

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**February 9, 2009**

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: City Manager Kyle Sonnenberg  
City Secretary Patricia M. Fogg  
City Solicitor Roger A. Akin  
Finance Director Dennis McFarland  
Planning Director Roy H. Lopata  
Community Affairs Officer Dana Johnston

- 
1. The meeting began with a moment of silent meditation and pledge to the flag.
  2. **PRESENTATION OF JEFFERSON AWARDS CERTIFICATE OF EXCELLENCE**

The following nominees were recognized for their volunteerism and given a Jefferson Award Certificate of Excellence for their public service:

Joyce Tannian – nominated for rallying Newark residents to raise money after a visit to rural Kenya in 2005-2006 where villagers were in desperate need of a local well but had no money to build one. The community was renewed as a result, and another project was completed in a second village. Ms. Tannian's efforts helped saved lives and brought hope to many people while uniting the citizens of Newark.

Mia "Sharon" Song – a Newark High School student who volunteered over 200 hours of her time in the past two years at Christiana Hospital. In addition, she also taught music to middle school students through the outreach program. She was an active member of the school's Key Club and National Honor Society and touched the lives of many in the community, especially children.

Maria Velasquez – has been very active in educating the youth in Latin America about diabetes prevention. She recently returned from a two-week trip to Bolivia where she set up a diabetes camp for at-risk youth who, along with their families, learned how to prevent further health problems from diabetes. Her energy and drive has motivated students at the University of Delaware to raise over \$3,700 for her cause.

Maureen Feeney Roser – goes above and beyond the call of duty as Assistant Planning and Development Director for the City of Newark. Numerous hours of her own time are spent preparing for and carrying out the Downtown Newark Partnership Board's mission and goals along with those of the Board's

Committees. She assists the Board and Newark business community in developing new and exciting programs and policies to enhance the community's economic well-being. She makes Newark a wonderful place to live, work, and enjoy.

George Krafchick – has volunteered regularly at the Newark Senior Center for about 10 years, doing everything from managing the mailing of over 3,000 monthly newsletters to running the kitchen booth at bi-annual flea markets. He also oversees and helps in setting up staffing and taking down the kitchen corner booth during the three-day flea market sale. Not only does he save the Senior Center money, he also helps raise money through the flea market. Most of all, he motivates other seniors to get involved.

**3. 2. CITY SECRETARY'S MINUTES FOR COUNCIL APPROVAL**

A. Regular Council Meeting of January 26, 2009

On page 3, Item #20, Mr. Athey changed Phillips Avenue to Phillips Park.

MOTION BY MR. ATHEY, SECONDED BY MR. TEMKO: TO APPROVE THE MINUTES AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

A. Public

Bruce Diehl, 205 Meriden Drive, expressed concern about pedestrian visibility at the crosswalk in front of Klondike Kate's. He also discussed better signage on College Avenue at the approach to Main Street where there were many close calls because vehicles in the left lane frequently cut off other drivers to turn on North College Avenue. Mr. Clifton agreed with Mr. Diehl that the area was treacherous and suggested something should be installed at the crosswalk to raise driver awareness to make it safer. Further, Mr. Diehl suggested the City examine its fleet of vehicles from an economic standpoint. Mr. Funk said staff had looked at this issue for some time.

**5. 3-B. UNIVERSITY**

1. Administration – There were no comments forthcoming.

**6. 3-B-2. STUDENT BODY REPRESENTATIVE**

Colin Craft, Student Government Association, reported that spring semester began on February 9<sup>th</sup>. He noted the SGA and a number of other student organizations had a big campaign scheduled on February 28<sup>th</sup> to raise money and awareness for global poverty issues.

**7. 3-C. COUNCIL MEMBERS**

Mr. Clifton felt the City needed a global market such as Ebay in order to maximize the return from the sale of City vehicles. Mr. Sonnenberg said there were a number of different options for disposing of public property that he had used in other places which could be looked at. Mr. Clifton said anything that increased the City's market would be good.

8. Mr. Clifton was informed by a constituent that there was no sign on Marrows Road for the Villages of Fountainview. State Representative Kowalko advised he would handle the matter through the state legislature.

