

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

May 26, 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
9:20 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. POMEROY: THAT THE AGENDA BE AMENDED BY ADDING ITEM 9-A-3, CENTER/NEW/LINDEN STREET STUDY.

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 May 11, 2009

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

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

Karen Middlekauff, outgoing Vice President of Political and Educational programming for Haven at the University of Delaware, noted members of the group were in attendance to support Mr. Temko's propositions to implement domestic partner benefits, a life partner registry and an inclusive, non discrimination policy for the GLBT community. Ms. Middlekauff reported that she spent a great deal of time working for the inclusion of this policy at both the local and state levels and said it was important that the City and the State of Delaware become a GLBT friendly community, especially in its written policies. She thought the proposal for domestic partner benefits was thorough and mirrored other policies across the country. As far as costs to the City, she recognized this was an extra expense but said it would be balanced out by new, productive citizens. Ms. Middlekauff urged Newark to join the growing trend of other cities

and states including New Castle County and City of Wilmington to protect its GLBT citizens.

5. Steve Dentel, 69 Kells Avenue, reported that he was the faculty advisor for Engineers Without Borders at the University of Delaware. The group worked with a community in Cameroon, Africa whose mayor asked if Newark would be interested in becoming a sister or friendship city with them. Mr. Dentel requested discussion of the subject at a future meeting and said he would provide information about the community for Council's consideration. Mr. Funk recalled meeting with the Mayor on a former visit to Newark.

6. **3-B. UNIVERSITY**

1. Administration

There were no comments forthcoming

7. **3-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

8. **3-C. COUNCIL MEMBERS**

Mr. Tuttle encouraged residents to sign up for the City's safety alert program which he felt provided very timely information on a variety of important topics including street closings.

9. Messrs. Markham, Athey, Clifton and Pomeroy said they enjoyed the Memorial Day ceremony and parade. Mr. Clifton noted next year's parade will be the 75th and was the second oldest in the state after Wilmington.

10. Messrs. Markham and Athey were pleased with the DNP visioning session and recognized the efforts of the Planning Department and the Design Committee.

11. Mr. Markham reported that he continued to receive towing complaints and recommended the private lots issue permits such as a hang tag to help improve their visibility to towing companies.

12. Mr. Markham commented there was a backlog of about one year in getting energy savings projects such as solar/geothermal systems through the green energy funding process.

13. Mr. Temko discussed towing at Newark Shopping Center where he heard from customers patronizing businesses there whose vehicles were towed. Mr. Funk had been communicating with the property owners to explain the negative impact the towing had on businesses at the shopping center.

14. Mr. Temko discussed an e-mail he sent to Mr. Akin dated May 23rd regarding the equal rights proposals and his concerns about process. He believed what Council requested (and received from Mr. Akin) was a revised version of Mr. Akin's confidential memo to Council of May 4th that would be made available to the public for the public hearing on June 8th.

Mr. Akin advised that he preferred any written communication he sent to Council containing legal advice should remain confidential communication between attorney and client. However, he said Council as the client had the authority to waive that privilege. Mr. Akin reported that in his memo of May 18th he removed several items that he felt should remain confidential. Further, Mr. Akin stated he was not sure that he could best address the broader aspects of Mr. Temko's issues and perhaps a full report on the subject could be better produced by individuals who were sensitive to and working in this area rather

than the narrow approach he would take in simply addressing some of the logistical and other issues presented.

Mr. Athey asked if Mr. Akin was arguing more on principle that it was not appropriate for any of his correspondence to Council to receive wider distribution, not just this one memo. Mr. Akin responded by saying yes and that typically in American courts and elsewhere, communications between an attorney and client, were privileged communications, although he recognized he wore the hat of a public official in Newark.

Mr. Athey said his recollection was the same as Mr. Temko's that Mr. Akin was specifically requested to prepare a revised version of his confidential memo of May 4th for public distribution. Thus, Mr. Athey felt on a one-time basis it had been decided that Mr. Akin's memo could be released.

Mr. Markham agreed with Mr. Athey that he thought the concern had always been precedent about what was being released, but believed it was Council's request to have Mr. Akin's memo available for public release.

