

**CITY OF NEWARK
DELAWARE
COUNCIL MEETING MINUTES**

April 27, 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
Assistant to the City Manager Carol S. Houck
Assistant to the City Manager Charles Zusag (arrived
8:20 p.m.)
Finance Director Dennis McFarland
Planning & Development Director Roy H. Lopata

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

2. MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THE AGENDA BE AMENDED BY ADDING ITEM 10-C, POTENTIAL LITIGATION, TO EXECUTIVE SESSION.

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 April 13, 2009

Mr. Athey changed page 9, item 30, first paragraph, last sentence to read, "In 2010 funding *may* (changed from would) become the City's responsibility." On page 11, sixth paragraph, second sentence was changed to read, "He said to be candid, the City would not *be in a position to* (added) follow the principles at the end of this year's budget..."

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: TO APPROVE THE MINUTES OF THE REGULAR COUNCIL MEETING OF APRIL 13, 2009 AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

4. **2-B. ORGANIZATIONAL MEETING OF APRIL 21, 2009**

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

5. 3. ITEMS NOT ON PUBLISHED AGENDA

A. Public

Amy Roe, Newark resident, outlined energy conservation measures she implemented in 2008 to cut her home electricity consumption by 60%. She noted that electric meters were read four times a year and were estimated eight months based upon previous consumption. Ms. Roe felt this procedure presented problems for people trying to reduce their electric consumption. Thus, she began reading her meter to make comparisons to the City's estimated bill. She reported that in May, her energy savings started to catch up, and she prepaid for that month. Ms. Roe reported she then received special treatment, and her bills were calculated from a different formula which worked fairly well. However, she was again overestimated and feared a repeat of the previous year's billing. She pointed out that customers working to save energy might become discouraged if they did not see reductions in their bills and felt this was not the kind of message the City should send. She stated that the use of estimated bills was a deterrent to conservationists and said accurate billing should be a top priority in the City.

6. Isaac Bennett, University of Delaware student, was upset with new parking regulations passed on January 26th. (Mr. Bennett received a parking ticket at the parking meters at Morris Library at 11:08 p.m.) He made several proposals as a solution.

He suggested an e-mail account be set up between the City and University students to strengthen communication with a large portion of the community. He felt notifying students of new laws and changes to pre-existing laws would clarify what was expected of the students. In addition, the City would have an opportunity to welcome incoming students and provide a link to the City's website, thereby providing an opportunity for more student involvement in the community. He felt students could be recruited to create a paperless online billing system for parking tickets and traffic violations and to maintain the City's website, which he found did not contain updated information regarding the recently enacted parking meter changes.

Mr. Bennett recommended changing active parking meter hours at the library from 1:00 a.m. to 8:00 p.m. He challenged the City to find a library anywhere where parking meters continued to be enforced until 1:00 a.m.

Further, Mr. Bennett requested justice and reimbursement for the \$15 parking ticket he received.

Mr. Funk replied that the reason for the late hours on the meters was to prevent disorderly behavior by teenagers. He added that Mr. Bennett was sentenced by the court, and it was not appropriate for Council to get involved in such matters. Mr. Clifton noted that the University parking lots charged for parking, and he saw no reason why the City should not do the same. Mr. Bennett reported the University charged \$1.00 per hour ending at midnight. Mr. Pomeroy clarified that the parking meters were updated with the revised fee and time. Mr. Athey felt this might be a good topic for the Town & Gown to explore and thought the University would not permit access to mass mailings by the City. Mr. Temko added there had been a previous attempt to do so which was denied by the Public Relations Department. Mr. Temko said his website was updated twice a month and contained information on the change. He suggested the City look into revising the parking meter ending time from 1:00 a.m. to midnight.

7. Gary Hayman, represented the Newark NAACP. He said a request was sent for employment statistics of City workers in January and thanked the City for a prompt response. After reviewing the report, he noted that the ratio of African-American City employees was not representative of Newark's African-American community, particularly in administrative positions.

8. 3-B. UNIVERSITY

1. Administration

Regarding demolition of the Gilbert complex and future plans for the site, Mr. Armitage said he did not know of any concrete plans.

9. 3-B-2. STUDENT BODY REPRESENTATIVE

There were no comments forthcoming.

10. 3-C. COUNCIL MEMBERS

Messrs. Tuttle and Temko acknowledged Senator Sorenson and appreciated her continued support of the City. Mr. Temko asked for an update on Senate Bill 42.

Senator Sorenson reported the legislature had been out for two weeks. She believed Senator DeLuca was aware of the opposition to the bill. She indicated there was some talk of a compromise and was optimistic that something could be worked out.

