

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**July 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

Absent: District 6, A. Stuart Markham

Staff Members: City Manager Kyle Sonnenberg  
City Secretary Patricia M. Fogg  
City Solicitor Roger Akin  
Finance Director Dennis McFarland  
Parks & Recreation Director Charles Emerson  
Planning & Development Director Roy H. Lopata  
Assistant P&D Director Maureen Feeney-Roser  
Community Affairs Officer Dana Johnston

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

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

A. Regular Council Meeting of July 13, 2009

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

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

A. Public

Betty Hastings, resident of White Chapel Village, a private adult zoned community, discussed issues with property management informing the residents that it was illegal to restrict the age of residents in the community. Ms. Hastings requested that the 55 and over occupancy requirements be enforced. Mr. Clifton noted that a number of White Chapel Village residents contacted him regarding the issue. Mr. Akin reported staff met with the complaining parties and reviewed the subdivision agreement which clearly designated it as an AC community. Mr. Akin prepared letters that would be sent to property owners and residents of White Chapel Village advising them of the City's regulation requiring 100% of the residents to meet this requirement. It was his understanding that under HUD regulations, 80% of the residents were required to be 55 and over in order to qualify as an AC community. Research showed that federal courts as well as HUD regulations stated that a municipality or state had the right to adopt an ordinance which required that all residents of an over 55 community be over the age of 55.

4. MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THE AGENDA BE AMENDED BY MOVING ITEM 9-A-1, RESOLUTION NO. 09-\_\_: IN APPRECIATION TO STEVE K. DENTEL TO ITEM 4.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Mr. Athey read the resolution in its entirety which was unanimously endorsed by Council recognizing Mr. Dentel for his service as Chair of the Conservation Advisory Commission from January, 1999 to September, 2008.

**(RESOLUTION NO. 09-M)**

5. Jane Sabine, a Newark resident, said a number of residents at White Chapel Village supported the residents under age 55 who were living in their community. Mr. Clifton said it was clearly stated in Newark law that no one under age 55 could reside in an AC community. He hoped to be able to preserve the owners who were presently living in White Chapel while preserving the integrity of the AC-zoned community for people purchasing properties in the future. Mr. Lopata reported that anyone who came to the City to buy an AC-zoned property was provided with an excerpt of the Zoning Code so there was no misunderstanding of the process. He noted that staff met with some of the residents several weeks ago, and the intent was to rigorously enforce the Zoning Code while not forcing current residents out as stated by Mr. Clifton. Mr. Funk explained that the issues discussed would be addressed by the City Solicitor through letters to the property owners and residents.

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. Clifton was pleased to be back and had information from several areas he visited that might be useful to the City.

9. Mr. Pomeroy acknowledged Senator Liane Sorenson who was in attendance at the meeting.

10. Mr. Pomeroy referred to the Council Workshop scheduled for August 18<sup>th</sup> which would be an important financial planning workshop that generated considerable interest. It was agreed that the workshop would be held in the Council Chamber rather than in the City Manager's Conference Room to allow for additional public seating.

11. Messrs. Pomeroy and Athey enjoyed the Food and Brew Fest. Mr. Pomeroy commented that the Elkton Road restaurants did not get the same traffic as Main Street businesses and hoped to find a way to better include that area in future events. Mr. Funk thought it would be difficult to get the same traffic on Elkton Road because the public tended to congregate more toward the center of Main Street, and the same concerns were voiced by the Deer Park and East End Café.

12. Mr. Athey referenced an article in the *Newark Post* regarding opposition to sobriety checkpoints. Out of almost 600 vehicles stopped on Cleveland Avenue at a recent checkpoint, there were 18 arrests for DUI, including one individual who had eight prior offenses with a blood alcohol level of .285 (three and a half times the legal limit.) He thought this was a strong argument in favor of the checkpoints.

13. Mr. Athey emphasized the need for the City to start cutting costs. To help toward this end, one of the recommendations suggested by Mr. Sonnenberg was changing to an E-newsletter, and the quarterly municipal newsletter would no longer be printed in hard copy. Mr. Sonnenberg said notice of the change would be provided in the fall issue which would be the last printed issue. There would also be an opportunity for people to register their e-mail addresses in that issue.

Council discussed having an inexpensive PDF version of the newsletter available in printed form for people without computer access. Mr. Sonnenberg said this would impact the cost savings, and to significantly cut back on costs required moving to e-newsletters. Ms. Johnston reported the printing and mailing cost was approximately \$7,000 for one issue of the newsletter. She said she would work on making a printed copy available at the Municipal Building.

Mr. Temko suggested automatically including people who were signed up for other City newsletters or e-mail lists, and Ms. Johnston said that would be done. Mr. Pomeroy clarified that the newsletter was currently posted on the City's website.

14. Mr. Funk commented on the state of the City's financial outlook and the fact that other cities around the state were initiating furloughs, stopping travel and other measures. He did not think the City could afford to continue sitting back and waiting for the economy to improve.