Mr. Temko clarified that he was not disappointed that staff had not prepared ordinances, but rather was disappointed that Mr. Akin's report did not contain more examples of decisions that needed to be made in order to move forward. Mr. Temko said he appreciated Mr. Akin's responses which he found very helpful.

15. Mr. Temko said he was pleased the City's fuel resource mix was available on the website. However, he was disappointed with the use of 54.6% coal and 34.8% nuclear energy and looked forward to seeing a report from Mr. McFarland about how much funding was needed for the City to get in line with or better than the state's renewable portfolio standards.

16. Mr. Athey appreciated Mr. Lopata's follow-up on the plethora of "For Rent" signs on East Park Place to insure landlords were aware of the various POOH programs in the City.

17. Mr. Athey noted that the Building Department instituted an improved rental inspection policy.

18. Mr. Clifton reported that he would not be in attendance at the June 22nd or July 13th Council meetings.

19. Mr. Clifton questioned the percentage of renewable energy sources purchased by the City for the period ending 2008. Mr. McFarland said it was 3%, and Mr. Temko added that about 1.5% of that was pure renewables.

20. Mr. Clifton said he was honored to represent the City at the Taiwanese Cultural Troupe performance at Mitchell Hall. It was pointed out that attendance in Newark was better than in Washington, D. C., and the troupe very much appreciated the turnout at the event.

21. In response to a constituent complaint, Mr. Pomeroy requested Mr. Sonnenberg to look into the City's after-hours phone messaging and department e-mail listings on the website.

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

23. **4-B. FINANCIAL STATEMENT/PENSION REPORT**

Mr. McFarland reported that financial results were \$1.1 million below budget for the first four months of 2009. Electric utility revenues were relatively on budget although usage was off. Water revenues were down significantly due to delays and changes in the budgeted rate increases and lower volumes. Mr.

McFarland anticipated that the shortfall in the water utility fund would persist for the balance of the year. The sewer fund showed a \$441,000 deficit due primarily to timing differences in the billing of large sewer accounts but was expected to come close to the budget by year end. For non-utility revenues, the largest negative item was a major shortfall in transfer tax revenues of \$364,000 below budget which would result in almost a million dollar shortfall from expected revenues for the year. Property tax revenues were up due to updated appraised values from the County offsetting some of the transfer tax. Operating expenses were \$146,000 under budget and the expectation was that the full year would be close to the operating expense budget. The cash balance continued to decline at \$13.2 million, a \$500,000 decrease from the prior month and down over \$1 million since the beginning of the year. Mr. McFarland felt the City was seeing the impact of the overall economic slowdown, and it would be difficult to predict when this might bounce back.

Mr. Funk said in terms of transfer taxes, the majority of settlements were first time homebuyers taking advantage of the \$8,000 stimulus package. He added that the vast majority of first-time homebuyers do not want to buy in the City because Newark is the only place they have to pay transfer taxes. He said based on the first four months unless there was a large commercial transaction, he did not see the City getting more than \$800,000 for the year.

Mr. Pomeroy asked if the County sewer rate increase proposed for Newark was the same as the rate increase being proposed for the unincorporated areas. Mr. McFarland said his understanding was that it was an across-the-board increase, and Mr. Funk was told the same information.

Regarding the water revenues, Mr. Markham asked for the breakdown of decreased usage vs. the rate delay. Mr. McFarland said it was about \$350,000 due to the rate change.

MOTION BY MR. CLIFTON, SECONDED BY MR. TEMKO: THAT THE PENSION PLAN PERFORMANCE REPORT FIRST QUARTER 2009 AND THE FINANCIAL STATEMENT ENDING APRIL 30, 2009 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

24. 5. RECOMMENDATIONS ON CONTRACTS & BIDS:

A. Contract 09-03 – Street Improvement Program

Ms. Houck summarized her memo to Council dated May 14, 2009 wherein she reported the contract provided for various improvements to 14 City-maintained streets. Six sealed bids were received. The lowest bidder, Mumford & Miller, performed two contracts for the City, and the Public Works Department was satisfied with their work. Funds were available from the Community Transportation Fund and from Capital Projects totaling \$1,056,400. It was recommended that the contract be awarded to Mumford & Miller for its bid totaling \$850,144.