11. Messrs. Tuttle and Markham advised they attended the cancer fund walk/race at the reservoir in honor of former Police Chief Bill Nefosky.

12. Mr. Markham reported positive testing at the Paper Mill site and hoped to see the final report soon. After that, work would begin with covering the site with grass.

13. Mr. Temko thanked City staff and other agencies and organizations that attended the speed management and Terry Manor workshops.

14. Mr. Temko recognized the Newark NAACP and thought they brought an important issue to light. He reported that he recently conducted a survey about a number of issues in Newark, and one issue that came back with mixed results was the City's performance on bridging diversity. According to Mr. Temko, a large segment of the community did not think the City responded strongly to acts of discrimination, and conversation was needed to move forward on that issue.

15. In response to a complaint from a member of the community, Mr. Temko suggested that Council consider changing the towing ordinance so that businesses would be permitted to have vehicles towed from their lots up to one hour prior to opening. Mr. Funk suggested this be referred to the Downtown Newark Partnership for a recommendation.

16. Mr. Temko referenced the City Solicitor's memo about releasing a memo he prepared for Council about the Freedom of Information Act. Mr. Akin said his memo was an attorney-client communication, and Council members need not disclose it or produce it publicly unless they chose to do so. Mr. Temko asked whether there would be any potential harm to Council if they chose to disclose the memo. Mr. Akin said clearly there would be no harm, but the memo was a statement of advice from an attorney to his clients and was otherwise privileged under common law and the rules of evidence in Delaware. Mr. Clifton said Council crossed this same bridge about 7-8 years ago. He remembered it being handled by putting the memo in question on the agenda for a vote by Council. The memo was sent under separate cover to Council members to determine whether to release the memo. He felt a procedure should be in place for similar circumstances.

Mr. Temko asked if Council members objected to putting Mr. Akin's memo on the agenda. Mr. Markham was concerned about setting a precedent where attorney-client privilege was concerned. Mr. Akin said that was a fair point, and once Council began disclosing legal advice, an argument could be made that by

releasing one memo discussing FOIA, the whole subject area was waived. Mr. Akin referenced past occasions where judges ruled that a breach of privilege on a general subject matter opened the door to other memos on the same subject matter. Mr. Akin stated that FOIA did not trump the attorney-client privilege, and a public body was permitted to consult with their attorney without being under the glare of the public eye.

Mr. Temko suggested that Mr. Akin could write a memo or give a brief presentation for public knowledge about FOIA as it related to Council communications. Mr. Akin said he would do so at Council's request.

17. Mr. Temko said he would send Council a link to vashoncalendar.org, a community calendar that he thought was a good model for non-City events for Newark.

18. Mr. Temko said concerns were brought to his attention about members of the public being asked to provide their name and address when speaking at Council meetings. He said the person who raised the issue was mainly concerned from a safety standpoint about the information being published on line. While he thought it was helpful to know a person's district and address, he suggested it could be optional on the request to speak forms. Mr. Athey thought Ms. Ciferni had a good idea by suggesting people provide their district. Mr. Funk thought Council had agreed if people did not want to publicly announce their address, they could give it to the City Secretary. Mr. Pomeroy thought Council had agreed that members of the public could provide only their name and the district they lived in. Ms. Fogg said she did remember Council agreeing to that and added she had not had anybody come up and request their address not be included in the minutes. She noted that it was Council's prerogative to decide if they wanted that information. Mr. Clifton thought he wanted to look at the reasons for and against and saw reasons in both directions. Mr. Clifton said he thought Council needed to know whether people were City residents. He said a good case in point was some of the on line comments in the *News Journal* which were veiled by anonymity. He did not want to see non-residents becoming a greater force than the people who lived in the City. Mr. Pomeroy felt people that would not provide their address would be the exception rather than the rule.

Mr. Akin read a letter from the ACLU dated April 23rd (see attached) on this subject which suggested that the policy was a deterrent for individuals who wished to speak at meetings but did not wish to share their private information for public consumption. It was suggested that the City consider including an option for individuals to provide the name of their town or provide their address privately but not for inclusion in the minutes. Mr. Akin was requested to respond to the ACLU regarding the City's policy and state that addresses would not be required.

19. Mr. Athey complimented the new format of the Municipal Newsletter.

20. Messrs. Athey and Pomeroy recognized the Police Department for the recent graffiti arrests.

21. Mr. Pomeroy planned to provide an update about the next BRAC visit day at an upcoming Council meeting.

22. Mr. Pomeroy reported that he and Mr. Funk attended opening day of Newark American Little League which was a great program in the City.