9. Mr. Pomeroy congratulated the Police Department for an impressive collar on a recent incident at Williamsburg Village.
10. Mr. Pomeroy welcomed Nancy Leonard, a representative from the Jefferson Awards, to the meeting.
11. Mr. Pomeroy announced that his son, Paul, celebrated his sixth birthday today.
12. Mr. Markham remarked that he received a letter from a family thanking members of the Newark Police Department for saving the life of a stroke victim. Master Cpl. Tracy Simpson, Cpl. Potocki, and Officer Marsilii, were recognized for their life-saving efforts.
13. Mr. Tuttle was pleased to see recognition of the Jefferson Award recipients who he said represented a large number of volunteers in the City which was one of the things that made Newark a great place.
14. Mr. Tuttle remarked on the beginning of the semester at the University which contributed in large part to the City's vibrancy.
15. Mr. Temko congratulated and thanked the Jefferson Award winners for their service and the Downtown Newark Partnership volunteers who were recognized at the DNP appreciation event held last week.
16. Mr. Temko reported that the West Newark Civic League will meet February 24<sup>th</sup> at 7:00 p.m. in the Mayor's Conference Room. Also, the Traffic Committee will meet on February 17<sup>th</sup> at 3:30 p.m. to discuss traffic calming on Country Club Drive and Corbit Street and consider a request to permit parking on Renee Court in North Gate Commons.
17. Mr. Temko noted he will present findings from a survey about the civic health of Newark at the next meeting and also discuss Operation Round-up, a voluntary program for residents to round-up their utility bills to the nearest dollar with funds going towards low-income programs.
18. Mr. Athey congratulated Mr. Funk on receiving the Volunteer of the Year award at the Downtown Newark Partnership event on February 5<sup>th</sup>.
19. Mr. Athey expressed concern about the number of icy sidewalks throughout the City during recent storms, and he felt the problem of snow and ice removal should be addressed. Mr. Funk thought the City's ordinance was adequate but felt the problem was lack of enforcement. He said reasonable fines were one option used in other municipalities, and Mr. Athey thought instant ticketing could be used. Mr. Clifton was concerned about the number of senior citizens in the City who were unable to shovel or find someone to do the work for them. He suggested a type of clearinghouse for those who were willing to shovel, perhaps through Channel 22. Mr. Pomeroy said it was one thing to shovel snow, but the thick layer of ice presented even more difficult conditions. Mr. Markham said this was a City-wide issue throughout the neighborhoods. Mr. Athey would like Council to continue working on this issue .

20. **4-A. ITEMS NOT FINISHED AT PREVIOUS MEETING:** None

21. **4-B. FINANCIAL STATEMENT/PENSION REPORT**

**FINANCIAL STATEMENT:**

Mr. McFarland explained the December financial report was internal reporting only, and additional entries would be made in preparation for external reporting to be completed in another 3-4 weeks. (The report was a good indication 2008 budget results.) Overall the City ended up at about \$234,000

under budget for the year which was less than 1% of total expenses for the full year. The revenue side was about \$1.2 million under budget with half of that from the shortfall in the sewer operating margins due to an overly-optimistic budget as well as some lower volumes in the sewer utility. The electric utility was under budget about \$300,000 as a consequence of the under-collection in the summer months not made up by year end. Offsetting the lower margins were some higher non-utility revenues, primarily transfer taxes, ending the year at \$1 million above budget on the non-utility revenues, with operating expenses right on target to the approved budget. The year ended with a cash balance of \$14.2 million, a decline of \$5 million through the course of the year due primarily to paying \$3.6 million to resolve the reservoir litigation and other higher litigation expense as well as the shortfall on the cash side in the electric utility.

Mr. Tuttle noted the most recent National League of Cities Weekly reported the vast majority of governments experienced financial difficulties this year, more so than ever reported in previous surveys. Most were already taking steps to make cuts, institute hiring freezes, etc. He said the budget workshop meetings would present interesting challenges to the City in finding future revenue opportunities to maintain the current level of services.

Mr. Clifton asked if the hiring freeze was still in effect that was instituted when Mr. Lopata was Interim City Manager. Mr. Sonnenberg was not aware of a hiring freeze, noting the City was in the process of filling several positions in the Police Department. Mr. McFarland explained the initiative was intended to keep the City in a steady state until the new City Manager was brought on board. Mr. Clifton added that, unlike some municipal governments, Newark did not have excesses in personnel.