Mr. Clifton related comments from Rohm & Haas regarding pedestrian safety and sidewalk installation on Bellevue Road. Mr. Pomeroy added that Rohm & Haas expressed interest in working together with the City to find a way to participate in the project. Ms. Houck was requested to contact Rohm & Haas and report back to Council.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT CONTRACT NO. 09-03, STREET IMPROVEMENT PROGRAM, BE AWARDED TO MUMFORD & MILLER CONCRETE INC. FOR A TOTAL OF \$850,144.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

25. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING

A. Bill 09-15 An Ordinance Amending Ch. 20, Motor Vehicles and Traffic, By Creating a New Article XXIX, Idling of Motor Vehicles

Ms. Fogg read Bill 09-15 by title only.

MOTION BY MR. ATHEY, SECONDED BY MR CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 09-15.

Mr. Clifton had concerns with the section that allowed cars to idle at temperatures below 23 Celsius and above 80 degrees contingent on health issues. Mr. Clifton thought there was merit to include people with young children and suggested an amendment to include these provisions.

AMENDMENT BY MR. CLIFTON, SECONDED BY MR. POMEROY: TO ADD THE FOLLOWING WORDING TO SECTION 20-267 (I) "A VEHICLE PROVIDING AIR CONDITIONED COOL AIR FOR THE COMFORT OF THOSE PERSONS OVER THE AGE OF 65 YEARS OR CHILDREN UNDER THE AGE OF SIX MAY IDLE UP TO 15 MINUTES IF THE AIR TEMPERATURE IS 90° OR ABOVE."

Steve Dentel, represented the Conservation Advisory Commission who proposed the ordinance. He claimed the ordinance was good for the environment in terms of cutting air pollution and greenhouse gases, saving energy and other natural resources, cutting down on noise, saving money and saving engine wear. He said a number of large municipalities have been adopting similar ordinances and explained the rules were largely taken from state code that previously applied only to heavy-duty vehicles. He noted that the Conservation Advisory Commission was interested in helping to publicize the ordinance to help cut down on wasteful idling. Mr. Dentel recommended that the ordinance limit vehicles idling to 15 minutes in a one-hour time period. He felt the intent of the ordinance was important and doubted the Police Department would go on an enforcement rampage.

Mr. Clifton congratulated Mr. Dentel for great research on the ordinance.

The Chair opened the discussion to the public.

Amy Roe, a Newark resident, expressed her support of the ordinance without the proposed amendment. She said one of the reasons anti-idling was so important was because emissions from vehicles on very hot days turned into surface-level ozone which was an asthma trigger. By permitting idling on hot days, she felt the whole purpose of the ordinance was defeated. She pointed out Delaware had many ozone action days and code red alerts for air pollution, and the leading cause for that was vehicle emissions.

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

Mr. Clifton explained that a car up to operating temperature would provide some reasonable warm air through a heater for quite some time. However, air conditioning worked on a different principle, and on a warm day without flow

going through and the system being pressurized, there would be only a couple minutes of really cool air and ambient temperature from that point on.

Mr. Tuttle thought 90° was a more reasonable cut-off than 80°. He said if exceptions were permitted to allow air conditioning when you could roll down a window because there were children in the car, then what about an exception for pets. He thought the heating exception made sense, but there were other alternatives to get ventilation in a vehicle in hot weather. Mr. Tuttle said perhaps it was a generational issue, but he survived as a young child when there was no air conditioning in cars. He did not feel the amendment was justified.

Mr. Pomeroy disagreed and felt with young children if the temperature was between 85-90° and a car has been sitting outside, interior car temperatures could be a lot higher. He did not want to criminalize people's behavior for doing the best for their children.

Question on the Amendment was called.

AMENDMENT PASSED. VOTE: 5 to 2.

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

AMENDMENT BY MR. CLIFTON, SECONDED BY MR. TEMKO: THAT THE TIME FRAME BE NOT MORE THAN 15 MINUTES WITHIN A 60-MINUTE PERIOD.

AMENDMENT PASSED. VOTE: 6 to 1.

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

Mr. Tuttle thought it was commendable to try to modify behavior and encourage drivers not to idle their vehicles, but emphasized that this was an unenforceable situation. He felt the anti-idling ordinance was a “feel good” ordinance for the City that would not be enforced. Mr. Markham said the best to be hoped for out of this was voluntary compliance. Mr. Athey did not think anyone was under false misconceptions. Mr. Clifton saw this as another tool in the toolbox that could be used in several avenues of law enforcement.