15. **4-A. ITEMS NOT FINISHED AT PREVIOUS MEETING**

1. Recommendation – Parks & Recreation Fee Increases

Mr. Sonnenberg explained in response to feedback at the last Council meeting, the proposed fee structure for recreation fees was revised. A matrix that illustrated the cost allocation to be reflected in the fees included four categories: resident youth, resident adult, non-resident youth and non-resident adult. Also included were costs to be collected in each of those groups in keeping with Council's interest to subsidize youth activities. For resident youth, the proposal was to cover 100% of direct costs and 50% of the departmental overhead as compared to resident adults where the proposal was to recover 100% of direct costs and 100% of department overhead.

Mr. Sonnenberg said he did not get a sense of Council's intentions regarding the non-resident fees. They were set at 100% cost recovery for direct cost departmental overhead and City overhead for youth and adult programs. In terms of the actual fee increases, it was proposed to phase this in over time. Initially for residents the fees would be increased by 25% per year and for non-residents by 33% per year until reaching the designated cost levels. Depending on the particular program it could take anywhere from three to five years to get to that level. The cost increases were spread out compared to the last proposal and differentiated for resident use at setting cost recovery at a lower level in order to subsidize youth activities. In conclusion, Mr. Sonnenberg requested Council to provide feedback and approval on his proposal or propose any modifications they wanted to see included in the matrix. Following Council approval, the matrix would be used to set rates for activities in each upcoming season. Each season had different programs and by having the formulas as specified in the matrix, those could be applied to whatever the particular program might be.

The Chair opened the discussion to the public.

Dorothy Miller, 430 Orchard Road, believed more people were looking for recreation opportunities close to home due to the economy. She thought Council should be careful not to price young people out of the recreation programs that provided the opportunity to keep them productively occupied. She suggested a scholarship program for people who could not otherwise afford to participate.

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

Mr. Temko said he received only negative feedback about the initial proposal. In terms of the revised increases, he thought most of them were reasonably priced for the value. He saw several issues with the proposed costs. For example, the 25% increase for residents would have a much greater impact with the higher-priced programs. He thought there were also discrepancies such as the Turkey Trot which increased from \$15 to \$19 for residents and \$20 for non-residents, yet there were 850 non-residents and 110 residents who participated. He believed that programs such as Babysitting, CPR Training and Defensive Driving directly benefited the City as a whole. Mr. Temko encouraged consideration of such issues with the program increases.

Mr. Temko further commented that while he thought the increases for the fall were reasonable, he was not comfortable with more than a one-time increase as he thought continued increases to recover costs would make the fees unreasonable. A quote he received from a constituent stated "I hope we don't wind up losing the one department in the City that is responsible for making the City a fun place to live." He believed the programs represented the extent of community in Newark and, in addition to being an economic development tool, provided a sense of place and a sense of why people liked Newark. He felt this was an area worth subsidizing, regardless of the financial problems the City faced.

Mr. Pomeroy reported he also received only negative feedback on the fee increase. He did not understand applying the "one size fits all" formula. By taking this action, he felt the City would be taking itself out of the market for many of the programs currently offered. He assumed a lot of the programs would either go away or would not be supported. In his opinion, the assumption that the increase would generate \$50,000 was a stretch as he believed the participation level would decline. Mr. Pomeroy talked to a number of younger families who relied upon certain programs, especially pre-school and before and after care, and it was agreed that some level of increase was warranted. Before taking action on the proposal, he thought Council should step back and evaluate the increases on the priority list, as he felt it was more complex than how it was being looked at from a standpoint of piecemeal increases of 25%, 50% and 100%. His constituents said they would rather see a tax increase than have the programs cut. Mr. Pomeroy felt those were the types of decisions Council would have to make in aggregate as to how to get through the remainder of the year and get through the fiscal year 2010. He did not object to discussing the increases during the August 18<sup>th</sup> workshop but at this time did not feel comfortable instituting the increases for fall programs.

Mr. Athey said he put out an e-mail to his constituents asking if the Parks and Recreation programs should be self sustaining or subsidized. His second question was whether a subsidy should be differentiated between youth and adult programs. The responses were about a 50-50 split. Mr. Athey congratulated Mr. Sonnenberg in striking a good a balance to Council's request. He felt the phase in as proposed was as palatable as possible. He believed by drastically increasing the cost, a lot of people would drop out of the programs out of spite, if nothing else. With this increase he thought it would be possible to better gauge the popularity of certain programs. Mr. Athey reminded Council of the \$2 million hole and the fact that a major tax increase at the end of the year would occur.

Mr. Clifton agreed with Mr. Athey's comments and noted that no one liked to hear fees or taxes were going to increase. He said Council asked Mr. Sonnenberg to propose fees that would make the programs self sustaining and believed the City needed operate as any business would operate. He believed at some point the City needed to commit to a fiscal belt tightening and said it was a

reality that Council either had to increase the fees or find someplace else to cut costs or raise taxes. He felt Ms. Miller's suggestion of scholarships based on need was an excellent point.