23. Mr. Pomeroy thanked City staff for cleaning up the graffiti at the Casho Mill Road underpass.

24. Mr. Pomeroy thanked Senator Sorenson for the update on Senate Bill 42 and for taking time to attend the meeting.

25. Mr. Pomeroy felt the turnout was disappointing at the speed management workshop but found the program to be very interesting.

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

27. **4-B. FINANCIAL STATEMENT**

Mr. McFarland reported the City was about \$500,000 under budget at the end of March. He felt there was enough information available to extrapolate the year-end balance and said the trends were not positive. The utility revenues, particularly water and sewer, were falling off budget. He said it was likely there would be a sewer rate increase mid-year based on higher costs for sewer treatment from New Castle County. The non-utility revenues were holding up fairly well, except transfer tax revenues which were significantly under budget. The indication was that transfer tax revenues would not pick up anytime soon. The expense side of the budget appeared to be holding up fairly well, and Mr. McFarland did not see any indication through the balance of anything that would cause a budget overrun for the full year. The cash balance decreased slightly during March. Given the other budgetary trends, he did not see any significant improvement in the City's cash position for the balance of the year. Mr. Funk felt it was surprising that building permit revenues held up.

Mr. Clifton asked Mr. McFarland to explain the terminology "allotment". Mr. McFarland said the language might be a poor choice of words, but the allotment for the financial statements would be one quarter of the annual budget as there was not a monthly budget for all the expenses, and they were divided by 12 and called an allotment.

Mr. Athey asked if New Castle County had given notice of a July 1st sewer rate increase and asked if the City should put residents on notice of the rate increase. Mr. McFarland said there was nothing official from the County at this time. Mr. Athey wanted to be sure that retroactivity would not be a problem since sewer rates were based on water meter readings. Mr. McFarland reported the billing system upgrade had a mechanism to avoid retroactivity in rate changes, and the sewer rates would be the first test of those procedures.

Mr. Athey noted there was a \$37,000 shortfall in the transfer station revenues as a result of the University's decision not to utilize the station. Mr. Armitage reported the University found having their trucks take some loads directly to the landfill was more economical. Mr. McFarland said he and Mr. Lapointe met with University staff about this situation, and those discussions were ongoing. However, in the interim the University was not using the transfer station. Mr. Armitage said one factor was that they were making more efforts to recycle.

Mr. Markham questioned the property tax delinquency rate. Mr. McFarland said it was running at the same historical rate, and he could get back with a report on the delinquencies.

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT THE FINANCIAL STATEMENT ENDING MARCH 31, 2009 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

28. **5. RECOMMENDATIONS ON CONTRACTS & BIDS:**
None

29. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING

- A. Bill 09-14 An Ordinance Amending Ch. 32, Zoning, By Amending the BLR and RM Zoning Districts Relating to Apartments

Ms. Fogg read Bill 09-14 by title only.

MOTION BY MR. ATHEY, SECONDED BY MR POMEROY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 09-14.

Mr. Lopata reported the BLR zone was in the City Code since the early 1970's, and the intent was to promote mixed uses primarily in the downtown area. Since its existence, it has been used mostly for small townhouse-apartment type developments at various locations around the City and has not been successful as a mixed-use concept which was promoted in certain locations. Mr. Lopata said the first section of amendments was intended to remove the freestanding residential component of that district from the Code. It was initially reviewed in February by the Planning Commission. A related part of that was the Commission also decided, after some discussion and public input, that in the future in so called mixed-use projects (commercial use on first floor with upper floor apartments) in the BLR zone, to require a minimum percentage of commercial use. The recommendation in Amendment 2 was 20% of the gross floor area in any individual BLR building. The third amendment came out of the original discussion at the February Planning Commission meeting. There was some give and take by the community and concerns were raised by several representative landowners who felt the BLR's flexibility in regard to problem or small properties otherwise not developable could not occur without a companion change in the RM (multi-family garden apartment) district which allowed apartments. The companion change eventually recommended by the Commission to Council allowed small apartment projects with the same density currently permitted, 16 units per acre, on one half acre minimum size lots rather than one acre.

Mr. Funk asked if there was something written about the number of units per acre being limited to 16. Mr. Lopata said that such a restriction was currently in the Code and had not changed in the RM district.