Mr. Temko thanked the Conservation Advisory Commission for their effort on this proposal.

Question on the Motion as Amended was called.

MOTION AS AMENDED PASSED. VOTE: 6 to 1.

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

(ORDINANCE NO. 09-19)

26. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS

- A. Request of 104 East Main Street, LLC, for the Major Subdivision of 108 East Main Street In Order to Renovate the Existing Building and Front Façade, to Add a Second Floor Devoted to Commercial Space, and to Add a Third Floor with Ten Apartment Units.

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

Jeff Lang, 13 Springwater Way, said the development plan would add two floors to the building – the first and second floor for commercial use, and third floor for residential use. According to Mr. Lang, a height variance was approved by the Board of Adjustment. He noted the Planning Commission was concerned with the entrance-only access off Center Street and the elimination of a very large oak tree on the site which they were able to save with re-engineering. Due to the size of the front structure, the Planning Commission recommended stepping the building back to make it more uniform with the adjacent buildings. It was ultimately decided to set the front façade of the building back eight feet. A concern voiced by Mr. Lang at the Planning Commission was that by pushing the front façade back, this could be detrimental to retailers who preferred storefronts with access to pedestrians. The other recommendation by the Planning Commission was to maintain the tenancy of Mid-Atlantic Ballet, and Mr. Lang said they were committed to this tenant who was very important to the downtown area.

Mr. Markham asked if Mr. Lang had a letter of intent from Mid-Atlantic Ballet as this was a selling point of the building. Mr. Lang said their director recently resigned, but both groups were very committed to moving forward. He spoke with the treasurer at length who sent an e-mail to assure Council they were comfortable with the relationship. Mr. Lang said the tenancy of the ballet was a selling point for his bank. (Secretary's Note: A copy of the e-mail was given to Council.)

Regarding the Center Street entrance, Mr. Markham asked whether that was critical to the building. Mr. Lang said it was discussed through the Planning Department, and said he did not need Center Street access, but it would be good for the building to have the visibility and pedestrian access to the back corner because that was where Mid-Atlantic Ballet came into the building.

Mr. Temko discussed the building setback, and Mr. Lang said it was determined based on the engineer's determination of structural stability of the building. Mr. Lang said they also reached a compromise as a 12-foot area would be a significant rentable portion of the building. With an 8-foot setback they were giving up 800-900 square feet, which he felt was a logical compromise. Mr. Charma added that Planning Commissioner Begleiter's primary concern was the line of sight down Main Street when approached from Center Street.

Mr. Clifton questioned and it was confirmed that the balcony was planned for the commercial side and not the residential side. Mr. Lang said the balcony was an opportunity to create space that was not typical for an office client and would provide a feeling of the vibrancy of Main Street.

Mr. Pomeroy echoed his support for Mid-Atlantic Ballet and said in looking to the diversity of offerings that the City wanted to have on Main Street, there was something about the dedication to culture and arts on Main Street that was important.

He thought there was something about the design of the building from the front that was lacking in aesthetic character. Mr. Lang agreed there was some flatness to the building and felt it needed relief although he said it would not be as plain as it appeared in the renderings. He said he planned to use full brick for the front, back, and as much of the side façade as possible as full brick pricing was very comparable to thin brick pricing at this time.

The Chair opened the discussion to the public.

Sheila Anderson, 206 Sypherd Drive, felt there were several parts to be discussed in regard to the project. She said Council passed a student home rental ordinance that protected the residential area around Center Street from more student apartments. At that time, Council indicated they wanted to keep the area as a residential community. It seemed to her that the earlier purpose

would be defeated by allowing the thoroughfare across Center Street to connect the parking areas. Her other concern was protecting the large tree on the site, and she hoped the City would be more diligent about protecting it than they had been on past projects. Regarding the building itself, she was disturbed about the large size compared to the historical buildings next to it. She was also concerned about the building's appearance because the space it would occupy was in the heart of the City and should reflect its placement accordingly. Ms. Anderson thought it would detract from the area and suggested an improved brick design. She also felt the balcony was inappropriate and would eliminate the canopy. She further recommended a more interesting window style as well as creative ways to set them in brick and provided examples for Council to consider. Ms. Anderson felt the entrance should be more inviting and suggested a rounded archway with brick. Further, she added that living greenery would be a good addition to the project.