Mr. Tuttle pointed out that Mr. Sonnenberg did exactly what he was asked to do by Council in coming back with a model that respected the importance of services for youth and looked at a way to phase in the increase. As a one-year implementation plan, he believed it took the City in the direction it needed to go in but was not sure whether he would buy into it over four or five years. Further, the tax revenue issue only pertained to people who paid City taxes. In looking at program attendance, a number of participants were not paying City taxes, so he felt raising taxes to subsidize non-residents was not good policy. Mr. Tuttle believed if there were services the City was not providing as efficiently as someone else could provide them, then they should not incur the overhead costs to provide them nor subsidize them.

Mr. Temko did not think Council should be talking about individual programs and reiterated that he agreed with Mr. Pomeroy that one size did not fit all as proposed in the recommendation. He suggested that the Parks and Recreation Department should be looking at the programs offered to determine if there was duplication and whether a particular program should continue to be offered.

Mr. Pomeroy said his comments were not to diminish the value of the work that was put into the report, but he thought there was a way to look at this more efficiently. He thought more money could be charged for programs without being priced out of the market so the City could continue receiving the revenue.

Mr. Funk agreed the Parks and Recreation programs deserved subsidy from the City. He reported that 50% of the objections he received to the increase were from non-residents. He said the City was providing a lot of services to non-residents, so increasing taxes to support the programs made no sense to him. He not like using flat percentages but thought the report was an attempt in the right direction. However, after the first year he did not know whether he would support each increase as outlined.

Mr. Athey added that he did not look at this as a revenue generator, but as a cost cutter.

Mr. Pomeroy asked for clarification whether Council was approving increases for 2009 or 2010. Mr. Tuttle thought the proposal would cover fall and spring. Mr. Funk explained the idea was for staff to make minor modifications and noted the City was \$3 million in the hole and Council needed to start making increases immediately.

MOTION BY MR. ATHEY, SECONDED BY MR. TUTTLE: TO ACCEPT THE FEE STRUCTURE AS PRESENTED BY THE CITY MANAGER WITH THE CAVEAT THAT THE PARKS AND RECREATION DEPARTMENT HAS THE DISCRETION TO MAKE FURTHER TWEAKING.

MOTION PASSED. VOTE: 4 to 2.

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

**16. 4-B. FINANCIAL STATEMENT**

Mr. McFarland provided the June 2009 Financial Report which showed that the City was \$2 million below budget for the first half of 2009. This reflected trends seen over the last three to four months. Utility revenues were down \$1.8

million. Electric margins were down reflecting very temperate weather in June. Water margins were down due to delays and changes in the budgeted rate increases and the wetter weather that has been experienced. Non-utility revenues were about \$732,000 under budget, and the largest factor was the sharp decline in transfer tax revenues which were about \$771,000 under budget. Property tax revenues were up by \$247,000 due to updated appraised values from the County. Operating expenses were \$516,000 under budget due largely to lower personnel costs. This was a result of the hiring freeze that was instituted several months ago and cost saving initiatives that were developed across all of the departments. The cash balance was \$10.8 million, a decline of \$1.2 million from the prior month. The cash balance actually declined \$3.6 million since the beginning of the year. From a cash management perspective, the City was now in the process where it needed to liquidate some of its investment portfolio in order to provide sufficient working capital during summer months when the City's working capital requirements were the highest because of the utility bills.

Also included in the report was an outlook for what the City's year-end position might be. Within the utility funds, Mr. McFarland claimed if no rate actions were taken for the balance of the year, the City would have a revenue deficiency approaching \$3 million. At the present time staff was working on an increase in water rates for consideration at Council's next meeting to help recoup some losses. Also, he expected to institute a change in the electric PPCA very shortly. With both of those rate actions, the deficiency in utility funds could drop to the \$1 million to \$2 million range depending upon the magnitude of the increase and when they may be instituted.

Mr. McFarland explained that revenues in the general fund were down about \$732,000. He believed that shortfall could approach \$1.2 million by year end because of the projected shortfall in transfer tax revenues. Another major decrease in funds was the budgeted \$548,000 in Municipal Street Aid funds that the City would not be receiving from the state. He anticipated the City would get increased property tax revenues of about \$200,000 for the balance of the year that would offset some of the declines in the revenue streams such as permits.

Mr. Clifton pointed out that property taxes generated about \$4.5 million of the budget. If there was a 50% increase in property taxes, that would barely cover the projected shortfalls, and he emphasized the present state of the economy of the City.

Mr. Tuttle asked what the practical effect of the loss of Municipal Street Aid was and how much of that money was already spent. Mr. McFarland said none of the money had been spent. However, he explained that certain repairs had to be made, and some projects would be deferred. Messrs. Temko and Pomeroy understood legislators were going to be in a special session and discussing whether there was a way to get Municipal Street Aid funds reinstated for the municipalities. Mr. Sonnenberg has talked extensively with one Newark legislator and planned to have the same discussion with others. He encouraged Council members to also talk to Newark's legislators about reinstating this funding to municipalities.