Mr. Pomeroy congratulated Mr. McFarland and the departments for keeping operating expenses so close to budget which he felt was impressive for a budget of the City's size, particularly in light of the current economic climate. He asked Mr. McFarland to forecast the cash position over the course of the next calendar year. Mr. McFarland said the approved budget would not improve the cash position materially in 2009, so he would anticipate ending the year roughly where it started.

#### **PENSION REPORT:**

Mr. McFarland reported it was a very difficult year for the Pension Fund. The fund lost almost 28%, declining from \$41 million to a little over \$29 million through the course of the year. The returns reflected the broad market where most pension funds took tremendous losses during 2008. The particular issue was the City began the year with a funded status of about 80% for the Pension Plan, and the funded status of the plan was now slightly under 60%. Several steps were taken earlier in the year to strengthen the position of the Pension Plan: the investment allocation policy was revised as of October; there was diversification into other real estate funds and into a different international fund; and a commitment was made with the 2009 Operating Budget to contribute an additional \$500,000 to the fund. Mr. McFarland explained while the steps were all in the right direction, it would take several years to restore the Pension Plan to an acceptable funding level. Also, there was concern about the returns achieved in 2009, as they were less than the benchmarks established for the plan to hit by the various asset allocations. Two years ago the Pension Plan enjoyed above-benchmark returns for the immediate two and three-year periods. However, during the last year and a half, the plan fell below the benchmarks. Mr. McFarland said deliberations had begun on what the City should do to correct that situation, but at some point in time, action would have to be taken.

Mr. Pomeroy asked how the \$500,000 injected in the 2009 Operating Budget manifested itself over the course of the calendar year and when it would impact the funded status. Mr. McFarland said the \$500,000 would go into the Pension Fund in twelve monthly installments, the same as with the other \$1.5

million that the City was required to contribute. He felt the prediction about what that does to the funded status would probably be dwarfed by the market returns.

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THE FINANCIAL REPORT DATED DECEMBER 31, 2008 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

None

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

None

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

None

**25. 8. ORDINANCES FOR FIRST READING**

A. Bill 09-06 An Ordinance Annexing and Zoning to PL (Parkland) 1.69 Acres, to MI (General Industrial) 2.39 Acres and to OFD (Open Floodway District) 8.51 Acres, Said Property Situated Along the Christina Creek on the Stine Haskell Site Located on Elkton Road

Ms. Fogg read Bill 09-06 by title only.

MOTION BY MR. ATHEY, SECONDED BY MR. MARKHAM: THAT THIS BE THE FIRST READING OF BILL 09-06.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(2<sup>ND</sup> READING 3/9/09)**

**26. 8-B. BILL 09-07 – AN ORDINANCE AMENDING CH. 20, MOTOR VEHICLES AND TRAFFIC, BY IMPOSING A MONETARY FINE WHEN A PERSON UNDER THE AGE OF 21 IS DRIVING AFTER CONSUMPTION OF ALCOHOL**

Ms. Fogg read Bill 09-07 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THIS BE THE FIRST READING OF BILL 09-07.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(2<sup>ND</sup> READING 2/23/09)**

**27. 8-C. BILL 09-08 – AN ORDINANCE AMENDING CH. 32, ZONING, BY REGULATING THE SIZE OF “FOR RENT” SIGNS IN RESIDENTIAL DISTRICTS**

Ms. Fogg read Bill 09-08 by title only.

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THIS BE THE FIRST READING OF BILL 09-08.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(2<sup>ND</sup> READING 3/9/09)**

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

A. Council Members:

1. Discussion re Equal Rights Proposals, Including Sexual Orientation and Gender Identity Nondiscrimination Measure, A Domestic/Life Partner Registry and Domestic Partner Benefits

Mr. Temko wanted to discuss measures to protect Newark citizens from discrimination and help make sure the City was one that valued and practiced equality. He presented the following four motions which he believed provided the City with an opportunity to be inclusive to all citizens. He requested one change to Motion One and Motion Two, changing the language from “gender identity” to “gender identity and expression”.

**MOTION ONE:**

That it is the sense of Council that it is appropriate to include gender identity and expression in the City’s personnel policy of prohibited forms of discrimination.

**MOTION TWO:**

That staff research and report back to Council by April 13, 2009 regarding prohibiting discrimination within City limits on the basis of sexual orientation and gender identity and expression in the areas of housing, public accommodations and employment.

**MOTION THREE:**

That staff research and report back to Council by April 13, 2009 regarding creating a domestic/life partner registry for the City of Newark, which would allow partners to prove their status to qualify for benefits employers voluntarily extend to unmarried couples and gives visitation rights to partners in all health care facilities.