Niles Norton, 27 Center Street, raised questions regarding the deed restriction for the number of residents per unit, refuse bins whose location would be screened and dictated by Public Works (Mr. Norton preferred they not be behind the homes of residents), and the transformer's location (Mr. Lang said it has not been located yet but thought it would be in the area between 108 and 102 E. Main Street). Mr. Norton expressed concern that with the Bank of Newark project, the City tore down two trees and installed power lines between his properties at 21 and 27 Center Street. Regarding the access to the building, he asked if there were other areas in the City where a home was torn down between two other buildings to create a parking lot and if so, wanted to know where that was done. Mr. Norton believed this plan would cause a great deal of traffic problems, and the loss of the Center Street house would have a negative impact on Center Street.

Catherine Ciferni, District 6, thought the building was out of proportion with the other buildings in the historic area. She asked what the depth of the porch would be and how that would look in comparison to the historic buildings in this area. She said there was a lot of flatness to the building, and it should be made more visually interesting and more in keeping with the surrounding historic buildings. She preferred to see a different awning and said it was incongruent compared to what was there. Ms. Ciferni suggested some attractive sconces on the exterior of the building to help break it up. She was not pleased with the profile of the building and was not a fan of the brick and modulating stucco. Ms. Ciferni noted that in some of the recent brick construction such as the porch next door, something unsightly was leaching out of the brick or the mortar. Ms. Ciferni asked if the height was going to be varied, and Mr. Hoffman of DCI said there would be some variation in the cornices.

Frances Hart, Main Street, said people came to a smaller town for the ambiance, not for the big buildings. She felt this project was too big in the historic district and said developers wanted to maximize their investment without regard to visual aspects. She noted a project could be aesthetically pleasing if a developer did not push to the limit.

Jean White, 103 Radcliffe Drive, addressed the front setback which she felt protruded intrusively. She reported that at the Planning Commission meeting Mr. Begleiter eloquently discussed the opportunities presented by the project and said this was a once in a lifetime opportunity to shape a central portion of Main Street. This was a key property in a historic location, and she thought the nature of that block had to be taken into consideration. She said the Planning Commission voted for the applicant to relocate the building's proposed Main Street façade so it was aligned with the average setback of the façade of the building at 102 E. Main Street. She preferred the setback to be at least 12 feet which would take off 750 sq. ft. of the building. She felt when the second and third stories were added, the massiveness of the building would be obtrusive. Mrs. White opposed tearing down the Center Street house to allow access to parking lot #3 because it would create a gap in the street that would damage the

cohesiveness of homes on Center Street. She noted that it was the responsibility of Council to protect residential areas and was concerned that parking lots overruled the need to protect those areas. Regarding zoning, Mrs. White did not believe a public parking lot was allowed in a residential zone.

Mrs. White suggested that the developer allow the architect to come up with a visually attractive design for the front of the building.

Mrs. White advised that as a condition of the Planning Department's approval to limit the impact of the proposed apartments on downtown parking, they recommended that each dwelling unit be restricted to a maximum of four tenants, whereas the resolution said the developer agreed to restrict the project to a maximum total of 40 residential tenants per 10 apartments. She thought the restriction should be per apartment.

Jan Baty, 807 Kenyon Lane, felt the design for the building was generic and was looking for something much more architecturally thoughtful that reflected the quality of buildings around it. She said green space would be very much appreciated on Main Street which was very car oriented at the moment. She thought a size comparison of the building to the Post Office would be shocking to see. Regarding Center Street, she said it was very easy for a precedent to be set when one house is demolished, and the whole texture of the neighborhood would be changed.

David Robertson, 15 Center Street, remarked that he would like the developer to consider diminishing the horizontality of the building, and said the straps that break up the façade looked like layers of a cake cut in half. He felt more could be done to accentuate verticality which would pull the building together. He felt it was Council's responsibility to think about the future of the Center Street area and to consider it as a model for neighborhood renewal. He said Center Street had turned into a shortcut for people coming down Chapel Street to get to Main Street, and combined with traffic exiting the parking lot, created a real safety issue.