Mr. McFarland reminded Council that the approved budget for 2009 had a very small operating surplus planned of less than \$100,000, and for the City to be healthy, it should have an operating surplus of about \$2 million.

**MOTION BY MR. ATHEY, SECONDED BY MR. POMEROY: THAT THE FINANCIAL REPORT ENDING JUNE 30, 2009 BE RECEIVED.**

VOTE: 6 to 0.

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

Nay – 0.

Absent – Markham.

17. **5. RECOMMENDATIONS ON CONTRACTS & BIDS**  
None

18. **6. ORDINANCES FOR SECOND READING & PUBLIC HEARING**  
A. Bill 09-22 – An Ordinance Amending Ch. 20, Motor Vehicles & Traffic, By Prohibiting Non-Consensual Towing From Private Parking Areas Before One Hour of the Opening of a Business

Ms. Fogg read Bill 09-22 by title only.

MOTION BY MR. TEMKO SECONDED BY MR. POMEROY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 09-22.

The Chair opened the discussion to the public.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Markham.

**(ORDINANCE NO. 09-24)**

19. **7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS**  
A. Request of Chris Cochran and Lisa Bartolozzi, Principals in 162 S. Chapel Street, LLC, for a Revision to the Approved Subdivision Agreement for the Development Known as Holly Woods, Located at 162 S. Chapel Street, In Order to Modify the Deed Restrictions to Permit Five Unrelated Tenants (Currently Restricted to No More than Four Unrelated Tenants)

MOTION BY MR. CLIFTON, SECONDED BY MR. FUNK: THAT THE REQUEST TO MODIFY THE DEED RESTRICTIONS TO PERMIT FIVE UNRELATED TENANTS BE APPROVED.

Mark Sisk, attorney for the principals in 162 S. Chapel Street, LLC, explained that Mr. Cochran and Ms. Bartolozzi were completing their third year as the owners of Holly Woods. In 2005, when the subdivision was approved, they agreed to a limit of four unrelated tenants. Several things have changed since that time, and they believed there were good reasons to grant their request to change the restriction to five unrelated tenants.

- Council has approved projects since that time with five and sometimes six occupants per unit.
- The Police Department and others perceived the principals as able landlords.
- The subdivision has received Bonistall certification, the only small landlord that has received certification (small as in the number of units).
- The principals contributed land for a bike path at the time of subdivision.

- Approval of the proposed restriction, which would add 15 students, would be consistent with the City's Comprehensive Plan. The units were built for student housing and would continue to be student housing. The Building Department has indicated there was adequate square footage in the residences as required in the International Residential Code.
- Precedent – Mr. Sisk thought Council may ask themselves if they would be setting a precedent if they approved the request which could open the floodgates for others to request the same. Mr. Sisk said that may happen but reminded Council they were in control of whether or not to amend the deed restrictions and could fashion whatever conditions they required. If approval of the request sent a message that Bonistall compliance was favorably looked upon by the City, he thought that would be a good precedent. He also reminded Council that they have amended deed restrictions in the past. For instance, the deed restrictions on the Stone Balloon Winehouse were amended earlier this year.

Mr. Sisk noted that the units required three legal parking spaces and as a practical matter, he believed they now had four parking spaces. A picture that was provided to Council in their packet showed one car parked perpendicular to two cars with one car parked in the garage. A tenant was issued a parking ticket for parking perpendicular but the Alderman agreed with the defendant that the car was parked lawfully. Mr. Sisk said he understood the Police Department's concern about parking but noted there was no issue of safety or accidents. He reminded Council that hundreds of tickets were given out on Main Street every month but that did not stop parking waivers. In this particular case, they were not asking for a parking waiver, because according to the Code, they met the parking requirement. It was also noted that the complex was near bus routes and buses run 21 hours a day. Mr. Sisk acknowledged that parking was a problem, but pointed out it was the responsibility of Mr. Cochran and Ms. Bartolozzi, and they would have to face it in the marketplace.

Regarding a comment in the Planning and Development Department's report that a two-year tenant indicated that under the current circumstances it was at times difficult for the tenants to adequately park their vehicles in the 45 available spaces on the site, Mr. Sisk pointed out he/she stayed two years regardless of the parking situation.

Chris Cochran referred to a booklet provided to Council that was also given to every tenant which contained a variety of information, including: Bonistall certification; University of Delaware bus schedules; the bicycle/walking path; a sample lease and certain City ordinances including penalties for violation of those ordinances, etc.

Mr. Clifton asked how many units had a fourth car and where they parked. Mr. Cochran advised they found alternate parking wherever it might be. Mr. Sisk added that there was alternative parking readily available, particularly in Lot #5.

The Chair opened the discussion to the public.

Jean White, 103 Radcliffe Drive, reminded Council she had supported this development when it was reviewed and approved by Council in 2005. Although the principals were reputable, responsible landlords, she encouraged Council not to amend the deed restriction.