**MOTION FOUR:**

That staff research and report back to Council by April 13, 2009 what options exist and processes must be followed for the City of Newark to offer domestic partner benefits to employees.

The first motion was to add gender identity and expression to the City’s personnel policy regarding non-discrimination. The personnel policy currently prohibited discrimination against any person on the basis of age, race, color, creed, religion, sex, national origin, marital status, disability, political affiliation, sexual orientation, parental status or active military or veterans status. He asked that the non-discrimination clause be extended to include people who had a gender identity or expression that might lead to discrimination.

Mr. Temko explained gender identity was defined as a person’s innate, deeply felt, psychological sense of gender which may or may not correspond to the person’s body or designated sex at birth. Gender expression was defined as all of a person’s external characteristics and behaviors including dress, manners and grooming, speech patterns and social interactions socially identified with a particular gender.

Mr. Temko said the second motion related to broader non-discrimination measures. The federal and state governments failed to offer the protections and public accommodations, and employment and housing for sexual orientation or for gender identity and expression. He said in the absence of these protections, Newark's government could act to protect those within City limits. Both Rehoboth Beach and Wilmington adopted similar measures for non-discrimination. At this time, their laws covered sexual orientation but not gender identity and expression. While he asked Council to vote and have staff research and report back on this issue, Mr. Temko noted it was important to that staff only spend time researching ideas that Council had an interest in pursuing.

The third motion related to creating a Domestic Partner or Life Partner Registry. This would be the first such registry in Delaware. The nearest city with the registry was Philadelphia which allowed both same sex and opposite sex couples to register if they were city residents or had at least one partner employed by the city. Mr. Temko said registries legally do not mean much. However, they were a form of relationship recognition that Newark could offer. They usually offer protection for partners so they had the right to visit their partner in a health care facility. He would also consider it economic development legislation. If a business in the City wanted to offer domestic partner benefits, currently they would have to establish a system to insure that employees who requested the benefits were domestic partners. Having a registry in the City would allow the small businesses who wanted to offer those benefits to refer to the City's registry and not have to do it themselves. It also allowed life partners, if they worked for a company that honored the City registry, not to have to supply documentation and constantly prove their relationship. He asked Council to vote to have staff research and report back on the issue.

Mr. Temko's final proposal regarded offering domestic partner benefits for City employees. He reported that a majority of Fortune 500 companies already offered domestic partner benefits and many Delaware companies did as well, such as DuPont, Clear Channel, PNC and the News Journal. Further, the City of Wilmington offered these benefits, and New Castle County offered domestic partner benefits for over a decade. Mr. Temko felt it was time for the City to offer these benefits. He believed the City lost out on recruiting employees looking for employment that included domestic partner benefits who instead could work for another government or private employers that offered benefits. According to Mr. Temko, domestic partner benefits were designed to make up for the fact that opposite sex couples can marry and obtain spousal benefits that same sex couples in Delaware cannot obtain. He felt this was not fair to employees who needed these benefits. From an initial discussion with Blue Cross and Blue Shield, it appeared that domestic partner benefits would cost the City \$26,000 per year as well as increase employee premiums about \$2 per month. Regarding the City's current financial situation and the overall economy, if the City could not afford that cost, there were other options such as the legislation introduced by Newark legislator, Terry Schooley. This will start with the state paying nothing and employees paying the COBRA equivalent, and then two years from now supplementing that payment until the state covered 100% of the cost of offering domestic partner benefits. There were different ways to structure domestic partner benefits, and if Council chose to propose and adopt offering these benefits, it would be contingent on approval from the Labor Management Insurance Committee that will meet in June. He asked Council to vote to have staff research and report back on this issue.

The Chair opened the discussion to the public.