Dan Hoffman of DCI said the canopies were louvered open-air systems to protect entrances and the balcony. He said the balcony was in the same location as it was prior to the 8' setback.

Joe Charma of Landmark Engineering and Chair of the DNP Design Committee said architecture was subjective, very much like art. He stressed that the Design Committee was where developers should hear from the public (rather than when a project got to the Council floor) to allow them to react before spending months of time and money on a project. In regard to the parking lot connection, Mr. Charma said the Planning and Development Department realized many years ago that parking lot integration would be an asset. This would allow cars to be taken off Main Street and traffic would be behind buildings, thereby opening up the rear of the buildings. He added that the project could stand alone without the entrance from Center Street.

Mr. Lang stated that his company was taking a tremendous amount of risk by redeveloping properties in today's economic environment and by trying to put commercial space on the second floor of a building when there was no financially viable second floor space on the street that had consistent tenancy other than perhaps the Galleria in the last 15 years

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

Mr. Clifton asked if trash pick up times could be controlled, and Mr. Lang said they could dictate the commercial pick up times at this location but not the residential pick up times by the City.

Mr. Markham felt if the Center Street house was demolished, there could be a domino effect in the neighborhood. He said the resolution contained a parking waiver which he assumed was the reason the developer was giving the property to the City. Mr. Markham wanted to defer what was done with Center Street until such time that a neighborhood preservation plan was adopted for the area, and the City would be required to maintain the property in its current use and condition. In that way he felt the Main Street project could move forward while allowing time to examine preservation options.

Mr. Clifton agreed with most of what was said about the Center Street property. He said with Washington House across the street it was clear the City was moving forward to bringing full-time residents to the downtown area. He was comfortable with the core property being redeveloped considering the parking in the back of the building that the City used for years. He hoped to see aesthetic improvements that would make this a charming property and agreed with Mr. Charma that beauty was in the eye of the beholder. He felt one house could change the dynamics of a neighborhood, and if Council was serious about neighborhood revitalization, it was time to send a message that the City was serious about this. Mr. Clifton thought tearing down the Center Street house and making it a cross street would commercialize the street even further back than what it already was. He wanted the City to take control of the house and deed restrict it so it would never have a rental permit and allow someone to homestead there to send a serious message about preserving the neighborhood.

Mr. Temko was opposed to demolishing the Center Street home and beyond the community aspect thought there was also a traffic safety issue. He felt the City was not in a position to fully take advantage of acquiring the home since the community did not have a Community Development Corporation. Mr. Sonnenberg did not think there was anything to prohibit the City from being more assertive in managing the property. He said neighborhood preservation in the Center Street area would require major changes with more involvement in the market dynamic including owning properties, deed restricting them, and so forth. Mr. Temko was concerned about this being handled on a house-by-house basis and felt there should be a programmed approach to these situations. Further, he thought it was important to discuss parking waiver fees and the financial impact to the City.

Mr. Athey said the commercial creep was already defined by where the City's parking lot comes out onto Center Street and thought Mr. Markham's idea was the best compromise at this point.

Mr. Tuttle said in response to the question asked about whether a house was ever torn down to make access to parking, he believed the University of Delaware had done that many times. He thought Mr. Markham's suggestion was an interesting one that did not commit the City to doing this in the long term but preserved the opportunity to do something creative that was not done in the past.

In regard to the aesthetic issue, Mr. Pomeroy said there would always be varied opinions on whether people like or do not like a building. He thought the appearance of the building could be improved and hoped public comments would be taken into consideration. He felt it would be one of the most important buildings on Main Street for decades to come so the way in which it presents itself would be of utmost importance. He said the Center/New/Linden Street study would be discussed later about taking proactive steps to preserve neighborhoods for the long haul. He felt this was the time to take a positive step in that direction and thought a profound shift was needed in the way in which people perceive Newark. When talking about economic development, the importance of preserving these areas was vitally important and keeping options open consistent with long-term planning was something he could support. Mr. Pomeroy felt the proposed building had the potential of positively impacting the downtown area at a time when projects such as this were difficult to come by. Regarding the setback issue, he thought there seemed to be some semblance of

a compromise which he thought was a plus. He said there was also not much focus on the second floor commercial space which was essential to the growth of a downtown area. Mr. Pomeroy believed opportunities for redevelopment infill projects in the core downtown area were responsible approaches and felt the City needed to take advantage of them.

