

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

April 26, 2010

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 Fogg
City Solicitor Roger Akin
Finance Director Dennis McFarland
Planning & Development Director Roy Lopata
Assistant P&D Director Maureen Feeney Roser
Chief of Police Paul Tiernan
Assistant to the City Manager Carol Houck
Public Works Director Rich Lapointe

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

1. 1. ITEMS NOT ON PUBLISHED AGENDA

01:05 A. Public

Pat Wisniewski, a Newark resident, requested compassion and that people listen to each other during the Barnes & Noble discussion.

2. Amy Roe, a Newark resident, commented on agenda item 5-B, the recommendation for an RFP for electric and water rate study. She was concerned that the water rate study might not be completed until next year which was inconsistent with what Council voted on in the budget and the understanding made to the public. She encouraged going back to the original intention and doing the water rate study this year.

3. 1-B. UNIVERSITY

06:35 1. Administration

Rick Armitage reported that the first project scheduled on the campus this summer will be replacement of the grass fields on Fraser Field on the north side of the Bob Carpenter center. Two fields will be turned into AstroTurf, and lights will be added to a second field.

There will also be two projects on the east campus. A new utility plant will serve future dormitories that will be built beginning 2011 and go through 2017. An additional plant was needed to service the dormitories as well as a new interdisciplinary science building which will begin sometime late in 2010, continuing into 2013.

In late fall at the Bob Carpenter center, construction will begin on a building that wraps around the southern and the eastern sides and will include basketball practice courts and volleyball courts. When not being used by the varsity teams, the facility will be used for recreational purposes by the students.

4. **1-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

5. **1-C. COUNCIL MEMBERS**

09:04

Mr. Markham – was pleased with the turnout at the Nefosky walk/run that raised money in honor of Chief Nefosky; noted the Water Department was looking into a plan to reduce waste within the system to reduce costs, and he encouraged more of that thinking by staff.

6. **Mr. Tuttle** – in regard to agenda item #7 (Barnes & Noble bookstore), he clarified that he worked for the University of Delaware as a faculty member. It was his judgment that the decision on the University bookstore had no impact on him financially, and the City Solicitor agreed there would not be a conflict for Mr. Tuttle to vote on this item.

7. **Mr. Clifton** – will be out of town from 5/9 through 5/16 and will be absent from the 5/10 Council meeting; noted Mr. Sonnenberg will attend a New Urbanism conference and requested him to report back on what elements from New Urbanism were applicable to Newark and how they apply here.

8. **Mr. Athey** – in the interest of public disclosure, stated that his employer could enter into a contractual arrangement with the University of Delaware at some point in the future, but this would not involve him or Barnes & Noble, and the City Solicitor felt he would be able to render a fair and impartial judgment on agenda item #7 (Barnes & Noble bookstore); commented on the Nefosky 5K; recognized Mr. Sonnenberg who was asked by the Delaware League of Local Governments to take an active role in the recycling bill currently in the General Assembly; based on the two pending appointments to the Newark Housing Authority, requested Ms. Fogg to contact Ms. Puzzo, Executive Director of the Joint Sunset Committee, to determine the timing for completion of their report and recommendations for the NHA. Mr. Clifton said he spoke with Representative Kowalko, and it appeared the time frame would be within the next three weeks.

9. **Mr. Pomeroy** – thanked staff for significant help on a property maintenance issue that came to a favorable resolution; congratulated Master Cpl. Gerald Bryda on his promotion in the NPD; issued a reminder for the Greater Newark Network public meeting on 4/27/10 at 7:00 pm at the Embassy Suites hotel – the discussion will involve economic development issues; joined Mr. Funk for opening day at the Newark American Little League; noted that AG day at the University was a great success; said it was good news that the Fitch rating reaffirmed the City's general obligation bonds at AA and upgraded the City's outlook from negative to stable; asked to revisit the topic of PPCA adjustments and the amount of control, or lack thereof, in the near future.

10. **Mr. Temko** – thanked Amy Roe and the Sierra Club for their efforts in the Painting Newark Green event; the last conservation report and update was March 2009, and he thought it would be useful to have a new update.