Debbie Gottschalk, 103 Briar Lane, supported the four resolutions described and spoke as an attorney from Community Legal Aid who represented low-income tenants in housing matters, and also as a lesbian who lived in Newark for almost 11 years. She said over ten years ago when a small group first met to consider adding sexual orientation to Delaware's non-discrimination laws, they decided to make it a statewide effort because so many cities with

populations the size of Delaware had already enacted such laws. Ten years after the bill was first introduced in Dover, they continued to hope this might be the year it passed both chambers; thus, she felt it was time for Newark to follow in the steps of Wilmington and Rehoboth and enact the legislation on its own. Ms. Gottschalk read in the Histories of Newark 250<sup>th</sup> Anniversary book that the City was the first jurisdiction in Delaware to prohibit discrimination in housing based on race, and she thought that was a proud history of equality that Newark should continue to follow with the motions proposed. She represented clients who encountered housing discrimination based upon their sexual orientation, which did not occur in Newark. Her comment should not be taken to mean that such discrimination does not occur in Newark, but rather that these proposals would enforce what she perceived to be the norm of acceptable behavior in Newark so if there were instances of discrimination, victims would have recourse under the law. Ms. Gottschalk explained Newark's gay, lesbian and transgendered citizens were trying to earn a living and take care of families by providing income, health insurance and housing. She hoped Newark would be a model for demonstrating that equality under the law was good for business and good for the community.

Karen Middlekauff, 1342 Christina Mill Drive, a senior at the University of Delaware, was the political and educational chair of Haven, the University's student group for gay and lesbian, bisexual, transgender and its straight allies. She was also one of the founding members and the former president of the Direct Action Committee for domestic partner benefits. This was the student-run group that lobbied and successfully won domestic partner benefits at the University of Delaware. She noted there were a number of Haven members present in support of Mr. Temko's motions and urged the City to follow the University's lead. Over 2,000 petition signatures were received from students, faculty and staff members in support of domestic partner benefits. She reminded Council members this was a great business decision because offering domestic partner benefits helped to recruit and include the widest possible pool of new employees or people coming to move into the community. She felt the community should reach out to a diverse and fresh group of people rather than excluding people from the community. Ms. Middlekauff said young professionals of her generation were looking for inclusive environments that provided equality and positive environments for all types of people.

Colin Craft, representative of the University of Delaware Student Government Association, spoke on behalf of SGA. He said one of the hallmarks of the University was its evolving student body and its increasing diversity with students from all walks of life, different genders, races, sexual orientation, sexual gender identities, who attended the University in hopes of learning more about others and more about themselves. He said any measure taken to alleviate discriminatory issues was an absolute must. SGA specifically supported all measures which promoted equality among members of the community, whether it involved extending current policies to include all types of sexual diversity or identity or calling for research to diffuse a potentially dangerous situation surrounding housing or life in Newark. Mr. Craft believed each proposed motion was important for consideration if intelligent graduates were to be encouraged to stay in the area. Further, discrimination on any level was a travesty and affected not only the targets of discrimination but also those of allies and friends of the victims. He felt UD alumni were more likely to thrive, live and bring prosperity to areas where it was clear that everyone had the same rights and opportunities.

Jon Manchester, Program Coordinator and Board member of the Unitarian Universalist Fellowship of Newark, represented Reverend Greg Chute who was unable to attend. The congregation voted to work to end discrimination based on sexual orientation and gender identity. He spoke for the approximately 350 members and friends of the congregation who believed it was time to be explicit and inclusive in legislating to protect equal rights. He commented that many towns, states and nations recognized the unique diversity of each individual and took the necessary steps to safeguard their rights. He said it was time for

Newark to join them. The congregation believed the motions proposed were an essential step toward a broader definition of equal rights for all and fully supported them. Mr. Manchester requested that a letter from Jeffrey Ramberg dated February 8, 2009 be made a part of the record (letter attached.)

Sam Cahall, 17 Deer Run, became involved in politics after being fired from a job in Delaware due to his sexual orientation. He explained that he lost his home and his friends and received death threats due to discrimination. He credited Debbie Gottschalk with being one of the many people that came forward when the group was formed to get anti-discrimination laws passed in Delaware. Mr. Cahall worked on the issues of hate crimes and reparations for victims of sexual abuse. Although he lost everything because of discrimination, he experienced positives as well. He was asked by Charlie Oberle to run the first openly gay fund raiser when he ran against Bill Roth which led him to become an advisor to Bill Clinton which led him to George W. Bush. In the last 20 years Mr. Cahall has seen a shift in public opinion, and he hoped Newark would be willing to step up to the plate in the fight for civil rights.

Jeffrey Jankowski, 1610 Sheldon Drive, worked for the State of Delaware and was a volunteer firefighter of 12 years where he served as a Rescue Captain. Mr. Jankowski experienced discrimination in the workplace and found it disturbing that there was no protection available through the workplace or the City.