Mr. Clifton thought Mr. Markham suggested a good compromise but wanted to insure the house could not be demolished by virtue of its approval even though the City owned it. Mr. Funk said it could be handled procedurally by amending the ordinance to say the City could not remove the building without the further consent of Council, and the City would assume existing leases.

AMENDMENT BY MR. MARKHAM, SECONDED BY MR. CLIFTON:
THAT THE RESOLUTION AND AGREEMENT BE AMENDED AS
SUBMITTED WITH THE STIPULATION THAT THE CITY CANNOT
REMOVE THE BUILDING ON CENTER STREET WITHOUT FURTHER
ACTION OF CITY COUNCIL.

(Note: Item b of the resolution and Item #5 of the agreement will now read: "The Developer agrees that prior to the issuance of the first certificate of occupancy, to deed to the City a portion of the Site currently leased to the City within Lot #3, and the adjoining parcel and house fronting on Center Street. As a result of that dedication the City agrees that the required parking waiver fee shall be excused. It is further stipulated that the City cannot remove the existing house on the Center Street parcel without approval of City Council.")

Mr. Temko supported Mr. Pomeroy's study and supported retaining the house. However, he would not support the amendment because he thought Council should wait until the preservation study was completed before taking action.

Question on the Amendment was called.

AMENDMENT PASSED. VOTE: 6 to 1.

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

Mr. Athey said in regard to the aesthetic issue there were a number of good suggestions made that would not add an enormous amount of cost to the project. Although he was still struggling with the setback issue, he felt Mr. Lang made a reasonable compromise.

Mr. Tuttle mentioned the need to be sensitive to non-food retailers and stated the further back a storefront was from pedestrian traffic, the less attractive it would be to non-food retailers. He said the City wanted to attract a diverse mix of commercial uses but almost everything on Main Street was a restaurant with apartments above it, and the City needed to make sure to try to tip that balance.

Mr. Markham said it would be appreciated if the building reflected positively on the functions held across the street at the Academy Building.

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.

(RESOLUTION NO. 09-K)

27. 7-B. REQUEST OF 104 EAST MAIN STREET, LLC, FOR A SPECIAL USE PERMIT TO ALLOW TEN APARTMENTS AT 108 EAST MAIN STREET WITH CERTAIN CONDITIONS RECOMMENDED BY PLANNING COMMISSION

(NOTE: The public hearing for the special use permit was held under item #26)

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THE SPECIAL USE PERMIT BE GRANTED AS PRESENTED WITH CERTAIN CONDITIONS RECOMMENDED BY THE PLANNING COMMISSION.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

28. 8. ORDINANCES FOR FIRST READING

A. Bill 09-19 - An Ordinance Amending Chapter 25, Sewers, By Revising the Sewer Charges for All Customers Effective July 1, 2009

Ms. Fogg read Bill 09-19 by title only.

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THIS BE THE FIRST READING OF BILL 09-19.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND Reading 6/8/09)

29. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA

- A. Council Members:
1. Discussion re Building Leadership

Mr. Temko explained that when he conducted his civic health study, this area received the most negative scores in terms of needing attention. There were three programs he thought might be worth looking into for the City: youth council, neighborhood leadership institute and a citizen academy.

Mr. Athey researched several links provided by Mr. Temko and asked if he planned to come back to Council with a recommendation. Mr. Temko said this was not his area of expertise but suggested the possibility of a task force. Mr. Athey thought broadening the police academy might be a possibility. Mr. Markham said youth councils worked well but it might be challenging to attract a large enough group of youth. Messrs. Clifton and Funk recommended that Mr. Sonnenberg look into this and provide Council with an overview of time and cost involvement.

30. 9-A-2. DISCUSSION RE NAME/ADDRESS POLICY

Mr. Clifton said concerns were raised previously about members of the public being required to provide names and addresses when speaking at Council meetings. At the April 27, 2009 meeting, it was agreed that addresses would be optional for speakers, although it was desirable for Council members to know the Council district. Although Mr. Clifton said he respected the privacy and/or safety concerns of those individuals who declined to publicly provide their address, he felt a policy should be established so Council would know whether a speaker resided in the City. Since their primary accountability was to City residents, Council members agreed it was important to verify residency.