Mr. Athey said he was struggling with the BLR one-half acre. Mr. Lopata clarified that the Planning Department suggested the BLR recommendations and the RM section came about through the discussion at the Planning Commission meeting. At that meeting the issue was raised that the BLR had been successfully used on Elkton Road where relatively small pieces of land that might not have otherwise been developed were successfully developed. He referenced a parcel on Murray Road next to the Sunoco station where there were three small apartment buildings in the BLR zone. These have been successful and provided student housing and were a so-called "problem" property based on size. He said the RM acre minimum requirement meant that small apartment complexes would not be approvable in the City. Mr. Athey said by not reducing the RM zoning to one half acre, infill development could be inhibited.

Mr. Temko believed if this was passed, fully residential projects such as CampusSide would be non-conforming uses in BLR. Mr. Lopata said CampusSide was a project in a residential district, and BLR zoning was used there. He said the argument could be made that such a type of transitional zone belonged closer to downtown and was supposed to be mixed use. He added that the district was being used in a way clearly not intended.

Mr. Pomeroy discussed whether the 20% minimum under Amendment 2 was the appropriate number or should be higher given some of the goals the City was striving for. Mr. Lopata said there was currently no minimum requirement, and anything was an improvement. Mr. Pomeroy suggested perhaps 30%, where it would almost be guaranteed that projects would be true mixed use in that the first floor would largely have to be commercial and the other floors would

have to be residential. Mr. Lopata said an important point made by Mrs. White was that there were no minimum standards, so when going for some kind of mixed use, some type of minimum was needed. This discussion highlighted the problem with BLR. It had never been an issue because no one ever proposed a real mixed-use project and thus the City never had to deal with it. Mr. Lopata stated that with the Code changed in this way, a standard was needed that made sense. He said there were a number of mixed-use projects in the BB district where no residences were allowed on the first floor.

Mr. Lopata said an important point for Council to keep in mind was that purely residential projects would be in the zoning district within which they belonged.

Mr. Pomeroy said if a developer patched together several projects totaling one half acre in RM zoning, they would be able to put up an apartment almost on a by-right sort of case. Mr. Lopata agreed, but subdivision approval and rezoning would be required. However, there was almost no vacant RM land in the City. Mr. Pomeroy asked if there were pockets of RM zoned land in certain areas around the City. Mr. Lopata said the only area he could think of was on Elkton Road just past Gateway Village.

The Chair opened the discussion to the public.

Ethel Davis said she was born and raised in Newark (but was no longer a resident) and was a member of the Elks Lodge for over 40 years. She felt part of the African American community was slowly dwindling away and asked Council to consider keeping a one acre minimum in the RM district.

Mr. Lopata reported that an application was received for the property next to the Elks Lodge for a BLR rezoning and subdivision. The project would go before the Planning Commission in June, and the request was for townhouse apartments under the current zoning of BN (commercial). Mr. Temko clarified in order for that property to have apartments, it had to be rezoned to RM and would require Council approval. Mr. Lopata said if a new application was filed for the property, it would have to be rezoned RM and required a variance. However, he did not think it was one half acre and thus had lots of hurdles to overcome. Mr. Lopata also pointed out that if 20% of the adjoining property owners by linear feet objected to a rezoning, six out of seven members of Council needed to approve the project. Mr. Athey asked if Council voted to approve Bill 09-14 and the applicant withdrew his application then reapplied under the new rules, would they get double the density from the RM rezoning. Mr. Lopata replied they would not.

Dora Beckham, a member of the Elks Lodge, recommended leaving the minimum lot area at one acre because if apartments were built adjacent to the lodge, traffic and parking problems would become more difficult.

Gary Hayman, a member of Pride of Delaware Lodge 249 referenced the previous discussion about the public providing their address at Council meetings. Mr. Hayman said he was NAACP president for 18 years and received threats against his life during that time so he thought Council was on the right track by not requiring that information. In regard to Amendments 7 and 8, he could not see the rationale of going from one acre down to one half acre. He felt if the project next to the lodge was successful, the density would make life unbearable for members of the Elks Lodge due to traffic and other safety concerns.

Mr. Athey asked Mr. Lopata how many other properties in proximity to the lodge were zoned RM. Mr. Lopata said most of the property was zoned BN, and there was a small parcel of RM. Mr. Pomeroy asked what was the zoning for the majority of Cleveland Avenue, and Mr. Lopata replied that parts were RM and parts were RD. Mr. Pomeroy said if someone put together a half acre of RM zoned properties on Cleveland Avenue, Cleveland Avenue could suddenly start having apartment complexes popping up. Mr. Lopata said the density would be

lower because the density of the row houses on that stretch of Cleveland Avenue was much higher.