11. **2. APPROVAL OF CONSENT AGENDA**

17:27

- A. Approval of Regular Council Meeting Minutes – March 22, 2010
- B. Approval of Organizational Meeting Minutes – April 20, 2010
- C. Receipt of Planning Commission Minutes – March 2, 2010
- D. Receipt of Alderman's Report - April 1, 2010
- E. **First Reading – Bill 10-07** - An Ordinance Amending Chapter 25, Sewers, Code of the City of Newark, Delaware, Article II, General

Requirements, With Regard to Owner and City Responsibilities –
2nd Reading 5/10/10

- F. **First Reading – Bill 10-10** – An Ordinance Amending the Zoning Map of the City of Newark, Delaware, By Rezoning from BB (Central Business District) to BC (General Business) a 1.995 Acre Parcel at 601 Ogletown Road – **2nd Reading 5/24/10**
- G. **First Reading – Bill 10-11** – An Ordinance Amending the Zoning Map of the City of Newark, Delaware, By Rezoning from AC (Adult Community) to RR (Row or Townhouses) an 8.18 Acre Portion of the Village at Twin Lakes Subdivision Located on the East Side of Elkton Road, Between the Newark Interstate Business Park, Otts Chapel Road, and the Northeast Corridor Railroad Right-of-Way – **2nd Reading 5/24/10**
- H. Receipt of Real Estate Tax Assessment Quarterly Supplemental Roll – April 1, 2010
- I. Resignation of Annette F. Cornish from the Newark Housing Authority
- J. Resignation of Catherine Ciferri from the Newark Housing Authority

Ms. Fogg read the Consent Agenda in its entirety.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THE CONSENT AGENDA BE APPROVED AS SUBMITTED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

12. **3. ITEMS NOT FINISHED AT PREVIOUS MEETING** – None

13. **4. FINANCIAL STATEMENT**

19:40

Mr. McFarland explained that the February 2010 report was reviewed at the Council workshop, and he would therefore review the March report.

There was good news regarding the ratings review with Fitch, and the City was reaffirmed at an AA rating with a stable outlook. They also indicated that within several months the City will be upgraded to AA plus.

Results through March reflected a deficit of about \$1.3 million relative to budget which was an \$800,000 improvement from the end of February. The primary driver of the shortfall was a shortage in the Electric Fund which will be addressed by the PPCA adjustment within a few weeks.

In the Governmental Funds there was an operating deficit of about \$2.8 million which was about \$238,000 below budget. Various revenue streams were trailing the budget a little contributing to the \$238,000 shortfall. Transfer taxes were still weak, and traffic fines in particular were trailing budget. Operating expenses turned around and were under budget for the first three months of the year by \$126,000. About a quarter into the year nothing within the Governmental Funds suggested the City would be severely off budget by year end.

The Enterprise Funds were roughly \$1 million below budget for the year, about \$110,000 of this was due to the higher expenses for contractual payments early in the year. Mr. McFarland expected over time that would work out, and the timing differences showed up in both the Electric and Parking Funds. The Electric Utilities margins were about \$660,000 below budget as a result of the sales rate. It was anticipated that the rate adjustment would take that into account. Margin in the Water Fund were tracking budget. Sewer margins trailed budget by about \$233,000, again based on a timing difference and over a period

of a few months should balance out. For the Enterprise Funds, given the actions taken to date, there was no reason to be materially off budget for the full year.

The cash position at the end of March was \$12 million which was a decrease of about \$1.4 million from the beginning of the year, and that cash decrease at this point was tracking the operating shortfall. As the operating shortfall was made up, cash should improve a bit for the balance of the year.

Mr. Funk questioned why there was a reduction in Instant Tickets for property maintenance which declined from \$29,000 to \$7,000-\$8,000 in three months.

Mr. Clifton asked what changed in the City's financial management plan that gave the City a positive review by Fitch. Mr. McFarland said Fitch reviewed the City three years ago when the reservoir litigation was still an unknown. Also, financial policies were not in place and action had not been taken in utilities to adjust the rates to insure they would achieve margin. From Fitch's perspective, those were improvements from three years ago. They noted the City's cash position was still weak but felt the City had and could take action to restore the liquidity position. Moody's had not issued an opinion on the City for almost seven years and compared the time when the City was cash flush with an excess of \$25 million vs. last year in the \$12-\$13 million range.

Mr. Pomeroy asked how closely the rating agencies tended to mirror each other. Mr. McFarland said generally Moody's and S&P were almost always in lock-step. Fitch tended to give slightly better ratings than Moody's and S&P.