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

Mr. Pomeroy asked Mr. Akin to comment on whether Council would be setting a precedent for similar situations in the future. Mr. Akin did not believe

from a legal standpoint that the effect of granting or denying this request was significant. He thought every application before Council stood on its own facts – every subdivision in the City was different in regard to parking circumstances, traffic patterns, building footprint, open space, etc. However, Mr. Akin believed if Council approved the request, it was likely that the next applicant who believed they had similar facts would argue for the same treatment. He was not concerned that because Council did something tonight they were bound to do the identical thing six months from now as granting this change in the deed restrictions was considered a privilege and not a right. He also did not believe there was an equal protection argument and gave the analogy when the City was engaged in litigation with regard to the City's refusal to grant a parking waiver for apartments over retail space on Main Street, the Court took into consideration the fact that although prior parking waivers had been granted, the Court realized circumstances had changed on Main Street. Parking pressures and traffic had increased. Based on that information, Mr. Akin believed his argument that there were different circumstances for each subdivision had strong merit and reiterated that a judge confronted with an equal protection argument would reject it because of that fact.

Mr. Athey asked for clarification on the number of tenants permitted at the recently approved building next to Bing's Bakery. Mr. Lopata advised that Council approved 14 units with a maximum total number of tenants. In other words, some units may contain two tenants while others may contain five tenants. Mr. Athey expressed concern with the current parking situation at Holly Woods and the impact of adding 15 tenants.

Mr. Athey questioned what CampusSide received in return for providing the City with a new road. Mr. Lopata said his department examined each subdivision, and when all things were equal in terms of parking circumstances, he examined the benefit to the community from granting x, y or z. In the case of CampusSide, the new road was an overwhelming benefit. He pointed out that Mr. Cochran was using the Bonistall certification as his benefit to the community. Mr. Lopata clarified that his department did not recommend approval for changing the deed restriction because they saw nothing on the record to justify the change.

Mr. Athey believed the Bonistall certification made a fairly compelling case, but he was concerned with the parking issue. Both he and Mr. Pomeroy believed Mr. Cochran went the extra mile with the certification and with their pledge to invest in solar energy in the future. Mr. Athey asked if this was approved whether major renovations would be done inside the buildings. Mr. Cochran said there was existing space in the back on the first floor and because he would need to install doors, a building permit would be required because it involved moving a sprinkler head.

Messrs. Clifton and Athey commented that they did not like going against recommendations from the Police and Planning Departments (both recommended against changing the restriction). However, Mr. Clifton said he would like to support this change but felt more parking was needed at the site. He did not like the fact that a loophole was found in the Code to permit a car to be parked sideways in the driveway and felt it was up to the property owner to manage the parking on the site. Because of the location of the development, the fact that it was student rentals and was on the University bus route, he had no problem with increasing the units to permit five provided the property owner managed the parking situation.

Mr. Clifton also believed a strong argument could be made regarding the bike trail which was a connection from the Hall Trail to the Pomeroy Trail. The property was given to the City long before trade-offs were ever suggested. Before making a decision to support the change, Mr. Clifton asked for ideas on how the parking situation would be addressed. Mr. Sisk interjected that a condition could be placed on granting their request requiring Mr. Cochran to

show available off-site parking. Ms. Feeney Roser advised that all of the City lots were full and there were waiting lists for the lots.

Mr. Temko felt responsible landlords should be recognized with less micro-management on the part of the City. He did not have a problem with the proposal in principle provided something was done to resolve the parking issue. Further, it was the general consensus of Council that a fourth car should not be permitted to park across the lot as illustrated in the picture provided.

Mr. Pomeroy believed if Council approved this change, they would see a flood of similar requests, and the only way he would support the request was if there was a compelling reason.

Mr. Temko added that although he eventually supported the CampusSide subdivision, he did so because of the benefit from the road. He did not agree with the number of proposed tenants because of the limited parking available.

Mr. Tuttle said clearly the concern was parking and pointed out that the previous item amended the current towing ordinance. He asked everyone to think about why there was a towing problem in the City and why businesses were towing cars from their parking lots an hour before opening. It was obvious to him that students bring cars and have no place to park them at their residences. He felt Council should not allow 15 additional cars to be brought into the City without adequate parking. He said if the demographics changed in the future where students came to the UD without cars, he would be happy to have more students living in the Holly Woods complex.

Mr. Funk did not think there was any reason to approve this request.

Mr. Sisk said his client would like to explore other parking alternatives and asked Council to table this item to allow them that opportunity.

MOTION BY CLIFTON, MR. SECONDED BY MR. ATHEY: THAT THIS ITEM BE TABLED FOR 90 DAYS.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Markham.

**20. 7-B. REQUEST OF MK PROPERTIES, LLC, FOR A MINOR SUBDIVISION OF A .237 ACRE PROPERTY AT 44-46 E. MAIN STREET IN ORDER TO RENOVATE AND REINSTALL THREE APARTMENTS ON THE UPPER FLOOR OF THE TWO-STORY EXISTING BUILDINGS ON THE SITE (RESOLUTION/AGREEMENT SUBMITTED)**

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MOTION BY MR. TEMKO, SECONDED BY MR. TUTTLE: THAT THE RESOLUTION AND AGREEMENT BE APPROVED AS PRESENTED.