Jeff Ramberg, Old Mill Manor, a member of the Unitarian Universalist Fellowship of Newark and Co-Chair of its Welcoming Congregation Committee whose purpose was to make congregants aware of and welcoming of sexual minorities, asked to have his formal statement entered into the record.

Susan Eggert, 306 Apple Road, talked about the value of offering health care benefits to domestic partners. She shared a personal experience and encouraged the City to join New Castle County in offering domestic partner health care benefits to City employees. Mr. Eggert said although the County's benefits were not equal to those of married employees, she was pleased they offered health care. Ms. Eggert wanted to live in a City that cared about their employees and encouraged the City to provide health insurance for domestic partners. She also encouraged gay and lesbian members of the community to speak up and express their views with their Council members.

Mike Mullen, 704 Cambridge Drive, commended Mr. Temko on his efforts to end discrimination. He felt Mr. Temko was off the mark with extending benefits to domestic partners because of the economy. He worked for Verizon which extended benefits and could afford to do so but said he, personally, could not afford to do so. He felt the amount of resources and money expended to do the further study recommended would increase the City's bottom line and, if passed, would mean be a tax increase. He urged Council to consider this when making any decisions.

John Kowalko, State Representative of the 25<sup>th</sup> District, apologized to Mr. Cahall for the shameful behavior of the state in not defending the equal rights of every one of its citizens. Mr. Kowalko said he was proud of Councilman Temko for taking the lead on this issue. He reported that twenty states, the District of Columbia, and over 180 localities passed laws prohibiting discrimination based on gender identity or gender expression but the State of Delaware was not among them. He said House Bill 5 was still being pursued after sitting mired in its own lack of energy from people who would rather fight than concede the fact that this was a basic human right. Four states plus the District of Columbia permitted gay and lesbian couples to register as domestic partners and receive rights under state law, but Delaware was not among them. Mr. Kowalko was the sponsor of House Bill 75 which created hospital visitation rights for couples of any persuasion. Sixteen states and the District of Columbia provided domestic partner benefits to their employees, but, again, not the state of Delaware. He felt the state's efforts were remarkably ineffective, painstakingly slow, and

disappointingly lacking in the area of equal rights and constitutional guarantees that all men and women were created equal and were allowed the pursuit of happiness. He hoped the City would consider this effort.

Chris Saltalamacchio, 611 Christina Mill Drive, came to Newark while attending the University of Delaware. He said when he was 20 years old he came out, which was an unbelievable, weight-lifting experience. He felt the City was a wonderful place to live, and he was welcomed with open arms. He believed it was to the City's advantage to provide the same opportunities to every citizen. Mr. Saltalamacchio felt the City should take the opportunity to be known as a place that encouraged people regardless of age, race, gender, gender identity and expression and sexual orientation. He was disturbed that statewide Delaware had not welcomed everybody who wanted to live here. He reported there were registries in cities in more than 25 states which meant that in half the states, at least one city had chosen to honor the union between two men or two women. He said establishing a life partner registry in the City would provide couples with the opportunity to share every moment of their journey together with a loved one.

Innocence Bello, 7 Washington Street, represented the LGBT Community Office at the University of Delaware, which was the community resource for the lesbian, gay, bisexual, and transgender community at the University. The term transgender was an umbrella term that included every person whose gender identity or gender expression may not align with their biological sex or their assumed gender roles. Ms. Bello explained that gender identity was important because the City was very inclusive and had always been progressive and positive. She supported laws protecting those who might be targeted because of gender identity. Ms. Bello said sadly, there were accounts of more than 20 transgender individuals who died where they lay on the street in the presence of medical technicians who mocked them. She emphasized the importance of recognizing and respecting the differences of all individuals.

Gilad Skolnick, 730 Chrysler Avenue, agreed with and supported the proposed motions.