Mr. Clifton said this brought to mind something that happened in the area he and Mr. Athey used to share where there were two side by side properties where the owner wanted to expand the house. Mr. Clifton asked if the City could take the property line out administratively or would Council make that decision. Mr. Lopata said assembling properties would require a minor subdivision which would come before Council. Mr. Lopata said ultimately this had the potential to impact some of the areas in the City zoned (and currently developed) RM, and that was a policy decision Council had to weigh. Mr. Lopata did not feel this change would suddenly result in the destruction of wholesale communities. He said this issue came up about ten or fifteen years ago and the Planning Department proposed a quarter acre as a minimum lot size to try to help save older communities by making sure the value of the properties was retained. Mr. Lopata again reminded Council the most important part of the ordinance was the BLR.

Mr. Athey said what if this was done the opposite way. Mr. Lopata said it was done the opposite way in BLR. The City used to allow six units with 3,000 square feet as the minimum lot area and then increased it to one half acre as one of the ways to combat the problem of BLR being misused. He said that was done just a few years ago.

Mr. Clifton clarified that moving a property line was an administrative function. Mr. Lopata said it depended on the circumstances. In the instance Mr. Clifton referred to, Mr. Lopata said the property line was moved, not eliminated. Mr. Clifton was concerned about someone buying multiple units next to each other and then letting them go into disrepair and saying they were in such poor condition it was no longer economical to fix them up, and he saw a half acre making that far easier to accomplish.

Amy Roe, a Newark resident, said before any vote was made, she wanted to see what properties were involved. She commented that some of the zoning categories were not on the Comprehensive Plan. She assumed the RM zoning district was in the Comprehensive Plan as R(SFM) but asked to have that clarified and said the BLR's were not on her planning map. Mr. Temko explained the Comp Plan had land use designations that were a lot broader, and zoning was a separate land use development code. Thus, zoning districts were not in the City's Comp Plan. Ms. Roe said that clarified her initial question, and she wanted to see those on a map since her map did not reflect that information. Mr. Temko said the large map on the wall in the Planning Department showed all of the zoning classifications. Ms. Roe recommended that Council get that information before making a decision on this issue.

Joanne Dodson, born and raised in Newark, said Cleveland Avenue and New London Road were already overcrowded and should not be rezoned less than one acre.

Jean White, 103 Radcliffe Drive, reminded Council that many times when a BLR project came before them, she argued that the project was not appropriate for BLR. Mrs. White presented a chart regarding BLR zoning and felt the non-residential portion should be at least 25% to 30%.

In regard to the RM, Mrs. White was totally opposed to changing this from one acre to one half acre. She said with garden apartments, certain setbacks were needed on all sides as well as a minimum amount of open space.

The other reason Mrs. White did not support this change was that every case she thought of where BLR came in was a rezoning. She said Council had the power to approve, or more likely negotiate, for something, either the project's appearance, the number of units, or other aspects. She said in the case of the

RM, there were a number of places in town that were not necessarily empty lots. For example, looking at both sides of Cleveland Avenue starting at Chapel Street, most of that was RM. On South Chapel there were a number of areas that were RM. On New London Road from the Deer Park, the houses all along there on the left side, and partly on the right side, were zoned RM. Mrs. White said she has heard developers talk about trying to acquire enough properties to get the minimum amount necessary to do with what they wanted. She felt that meant tearing down houses and then putting up an apartment house. She reminded Council that other things could be done in RM besides apartment houses – single family homes, duplexes, etc. She felt going to a half acre would make it much easier for developers to acquire properties to tear down and rebuild as apartments. She also felt that piecemeal acquisition of properties should not be encouraged for the purpose of tearing them down and putting up apartment houses. Mrs. White opposed changing the RM from one acre to one half acre.

Nathaniel Johnson said he heard a lot of conversation concerning the RM and BLR. He had served on the Traffic Committee and thought the main concern was the change in density and increased traffic by requiring only one half acre instead of an acre.

Catherine Ciferni, District 6, said when the Comprehensive Plan was reviewed, comments were made about trying to increase owner occupancy in the downtown and coming up with strategies to accomplish that goal. She said that clearly was not an objective in this ordinance. By approving this building agenda, she said the City was losing a quaint place to live and potential owner occupancy in the downtown because the ordinance was largely geared for students. She felt in addition to increasing density, it was destructive to the sense of community. Mr. Markham asked if Ms. Ciferni was referring to RM, BLR, or both, and she replied both.

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

AMENDMENT BY MR. CLIFTON, SECONDED BY MR. MARKHAM TO STRIKE AMENDMENTS 7 AND 8 FROM BILL 09-14.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Regarding Amendment 2, Mr. Pomeroy asked for Council's opinions about the 20 percent minimum of the gross floor area of each building. Messrs. Funk and Pomeroy thought it should be 30 percent.