Joe Charma, Landmark Engineering, Inc., reported that the owners were seeking approval of a special use permit, parking waiver (granted by the Planning Commission) and minor subdivision to renovate three existing second-floor apartments that were last occupied in 1997. The prior owners allowed the occupancy permits to expire; otherwise, this project would simply be a building permit application.

Mr. Charma said this small project would have a large impact on the Main Street streetscape with the proposed façade improvements that included: new second story windows; improved storefront window treatments; cornice repairs; repainting; and some new brick facing. The interior of the building would be

brought up to the current fire and life safety standards by adding automatic sprinklers and fire protection equipment. New energy efficient systems to be added would help reduce the building's carbon footprint and would create a sustainable redeveloped building that would last for decades to come.

Mr. Charma reiterated that the prior owners allowed the apartment use to expire, so the new owners required a six car parking waiver as there was no opportunity to expand the parking facility behind the building. In return, the owners agree to donate a portion of the land containing eight parking spaces currently used by the City in parking lot #2. In lieu of that donation, the parking waiver fee would be waived.

The project conformed to the land development recommendation presented in the Comprehensive Plan for the downtown corridor area. The proposed density of 12.66 dwelling units per acre was well below the average density of 28.4 dwelling units per acre, the average of the mixed use projects recently approved in the downtown area.

In closing, Mr. Charma asked Council to approve the project for the following reasons. It would dramatically improve the building streetscape appeal and restore one of the Newark's remaining older buildings. The project restored additional living units downtown that could be converted to some type of owner/occupied units in the future. The older building would be brought into compliance with current building and life safety standards, creating a more environmentally-sustainable property. The project would increase revenues to the City for licensing fees, taxes, utility service fees and the elimination of a potential land lease expense for the parking. The project received unanimous approval from the Planning Commission.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Markham.

**(RESOLUTION NO. 09-N)**

**21. 7-C. REQUEST OF MK PROPERTIES, LLC, FOR A SPECIAL USE PERMIT TO ALLOW THREE APARTMENTS AT 44-46 E. MAIN STREET**

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**(Note: Public hearing was held under Item #20.)**

MOTION BY MR. TUTTLE, SECONDED BY MR. ATHEY: THAT THE SPECIAL USE PERMIT BE GRANTED TO ALLOW THREE APARTMENTS AT 44-46 E. MAIN STREET.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Markham.

**22. 7-D. REQUEST OF JOSEPH AND GERRY McCOY FOR A SPECIAL USE PERMIT FOR THE SALE OF ALCOHOLIC BEVERAGES IN A PROPOSED TWO FLOOR, FULL SERVICE RESTAURANT (CATHERINE ROONEY'S) TO BE LOCATED AT 102 E. MAIN STREET (BANK OF NEWARK BUILDING)**

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MOTION BY MR. POMEROY, SECONDED BY MR. TUTTLE: THAT THE SPECIAL USE PERMIT FOR THE SALE OF ALCOHOLIC BEVERAGES AT 102 E. MAIN STREET BE APPROVED.

Joe McCoy, 1616 Delaware Avenue, proprietor of Catherine Rooney's, reported that he and his wife have been in the restaurant business for about 20 years and presently run a Catherine Rooney's in Trolley Square in Wilmington. They were excited about opening a restaurant in Newark because it was a great business location, they were committed to the City and liked the sense of community in Newark and its cultural environment. The McCoy's have had joint ventures with organizations such as the Alzheimer's Association, Wilmington Flower Market, the Ulster Project, the Delaware Humane Society, etc. They viewed themselves as good community partners and provided numerous letters of support including one from their State Representative, the City of Wilmington, and the Delaware Avenue Community Association.

Mr. McCoy commented that they have a good record with the DABBC. Their current restaurant has been open for seven years and had only one minor incident five years ago involving a bartender counting his tips at 2:00 am. The DABBC rule was that all drinks have to be off the bar by 2:00 am, and the bartender did not adhere to that rule. Mr. McCoy said he did not want to do anything to diminish the great reputation of Newark and hoped to enhance that reputation. He was making a significant investment so this would be an authentic Irish pub and restaurant which would be designed in Ireland. He thought it would be a destination point that would attract a diverse crowd. Mr. McCoy and his wife would be personally involved with the restaurant and be a part of the community.

The Chair opened the discussion to the public.

Jimmy Flynn, 113 E. Main Street, said he had a Newark address for the past 56 years and used to have a business on Main Street for five years. He pointed out there were 13 businesses now serving alcohol on Main Street. He did not think Newark needed another bar or Irish Pub with Kildare's already located on Main Street. Mr. Flynn now resides in the Washington House and chose it because he loved Main Street. He and others living there made a commitment to live on Main Street and made a commitment to Newark. He did not want another bar, particularly one that would be across the street from his residence. He acknowledged that when the units were purchased in the Washington House, the residents were aware of the bars and restaurants on Main Street, but they did not realize the City would keep adding them downtown.