Scott Serota, 809 Rock Lane, said it was important to note that discrimination against someone for being transgender was discrimination based upon that person's non-conformity with gender stereotypes. In the very acts that define transgender people as being transgender were those that contradicted the stereotypes of that gender-appropriate appearance and behavior. Currently, 13 states and the District of Columbia had transgender inclusive non-discrimination laws. Since 2001, at least seven states enacted legislation explicitly protecting transgender people from employment discrimination. Nationwide, 108 cities and counties also had similar protections, 27 of the Fortune 500 companies prohibited discrimination based on gender identity in 2004, and 433 of the Fortune 500 companies had policies covering sexual orientation, with 153 of those covering gender identity. A study by the Williams Institute at UCLA last year found that work place discrimination against LGBT employees was as widespread as that against women and visible minorities. The study found that five out of 10,000 LGBT people in the work force filed sexual orientation employment discrimination each year. This was compared to sexual discrimination complaints filed by five out of 10,000 women and race discrimination suits filed by seven out of 10,000 people of color. In eight states, sexual orientation claims surpassed sex claims, and the same was true for three states when compared with those which provided protection including gender identity and expression clauses. The Executive Director of the Williams Institute noted that over 3.1 million LGBT adults lived in states which did not provide workplace protections. Mr. Serota urged the inclusion of gender identity and expression to the City's anti-discrimination policies.

Drew Phillips, 42 Lynn Drive, attended the University of Delaware and currently worked as a nurse and was in the Masters R.N. program. He said

although nursing appears to be a career with job security, he could get fired for his sexual orientation. He asked Council to vote in support of the proposed motions.

Kathryn Mallary, 49 Madison Drive, who worked in the LGBT office, was a University of Delaware senior and board member of Haven, said she had some involvement with the Direct Action Committee that lobbied for domestic partner benefits on campus. She felt it was important to recognize the issue was not one of economics but was an issue of giving people what they deserved and allowing every human to be recognized as equal. She was proud of what the University had done and hoped the City could do the same.

Mudhillun Muqaribu, 630 Lehigh Road, supported the measure and said other communities, both large and small, were providing equal pay and protections for equal effort and participation, and hoped Newark could find a way to do the same, not just for its employees but also for its citizens.

Paul Baumbach, 38 Country Hills Drive, was the Chair of the Social Justice Committee of the Unitarian Universalist Fellowship of Newark. The congregation passed a resolution three years ago supporting the end to discrimination based on sexual orientation and gender identity. He said the issue was not about special rights, it was about human rights and economics should not even be considered when human rights were involved. He urged support of the proposal and its passage.

Pat Wisniewski, 604 Apple Road, worked for seven years in hospice medicine. He said when people were at the end of their lives, the same depth of grief and pain of loss was evident regardless of who the person was. He felt that a family was defined by who was present at that time and what they were going through. Mr. Wisniewski hoped the testimony at the meeting gave Council a sense of the importance of supporting the proposals.

Amy Roe, 19 Sunset Road, said although she was not a member of the gay community, she supported the motions and felt as though they would benefit her directly because they would improve her neighborhood. Ms. Roe was more than willing to accept an increase in her property taxes if warranted.

Carol Post, 69 Kells Avenue, pointed out it was important for government to be a bully pulpit. As the Director of a non-profit agency, one of the things they looked for in city and state government was to provide leadership for those who worked and led other kinds of organizations. She thought it was important for the City, as a progressive center in Delaware, to provide leadership and support these measures.

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

**MOTION BY MR. TEMKO, SECONDED BY MR. TUTTLE: TO INCLUDE GENDER IDENTITY AND GENDER EXPRESSION IN THE CITY'S PERSONNEL POLICY OF PROHIBITED FORMS OF DISCRIMINATION.**

Mr. Clifton said in looking at the City's personnel policies on discrimination, he referenced a case several years ago where there was potential for a discriminatory statement that was made, and a third person was party to that but could not say anything in the context of the City's personnel discrimination policy. As a federal government worker, Mr. Clifton said his department had a 76-page discrimination policy and part of the policy stated that federal employees who witnessed a discriminatory act without reporting it were as guilty as the perpetrator. Mr. Clifton asked Council to support reviewing the federal policy and the City's policy in a more broad-based sense. Mr. Funk thought that would apply more toward proposed Motions 2, 3 and 4.

Mr. Athey asked Mr. Zusag what provisions were in the City's Code regarding employee attire. His concern was, as a public body if a male employee chose to wear female garments to work, he assumed Motion 1 would protect that employee from any action by the City. Mr. Temko said if that was being done as part of a person's gender identity or gender expression, it was his understanding that such behavior would be protected. Mr. Zusag did not believe attire was addressed in the Personnel Manual. Mr. Temko reported the City's discrimination policy stated, except for where such factors constitute a bona fide occupational qualification. Thus, if the practice interfered with an employee's ability to do their job, that was different than something having to do with their identity. Mr. Zusag thought in a situation like that, an employee might be able to claim discrimination if transgender identity or expression was added to the policy. Mr. Athey asked about including a statement in the policy to address how employees present themselves to the public. Mr. Temko said he would be concerned about transgendered people who were presenting a different gender expression kept from the public as opposed to interacting with the public,

Mr. Akin suggested the definitions of the terms gender expression and gender identity needed to be included in the City's Personnel Manual if Motion One was adopted.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY.