AMENDMENT BY MR. POMEROY, SECONDED BY MR. CLIFTON: CHANGE AMENDMENT 2 TO READ "APARTMENTS ARE PERMITTED IN CONJUNCTION WITH ANY NONRESIDENTIAL USES PERMITTED IN THIS DISTRICT. NONRESIDENTIAL USES ARE PERMITTED ON GROUND FLOOR AND SECOND FLOOR ONLY IN SUCH MIXED USE BUILDING AND PERMITTED NONRESIDENTIAL USES SHALL OCCUPY A MINIMUM OF 30 PERCENT OF THE GROSS FLOOR AREA OF EACH BUILDING ."

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Athey said he was not willing to abandon Amendments 7 and 8. He felt there was concern about a large density increase and wanted to see more data about the number of RM properties involved.

Mr. Athey said he and Mr. Lopata spent at least a year compiling a draft of a compatible use ordinance to guide situations identical to this. He was most concerned with the density aspect. Mr. Lopata said his sense was that there was not much interest in changing the lot size of the RM zoning. He said if there was not any interest in reducing it, this was almost a pointless exercise. Mr. Pomeroy said before sending this back to staff, he thought the density issue was an important one, but the tandem issue was the idea of looking ten years down the road at Cleveland Avenue and would the City want it to be apartment block after apartment block. If staff further explored this issue, he felt that was just as important as the future density issue, and he would like to look at the two together.

Mr. Markham thought maintaining the character of the area was important and said he was not looking for more apartments.

Question on the Motion as Amended was called.

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

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

(ORDINANCE NO. 09-15)

30. 6-B. BILL 09-16 – AN ORDINANCE AMENDING CH. 20, MOTOR VEHICLES & TRAFFIC, BY AMENDING SCHEDULE VI SO AS TO PERMIT PARKING IN TURNAROUNDS ON RENEE COURT

Ms. Fogg read Bill 09-16 by title only.

MOTION BY MR. TEMKO, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 09-16.

Mr. Temko stated Renee Court was in North Gate Commons on New London Road. Residents have parked in the turnarounds for the last 20 years until signs were posted prohibiting parking. Following a discussion by Council, the subject was referred to the Traffic Committee who received a petition from every household in Renee Court to reinstate the parking. The Traffic Committee recommended that Council adopt the ordinance.

The Chair opened the discussion to the public

Ed Smith, 1 Renee Court, lived in North Gate Commons since 1987 and said parking had been available at that location until no parking signs appeared after fall leaf pick up. He felt the fact that a car was parked at the end of the street at that time instigated the change in parking regulations.

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

(ORDINANCE NO. 09-16)

31. 6-C. BILL 09-17 – AN ORDINANCE AMENDING CH. 22, POLICE OFFENSES, BY WAIVING THE ALARM REGISTRATION FEE FOR ANY RESIDENTIAL USER OVER THE AGE OF 65

Ms. Fogg read Bill 09-17 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. POMEROY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 09-17.

Mr. Tuttle said the senior citizen exemption from the alarm permit fee was eliminated without any discussion at the table when the ordinance was re-written last year. He said it was pointed out by the City Manager that age was not necessarily an indicator of ability to pay. Mr. Tuttle reported there were 700 permits for citizens over 65, some with multiple alarms, and the fiscal impact was estimated to be between \$7,000 and \$11,000.

Mr. Temko said while there might not be a difference in ability to pay based on age, a number of senior citizens had security concerns, and an alarm system provided them peace of mind.

Mr. Clifton did not see this as a reduction in revenue because it was a revenue the City did not previously have. He thought there was a lesson to be learned that Council needed to be apprised about changes before them on any given action. He did not see this as discrimination based on age as government bodies often provided property tax discounts to senior citizens. He felt the City should encourage people to have alarm systems in their homes which were an aid to the Police Department.

Mr. Pomeroy agreed this was not anticipated revenue and the exemption had been policy for quite some time. He did not view it as a discrimination issue since seniors tended to be on fixed incomes more than non-seniors and felt it related to a feeling of security.

Mr. Athey appreciated Mr. Sonnenberg's memo and had a problem with the broader issue. He said seniors were already receiving a property tax exemption and could see this exemption as continuing down the slippery slope in regard to the budget.

Mr. Markham asked Mr. McFarland if this money was already budgeted, and Mr. McFarland said it was. Mr. Sonnenberg noted that it had become evident in budget discussions during the past several months that the City could not continue to operate the way it had operated in the past. He said the City had major financial obligations and major shortfalls, so regardless of whether these fees were in the budget, doing away with them equated to lost revenue. He added that such a decision would put a greater burden on other revenue sources to fund this and future budgets.