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

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

14. 5. RECOMMENDATIONS ON CONTRACTS & BIDS

A. Recommendation for Request for Proposal (RFP) No. 10-01, Economic Development Plan

28:03

Ms. Houck reported an RFP was recently issued for an economic development study. Nine proposals were received and ranked by a committee of six. Four of the original nine were asked to make a presentation to the committee. Following the presentation the committee determined to enter negotiations with the firm Wadley-Donovan Group, and the budget was reduced from the negotiations by \$7,700. Funding was available from the City for \$50,000, and there was a funding commitment from the University of Delaware, New Castle County Chamber of Commerce, and the New Castle County Government totaling \$37,500. The additional funds brought the total available for the study to \$87,500. It was recommended to authorize the City Manager to enter into an agreement with Wadley-Donovan for their reduced budget proposal of \$80,500.

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT THE CITY MANAGER BE AUTHORIZED TO ENTER INTO AN AGREEMENT WITH THE WADLEY-DONOVAN GROUP FOR THE DEVELOPMENT OF AN ECONOMIC DEVELOPMENT PLAN FOR THE CITY OF NEWARK AND SURROUNDING AREAS AT THE TOTAL COST OF \$80,500.

MOTION PASSED: VOTE: 6 to 0.

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

Abstain – Athey
Nay – 0.

15. 5-B – RECOMMENDATION FOR REQUEST FOR PROPOSAL (RFP) NO. 10-02, ELECTRIC RATE CONSULTING AND NO. 10-03, WATER RATE CONSULTING

29:52

Ms. Houck explained that two RFPs were issued in February, one for the electric utility and one for the water utility rate study. Seven proposals were received for the electric and eleven for the water rate studies. Five firms responded to both studies.

Following the initial ranking, Black & Veatch was found to be ranked at the top for both the electric and the water rate studies. Black & Veatch agreed to an 8% reduction (a savings of \$7,300) for being awarded both rate studies. Funds of \$50,000 were available in the City's budget, and Black & Veatch agreed to hold their pricing for next year if Council chose to include the water rate study in the 2011 budget. If Council decided to have the study done this year, a budget amendment would be required.

Based on the funds budgeted this year and the City's financial situation, it was recommended to move forward with the electric rate study and to hold the water rate study until next year. Ms. Houck noted the Finance Department would not be working on both studies at the same time based on staffing requirements.

Mr. Pomeroy found it frustrating and said it was clearly brought up on multiple occasions that the amount budgeted would cover both studies and that both studies would be conducted this year. Further, one of the studies (if not both) had been delayed from the prior year. Ms. Houck explained nothing was intentional and during the budgeting process, it was not known what prices would come in. During the ranking process, the budget proposals were not opened until the rankings were completed. She believed staff thought they had budgeted adequately for the studies and reiterated a budget amendment was an option.

Mr. McFarland explained he put \$50,000 in the budget as his best guess and this was an instance where an item budgeted for came in above budget. In light of the ongoing financial challenges the City faced, it was felt the best recommendation was to push the water study out into the next year. However, with Council approval the additional money could be spent to conduct the water rate study this year.

Mr. Pomeroy asked if this was really the best discount the City could get for having both services provided by the same firm and was there any reason we could not contractually obligate to both of them and at least initiate both the studies so they ran concurrently. That way even if they were not completed by the end of this year, both would have started this year.

Mr. McFarland said with the proposal, the electric rate study could be done and the approved recommendations of that study could be embedded in the 2011 Operating Budget. There was not adequate staffing to do the two studies concurrently; it was not a question of handing the study off to the consultant and they do the work and bring it back to you. It required on-going staff work and analysis, and staff could not effectively do a good job if the studies were run concurrently.

Mr. Pomeroy thought many people were told, that the City would be able to conduct both studies in one calendar year. He asked if something changed. Mr. McFarland said if Council approved going forward with the water rate study this year, the electric study would have to be completed by July or August to appear in the 2011 Operating Budget. Thus, as soon as the electric rate study was completed, the water rate study could commence. However, the results of the water rate study would not be available to be incorporated into the 2011

Operating Budget. Mr. McFarland pointed out that these were rate design studies and were not studies intended to lead to a rate increase. The intent was to assign costs to the correct customers and recover them in the correct manner so in any event they should not have a huge impact on the Operating Budget in terms of gross revenues, but they would have material impact on which customers paid what costs.