Anne Dunlap, 113 E. Main Street, stated that she loved Newark. She loved all the people who have been very friendly. She was concerned about having a pub directly across the street from her condo and asked Council to vote no.

James Dunlap, 113 E. Main Street, said he was a long-time resident of Delaware having spent most of his adult life here. He was attracted to Newark by its convenient access to shopping, libraries, and restaurants, all in a college town environment. He felt the Washington House condominiums demonstrated that downtown Newark had strong attributes to attract families as permanent residents. However, he was concerned that additional liquor licenses in the downtown area would detract from those attributes. He and his neighbors were shoppers in the downtown area as well as taxpayers and viewed themselves as urban family homesteaders.

Mr. Dunlap felt strongly that Council should make its decision with some long-term development objectives in mind, as well as the alcohol management objectives at the University. The decision should foster a family friendly neighborhood in the downtown business district. Personally, he opposed any new liquor licenses in the central business district and opposed applications to any businesses that wanted to remain open after midnight. He claimed his view was shared by his family members and by 26 of his neighbors in the Washington House. A statement of opposition was sent around the condominium and 29 of 30 respondents were against with one neutral. They represented the majority of the owners and residents and over two-thirds of the unit owners.

Jean White, 103 Radcliffe Drive, questioned whether the McCoy's had any plans to apply to Council at a later date to stay open to 1:00 am. Mr. McCoy said he planned to make that request sometime in the future. He understood the midnight closing could be extended to 1:00 am if a restaurant proved they were good community partners and proved they ran a good business in the City.

Mrs. White hoped the McCoy's would wait a sufficient amount of time before requesting the later closing so there would be a track record which could be fairly judged by Council.

Mrs. White asked how the McCoy's saw their restaurant differentiating from Kildare's.

Mr. McCoy responded that Kildare's was part of a chain, while they did not plan to expand beyond two restaurants. Further, the McCoy's would be personally involved in the business. He felt that an Irish Pub was an integral part of a community and did not think his restaurant would be a detriment to the community. He also noted that Irish Pubs were known as family and children friendly places.

Mr. Athey asked what the ratio of alcohol sales to food sales was at the Wilmington restaurant. Mr. McCoy thought for the last month it was about 55/45 and explained that \$5.50 was charged for a pint of Guinness and \$9.99 for a Shepherds Pie dinner. Therefore, a patron could have two beers and a meal, a 50/50 ratio. With a \$1.50 beer special, a patron could have six 16-ounce beer specials and \$8.99 wings and get the same ratio, but the person would consume a lot more alcohol. Mr. McCoy anticipated the ratio in Newark would be higher for food than alcohol.

Mr. Athey questioned why Mr. McCoy thought the ratio would be different in Newark. Mr. McCoy said that in Trolley Square after 11 pm, there was a very different crowd. He expected more foot traffic in Newark during the daytime hours than in Trolley Square. It was his experience that many people come to Newark without having a specific location in mind. He believed his restaurant would become an attraction for people to visit.

Mr. Clifton said it was his understanding that the DABCC spent much of their time looking at bars and restaurants in Dewey Beach in the summer and Newark during the school year. He asked how many police calls for service were made at the Wilmington restaurant. Mr. McCoy said there were police calls at the restaurant but they were not frequent – perhaps four to five times a year. He pointed out that his “bouncers” were called “customer service representatives” and were trained by an ex-state police officer.

Mr. Clifton commented on the fact that Mr. McCoy planned to ask Council to extend his closing time to 1 am. Mr. McCoy clarified that he was presently asking for a midnight closing, and after the restaurant has established a good track record, he would come back to Council to ask for approval to extend the time to 1 am. Mr. Clifton asked why Mr. McCoy was compelled to do that when he claimed to be family friendly. Mr. McCoy stated he aimed to make as much profit as possible and pointed out that one of the reasons Main Street was

attractive was because of the people who visited there and that was why the rents were higher than most locations.

Mr. Clifton said that historically the hour from midnight to 1 am morphed a restaurant to a college bar, and the calls for police service proved that fact. This recently occurred with Kildare's on Main Street. He predicted the same thing would happen with Catherine Rooney's and emphasized that Mr. McCoy would find a much different market in Newark than in Wilmington.

Mr. McCoy empathized with Mr. Clifton's concerns but in light of his significant investment, he preferred to have the option to consider changing the closing time after proving himself to Council. Mr. Clifton advised that option was always available. Mr. McCoy thought there were a lot of people who would not visit the restaurant with a last call at 11:45 pm and said he had no intention to offer \$1.50 beers, shot nights, etc.

Mr. Temko asked what the 60/40 rule was, and Mr. Lopata explained it was a DABCC rule. Mr. Lopata reminded Council that the most important stipulation added to the City's regulations was the revocation clause in the special use permit.