Mr. Clifton said the core of his concern was that it was obvious the alarm fees of \$7,000 were included in the budget without Council being fully aware of the policy change. He was concerned about the fact that 700 residents were billed for something they had never been charged for in the past.

Mr. Pomeroy thought the action being taken was a signal of many such discussions Council would take through the calendar year in making budget choices. He felt this was an oversight and he would vote to keep the exemption in the budget.

Mr. Funk said Council was not aware of the policy change and should have had the opportunity to discuss the issue when the ordinance was revised.

The Chair opened the discussion to the public.

An unidentified individual had an issue with charging seniors for alarm registration. He said alarms were for safety and Council should applaud people for putting alarms in their house. Mr. Funk said the average person with an alarm paid about \$300 a year to maintain it, and the City charged only \$10 for registration. He noted that 95% of the calls were false alarms which cost the City money.

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

Mr. Markham said he thought Council would have to revisit this at some point in time but should possibly consider some kind of discount for seniors.

Question on the Motion was called.

MOTION PASSED. VOTE: 6 to 1.

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

Nay – Athey.

(ORDINANCE NO. 09-17)

32. 6-D. BILL 09-18 – AN ORDINANCE AMENDING CH. 22, POLICE OFFENSES, BY AMENDING THE PENALTIES FOR THE ACT OF GRAFFITI, AND SPECIFYING PENALTIES FOR THE ACT OF POSSESSION OF GRAFFITI INSTRUMENTS

Ms. Fogg read Bill 09-18 by title only.

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 09-18.

Mr. Temko suggested removing the word “adult” from Amendment 1 (2) – Possession. He understood fining minors if they possessed a graffiti implement such as an aerosol paint container. However, in reading the definition of graffiti implement he felt it was a bit overreaching. He also recommended replacing “any graffiti implement” on the eighth line with “aerosol paint container”.

Mr. Clifton thought the key was in the phrase “evidencing an intent to use...” Mr. Temko pointed out that penalizing for possession with intent to use related only to adults, and Mr. Akin thought the origin of this was that minors were not prosecuted in the Alderman’s Court for acts of delinquency. He agreed that removing the word “adult” from the first line of Amendment 1 would allow police to arrest and charge anyone found with implements if they could connect the possession of those implements with a recent act of graffiti.

Mr. Markham said there were long discussions when this ordinance was originally considered, and he suggested reading through that discussion to see how the wording was decided on. Mr. Temko said he was involved in that discussion, and part of the reasoning was that the police would show discretion in terms of what they enforced and would not arrest someone for carrying around a marker. Mr. Funk felt the ordinance was broad enough that it would be easier for the police to prosecute.

Mr. Markham asked how the ordinance compared to the state law. Mr. Tuttle said the position of intent language came from the state law and what was different about the state law was that it segregated offenses into felonies or misdemeanors based on the amount of damage done and got into other areas beyond the Alderman Court’s jurisdiction.

Mr. Pomeroy said in his mind this was the second time Council had too long a conversation about this topic. He suggested having Amendment 1 (2) – Possession read, “It shall be unlawful for any person to be in possession of any graffiti implement under circumstances evidencing an intent to use the same in order to commit an act of graffiti or damage such property” and eliminating the remainder of the paragraph.

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

AMENDMENT BY MR. POMEROY, SECONDED BY MR. TEMKO: TO AMEND AMENDMENT 1 (2) POSSESSION, BY DELETING THE WORD “ADULT” IN THE FIRST SENTENCE AND DELETING THE REMAINDER OF THE PARAGRAPH TO READ AS DETAILED ABOVE.

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 AS AMENDED PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(ORDINANCE NO. 09-18)

33. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS

None

34. 8. ORDINANCES FOR FIRST READING

None

35. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA

A. Council Members:

1. Resolution 09-__: Support of the Victims of Crime Program

Mr. Clifton read the resolution in its entirety. Mr. Pomeroy credited Mr. Athey with bringing this important subject to the attention of Council.

MOTION BY MR. ATHEY, SECONDED BY MR. POMEROY: TO APPROVE THE RESOLUTION AS PRESENTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(RESOLUTION NO. 09-I)

36. 9-B. COMMITTEES, BOARDS & COMMISSIONS

None

37. 9-C. OTHERS

1. Request from James Bauerle to Amend Deed Restrictions on the Stone Balloon Wine House Located at 115-117 E. Main Street re Hours That Alcohol May be Served

Mark Sisk, Esquire, 299 E. Main Street, represented James Bauerle, a principal in Washington House Partners. He said a little less than a year ago Mr.