Mr. Funk said at the beginning of Council meetings he would announce that anyone who intended to speak must complete a "Request to Speak" form. Verification of residency would be provided by the City Secretary or Deputy City Secretary.

31. 9-A-3. CENTER/NEW/LINDEN STREET STUDY

Mr. Pomeroy reviewed his proposal requesting the Planning and Development Department, in conjunction with other applicable City departments, the City Manager, the University of Delaware and the community at large to prepare a detailed Center/New/Linden Streets Neighborhood Revitalization Feasibility Plan. The plan's goal would be to develop strategies to enhance and encourage the long-term preservation of the residential component of the neighborhood, utilizing, at a minimum, the following planning tools:

- Evaluation and design of targeted programs to enhance and upgrade property maintenance and housing rehabilitation in the neighborhood.
- Evaluation and design of targeted programs to foster owner occupancy in the neighborhood.
- Evaluation and design of targeted programs to enhance and protect public facilities in the neighborhood.
- Investigate the feasibility of land assembly programs to promote appropriate neighborhood redevelopment, especially to enhance owner occupancy.
- Investigate the feasibility of City (and perhaps, University) incentive programs to promote appropriate residential neighborhood redevelopment.
- Other strategies intended to meet the goals of the plan.

Mr. Pomeroy suggested allowing staff six months to prepare the study. During that time Council should postpone final consideration of applications for rezoning, subdivisions, or special use permits in the area specified.

Mr. Pomeroy thought this would be a strong step forward and noted that everyone on Council recognized the relevance to economic growth and development in the City. He felt this was an important location to focus on based on the proximity to Main Street, and it was an area most likely to be affected by future development plans. Mr. Pomeroy suggested this could be a benchmark for future initiatives in other areas in the City.

Mr. Athey complimented Mr. Pomeroy on his efforts and agreed he would like to use this neighborhood to apply the lessons learned when targeting other areas in the future.

Mr. Markham agreed this was a nice self-contained area and recommended adding Choate Street to the study.

Mr. Athey asked if there would be an interim step such as an outline or some sort of interim report from staff. Mr. Lopata said this would be a much more interactive process with a very targeted, focused approach to neighborhood redevelopment working with landowners, the University and tenants to come up with a pilot project that would become a model for other areas in the City. Mr. Lopata said in order to get something meaningful done, the Planning and Development Department needed to go quickly into the community to find out what would work and be effective, and he would keep Council updated on their progress.

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: TO REQUEST THE CITY MANAGER TO PROCEED WITH THE CENTER/NEW/LINDEN/CHOATE STREET REVITALIZATION STUDY.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

32. 9-B. COMMITTEES, BOARDS & COMMISSIONS

1. Planning Commission Minutes of May 5, 2009

MOTION BY MR. ATHEY, SECONDED BY MR. POMEROY: THAT THE PLANNING COMMISSION MINUTES OF MAY 5, 2009 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

33. 9-C. OTHERS

None

34. 10. SPECIAL DEPARTMENTAL REPORTS

A. Special Reports from Manager & Staff:

1. Approval of Unicity Bus Service Agreement for State Fiscal Year 2009-2010

Mr. Lopata said a motion was needed by Council to approve the agreement pending approval of the proposed budgeted amount of \$139,200 by the State General Assembly. Mr. Lopata was pleased the state funding level remained unchanged from the previous year.

MOTION BY MR. TEMKO, SECONDED BY MR. POMEROY: TO APPROVE THE UNICITY BUS SERVICE AGREEMENT FOR THE STATE FISCAL YEAR 2009-2010.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

35. 10-B. ALDERMAN'S REPORT

MOTION BY MR MARKHAM, SECONDED BY MR. TUTTLE: THAT THE ALDERMAN'S REPORT DATED MAY 20, 2009 BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

36. 10-C. REQUEST FOR EXECUTIVE SESSION RE LABOR NEGOTIATIONS

MOTION BY MR. MARKHAM, SECONDED BY MR. ATHEY: 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 11:15 p.m. and returned to the table at 11:43 p.m. Mr. Funk said no further action was required.

37. Meeting adjourned at 11:45 p.m.

Patricia M. Fogg, CMC
City Secretary

/av
Attachment