VOTE: 7 to 0.

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

Nay – 0.

(Note: The following are the definitions of gender identity and gender expression as set forth in a document provided by the Human Rights Campaign.)

**GENDER IDENTITY** is distinct from sexual orientation and refers to a person's innate, deeply felt psychological sense of gender, which may or may not correspond to the person's body or designated sex at birth (the sex originally listed on a person's birth certificate.)

**GENDER EXPRESSION** refers to all of a person's external characteristics and behaviors, including dress, mannerisms, grooming, speech patterns, and social interactions, that are socially identified with a particular gender.

Mr. Funk said Motion Two, Three and Four should be combined because they were going back to staff for study. Mr. Markham felt 90 days was a more reasonable time frame for a report from staff which would be the May 11th meeting.

Ms. Fogg reported that a phone call in support of all four motions was received from Barbara Hebner, 206 Grantham Place.

Proposed Motions Two, Three and Four were referred to staff for further study. Council agreed that a report be given at the May 11<sup>th</sup> meeting.

**29. 9-B. COMMITTEES, BOARDS & COMMISSIONS**

1. Planning Commission Minutes of January 6, 2009

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT THE PLANNING COMMISSION MINUTES OF JANUARY 6, 2009 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**30. 9-B-2. APPOINTMENT TO BOARD OF ETHICS**

MOTION BY MR. POMEROY, SECONDED BY MR. TEMKO: THAT DANA DIMOCK, 12 TIMBERLINE DRIVE, BE REAPPOINTED TO THE BOARD OF ETHICS, SAID TERM TO EXPIRE FEBRUARY 1, 2014.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**31. 9-C. OTHERS: None**

**32. 10. SPECIAL DEPARTMENTAL REPORTS**

- A. Special Reports from Manager & Staff:  
1. Real Estate Tax Assessment Quarterly Supplemental Roll

MOTION BY MR. TUTTLE, SECONDED BY MR. ATHEY: THAT THE REAL ESTATE TAX ASSESSMENT QUARTERLY SUPPLEMENTAL ROLL DATED JANUARY 16, 2009 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**33. 10-A-2. REPORT RE HISTORICAL DESIGNATION OF “QUALITY HILL AND TERRY MANOR”**

Mr. Lopata reported that in January, Council asked for information about designating the Quality Hill and Terry Manor neighborhoods as historic areas. He explained that placing the areas under the historic preservation ordinance would impose significant restrictions on any construction or demolition of the properties. There were several properties on West Main Street, the Quality Hill area, currently on the National Register, and those properties were included in the City’s historic preservation ordinance. Mr. Lopata said in order to move forward, the Technical Advisory Committee would have to be convened to begin the process of deciding whether to include the properties. A second alternative was listing the properties on the U. S. Department of Interior’s National Register of Historic Places which could be done through the State Historic Preservation Office or with a consultant. This was a lengthy process that produced certain restrictions on the use of a property which only applied when federal funding was involved, although there were some limited tax benefits to property owners.

Mr. Lopata said in the case of Terry Manor that might be particularly important because there was the potential for additional community development work in this community. However, if a property was listed on the National Register, a result would be a much more onerous level of scrutiny for funding of community development-reviewed projects. Historic plaques were a possibility, and were handled by the state legislature.

Mr. Lopata suggested if Council wanted to proceed, the next step would be to meet with the two communities to get a sense of whether the residents wanted an investigation of either the National Register listing, listing on the City’s registry, or both.

Council requested staff to convene meetings with area residents in the Quality Hill and Terry Manor neighborhoods to discuss possibilities regarding historic district or neighborhood designations.

**34. 10-B. ALDERMAN'S REPORT**

MOTION BY MR CLIFTON, SECONDED BY MR. TUTTLE: THAT THE ALDERMAN'S REPORT DATED JANUARY 29, 2009 BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

**35. Meeting adjourned at 9:35 p.m.**

Patricia M. Fogg, CMC  
City Secretary

/av  
Attachment