

Mr. Lopata read Bill 08-29 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THIS BE THE FIRST READING OF BILL 08-29.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

Mr. Zusag advised that management employee dental insurance was inadvertently omitted from the ordinance.

AMENDMENT BY MR. TEMKO, SECONDED BY MR. CLIFTON: TO INCLUDE MANAGEMENT EMPLOYEE DENTAL INSURANCE IN BILL 08-29.

AMENDMENT PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

Question on the Motion as Amended was called.

MOTION BY MR. TEMKO, SECONDED BY MR. CLIFTON: THAT THIS BE THE FIRST READING OF BILL 08-29.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

(2ND READING 11/10/08)

27. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA

A. Council Members: None

28. 9-B. COMMITTEES, BOARDS & COMMISSIONS

None

29. 9-C. OTHERS

None

30. 10. SPECIAL DEPARTMENTAL REPORTS

A. Special Reports from Manager & Staff:

1. Setting Date for Public Hearing of 2009 General Operating Budget – November 10, 2008

MOTION BY MR. POMEROY, SECONDED BY MR. TEMKO: THAT THE PUBLIC HEARING FOR THE 2009 GENERAL OPERATING BUDGET BE HELD ON NOVEMBER 10, 2008.

MOTION PASSED. VOTE: 6 to 0.

Aye – Athey, Funk, Markham, Pomeroy, Temko, Tuttle.
Nay – 0.
Absent – Clifton (away from the table.)

31. 10-A-2. DISCUSSION OF RESOLUTION OF PENDING WORKER'S COMPENSATION CLAIMS

MOTION BY MR TEMKO, SECONDED BY MR. CLIFTON: THAT THE SETTLEMENT OF CERTAIN INJURED CITY EMPLOYEE CLAIMS BE AUTHORIZED AS DETAILED IN THE CONFIDENTIAL MEMO FROM THE CITY SOLICITOR TO COUNCIL OF OCTOBER 22, 2008.

MOTION PASSED UNANIMOUSLY: 7 to 0.

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

Mr. Clifton found it troubling that possibly two of the injuries were potentially avoidable. He felt the City was lacking a realistic and viable safety program. Mr. Lopata said he recently met with Messrs. McFarland and Zusag, and they agreed the City's safety efforts should be reinvigorated.

32. 10-B. ALDERMAN'S REPORT

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

33. 10-C. FINANCIAL STATEMENT

MOTION BY MR. CLIFTON, SECONDED BY MR. POMEROY: THAT THE FINANCIAL REPORT DATED SEPTEMBER 30, 2008 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

34. Meeting adjourned at 10:05 pm.

Patricia M. Fogg, CMC
City Secretary

/av