Dr. Axe, Washington House resident, said his condo faced Main Street and he was worried about the noise that would be generated from the restaurant. Mr. Funk advised that the applicant applied to the Board of Adjustment to be allowed live music, and restrictions were placed on the noise. Dr. Axe was also concerned that Council might extend the hour of closure to 1 am.

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

Mr. Pomeroy did not think that the City's long-term identity should be tied to bars and restaurants, but acknowledged these businesses drew people to the downtown area. He reiterated the fact that Council had the authority to shut down a restaurant if it got out of line and viewed that as a big risk for a restaurateur to face. He thought there seemed to be a presumption of guilt that Catherine Rooney's was going to be operated irresponsibly. He viewed the new restaurant as a plus because a business was investing in Newark at a time when the City was facing a budget crisis. Mr. Pomeroy found it disturbing to tackle the alcohol issue every time somebody wanted to open a restaurant in Newark. In his mind, if Council felt there was an alcohol problem, they needed to come up with a plan to address the problem.

Mr. Clifton agreed Council had the same discussion every time a restaurant was coming to Newark and it was because every location was different. For instance, Blackstone's was 275' or 300' from the nearest residence, and in this case the restaurant was only 60' to 70' to the nearest residence. There were different dynamics to consider and that was what he thought the special use permits allowed Council to think about. He agreed with a midnight closing time but would like something different on Sunday nights. He was concerned about the proximity to the Washington House. Mr. Pomeroy interjected that there were two restaurants directly under those residences which Council approved.

Mr. Athey reminded Mr. Clifton they were not discussing the closing time at this point. Mr. Clifton said Council could put any restriction they wanted to on the special use permit. While Mr. Athey understood the petition from the Washington House residents, he thought anyone wanting to open a restaurant on Main Street was making a serious investment and it would take serious circumstances for Council to revoke a special use permit. He agreed with Mr. Pomeroy in recognizing the need for more consistency in dealing with the new businesses coming to Newark.

Mr. Temko agreed with Mr. Pomeroy in regard to the economic development engine as far as having clear rules of engagement referring to land use, economic development and having consistency and rules outlined for the businesses coming to the City. He preferred to see a diverse mix of businesses on Main Street and felt the City needed to work on that from an economic development and business recruitment standpoint. He was pleased the business was willing to come to Newark in this economy and that it was local. He felt if there were issues with alcohol or with the types of businesses the City wanted on Main Street that it was important to have planning discussions to make sure the City was going in that direction.

Mr. Tuttle noted that he and Mrs. White served on the Building Responsibility Coalition for many years and the hammer that Council now had was worked toward for some time. He said there were several businesses on Main Street who were able to demonstrate they could stay open past midnight and still behave as responsible members of the business community. He felt there were a number of attractive elements to the Catherine Rooney application because the business was not a chain and had the potential to be a real addition to the City. Although it would be across the street from residents who were concerned about noise, the business would lose the ability to have amplified music if there was a pattern of noise violations. He thought there were adequate controls in place and hoped the business would be a plus to Main Street.

Question on the Motion was called.

MOTION PASSED. VOTE: 4 to 2.

Aye – Funk, Pomeroy, Temko, Tuttle.

Nay – Athey, Clifton.

Absent – Markham.

**22. 8. ORDINANCES FOR FIRST READING**

- A. Bill 09-23 – An Ordinance Amending Ch. 22, Police Offenses, By Increasing the Monetary Threshold for Property Crime Misdemeanors to Conform to State Code

Ms. Fogg read Bill 09-23 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THIS BE THE FIRST READING OF BILL 09-23.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Markham.

**(2<sup>ND</sup> READING 8/10/09)**

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

- A. Council Members  
1. Resolution No. 09-\_\_: In Appreciation to Steve K. Dentel

**(SEE ITEM #4)**

**24. 9-B. COMMITTEES, BOARDS & COMMISSIONS**

1. Appointments to Downtown Newark Partnership (5 Appts.)

Mr. Funk made the nominations to the DNP.

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT BOB ASHBY (DEER PARK), FRED DeMICCO (UD-HRIM), KEN

GODWIN (KLONDIKE KATE'S) AND KATRINE HUTCHISON (WILMINGTON TRUST) BE REAPPOINTED TO THE DOWNTOWN NEWARK PARTNERSHIP AND THAT KRISTEN SHORT (GRASS ROOTS) REPLACE MIMI SULLIVAN-SPARKS (BLOOM) AND DOUG RAINEY (NEWARK POST) REPLACE MARTY VALANIA; SAID TERMS TO EXPIRE JULY 2012.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

**25. 9-C. OTHERS**  
None

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

**27. 10-B. ALDERMAN'S REPORT**

MOTION BY MR ATHEY, SECONDED BY MR. TEMKO: THAT THE ALDERMAN'S REPORT DATED JULY 20, 2009 BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

**28. Meeting adjourned at 10:46 pm.**

Patricia M. Fogg, CMC  
City Secretary

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