Bauerle agreed to a series of deed restrictions in connection with operating the Stone Balloon Wine House. Mr. Sisk noted the way in which the business has evolved caused Mr. Bauerle to want to revisit the hours during which alcohol was served. He requested extending the hours of operation to permit alcohol to be served up to midnight every night which would help the business to be more effective and enjoyable for its patrons. Mr. Sisk reported that 30 of the 54 condo units were sold in a very difficult economy, and he had a petition signed by 12 residents who endorsed the change.

Jim Bauerle said he was very proud of the quality of the project which had evolved into an asset for Main Street. He felt they were losing a lot of tables with people who wanted to come in late to have a leisurely dinner. He said the ability to stay open until midnight would insure the long-term success of the business.

Mr. Funk said everything about the restaurant was special and felt they had taken the restaurant scene in the City to another level. Mr. Bauerle added that the facility was voted Best Wine List in Delaware by *Delaware Today*.

Mr. Clifton was somewhat concerned about the noise level becoming an issue in the units directly above the restaurant. Mr. Bauerle stated that the units were very sound proof, and amplified live music was prohibited in the restaurant. He said this was a partnership between the Washington House, the City and the community. He reiterated the proposed change would help to further insure the success of the business as a viable commercial entity, and said he went to great lengths to make sure it was a beacon for the rest of the business community on Main Street.

Mr. Clifton felt there was a perception among some members of the public that once a business was approved, Council had a tendency to approve requests for changes in deed restrictions.

Mr. Pomeroy thought there should be some consideration given based on the quality of the project and felt extending the closing hours would not change that dynamic. In regard to potential complaints about noise by residents in the units above the restaurant, Mr. Pomeroy felt the City should not be involved in micromanaging the business.

Mr. Markham said there have been several cases when people have come back to Council to revisit certain restrictions, and he felt if they were good business partners, they should be given a chance. Therefore, he did not see any issue with adjusting the hours. In regard to the Sunday 5:00 p.m. closing, Mr. Bauerle said in going back to the minutes, there was a misconception that the Sunday closing time was a state ABCC regulation which actually was not the case. Mr. Markham asked if there was a limit from the ABCC on Sunday. Mr. Bauerle's understanding was as a taproom, the Sunday hours were unlimited but the off-premise sales had to end at 8:00 p.m. Mr. Markham preferred to see a 10:00 p.m. closing on Sunday rather than midnight. Mr. Bauerle said that would mean his business would be treated differently than anybody else on Main Street.

Mr. Athey said he would like to see some kind of consistency with closing times. Mr. Funk thought restaurants should be open until 12:00 and bars until 1:00. Mr. Pomeroy agreed there should be consistency but felt that got back to the City micromanaging hours of operation for a business. Mr. Athey asked whether the deed restrictions followed the location or the business, and Mr. Akin confirmed they applied to the location.

The Chair opened the discussion to the public.

Catherine Ciferni, District 6, was concerned that the business wanted to lift a deed restriction on a property after being open for only three months with no proven track record. She said Blackstone's request came after a year in

business and Caffé Gelato's request came after nine years, so they were established businesses which were already economically viable. Mr. Bauerle said he had been in the community for 15 years, and the Stone Balloon was a good business partner.

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

MOTION BY MR. TUTTLE, SECONDED BY MR. POMEROY: TO AMEND THE DEED RESTRICTION TO ALLOW THE HOURS OF OPERATION TO BE MONDAY-SUNDAY TO 12 A.M.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

38. **10. SPECIAL DEPARTMENTAL REPORTS**
A. Special Reports from Manager & Staff: None

39. **10-B. ALDERMAN'S REPORT**

MOTION BY MR ATHEY, SECONDED BY MR. CLIFTON: THAT THE ALDERMAN'S REPORT DATED APRIL 21, 2009 BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

40. **10-C. REQUEST FOR EXECUTIVE SESSION RE LABOR NEGOTIATIONS AND POTENTIAL LITIGATION**

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT COUNCIL ENTER INTO EXECUTIVE SESSION WITHOUT THE PRESS TO DISCUSS LABOR NEGOTIATIONS AND POTENTIAL LITIGATION.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

Council entered into Executive Session at 10:27 p.m. and returned to the table at 11:15 p.m. Mr. Funk said no further action was required.

41. **Meeting adjourned at 11:17 p.m.**

Patricia M. Fogg, CMC
City Secretary

/av
Attachment