Mr. Temko asked Mr. McFarland to expand on the goals for the studies. Mr. McFarland said there were fundamental goals going into any rate design study – treat all customers equitably, have a rate design giving reasonable assurance that you will collect all your costs and that you remain somewhat competitive or comparable to utility costs and services in the same or surrounding markets. Further goals were to insure that the rates were conducive to economic development and encouraged conservation, both energy and water.

Mr. Markham stated he would not do the studies concurrently because you can usually learn from the first one you did. With that in mind, he thought the water study would take less time. Mr. McFarland said most of the proposals for the electric study were about four months. In terms of the impact on the City, the electric rate study had much more significance and, in particular, a lot to do with the City's relationship with the University and what they wanted to accomplish in the next few years and what they would look for in terms of electric service from the City. Therefore, his opinion was that the electric study should be completed as quickly as possible and prior to the water rate study.

Mr. Temko asked Mr. McFarland to comment on the financial implications to the City's finances if the City had the water rate study done in September as opposed to the following January. Mr. McFarland said the cost not budgeted was \$30,000. On the other hand, the City would spend the \$30,000 sometime, so it would either be spent in 2010 or spent in 2011.

MOTION BY MR. TUTTLE, SECONDED BY MR. POMEROY: THAT THE 2010 OPERATING BUDGET BE AMENDED BY \$37,798 IN ORDER TO CONDUCT THE WATER RATE STUDY IN 2010.

MOTION PASSED: VOTE: 6 to 1.

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

MOTION BY MR. POMEROY, SECONDED BY MR. ATHEY: THAT RFP NO. 10-02, ELECTRIC RATE CONSULTING, BE AWARDED TO BLACK & VEATCH IN THE TOTAL AMOUNT OF \$45,977 AND THAT RFP NO. 10-03, WATER RATE CONSULTING, BE AWARDED TO BLACK & VEATCH IN THE TOTAL AMOUNT OF \$37,798, WITH THE ELECTRIC AND WATER RATE STUDIES CONDUCTED IN CALENDAR YEAR 2010 AND THE ELECTRIC STUDY COMPLETED FIRST.

MOTION PASSED: VOTE: 6 to 0.

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

16. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING

A. Bill 10-08 – An Ordinance Amending Chapter 32, Zoning, Code of the City of Newark, Delaware, By Adding Continental Avenue to the List of Exempted Streets from the Student Home Ordinance

43:45

Ms. Fogg read Bill 10-08 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 10-05.

The Chair opened the discussion to the public.

Brian Leshar, a Newark resident and owner of 29 Continental Avenue, requested approval to add Continental Avenue to the exempt street list of the Student Home Ordinance. He noted that 11 of the 15 property owners of Continental Avenue currently had rental permits, and he had a signed petition to add Continental Avenue. Mr. Funk added the request was unanimously approved by the Planning Commission.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

(ORDINANCE 10-12)

17. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS

45:48

- A. Request of the University of Delaware for the Major Subdivision and Parking Waiver for the Properties at 83 and 87 East Main Street, 78 East Delaware Avenue, and 16, 20, 22 and 26 Academy Street In Order to Demolish the Existing Buildings at 87 East Main Street, the Rear Portion of the Building at 83 East Main Street, and the Building at 78 East Delaware Avenue, and Replace said Facilities with An Approximately 60,000 sq. ft. Barnes and Noble Bookstore and Office Facility ***(Resolution and Agreement Submitted)***

(Secretary's Note: As requested by Mr. Pomeroy at the conclusion of the meeting, the following minutes are verbatim.)

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

Mr. Bill Manning represented the University of Delaware with Andy Lubin, consultant to the University, Mark Sanderson, a representative of DIGSAU, the architectural firm and Steve Davis who represented one of the owners of Apex Engineering.

Mr. Manning: On tonight's agenda you have two items relating to the University Bookstore; one is the approval of the subdivision or development plan and the other is the approval of the parking reduction. Very generally there's been a lot of conversation about this, and I'm going to have Mark take you through the design in a little bit of detail. So let me just say that as you know, this is the combination of several parcels owned by the University in the Main Street/Academy Street area. The large parcel ends up being about an acre and a half and on this parcel the University proposes to build a building of about 60,000 square feet, 40,000 of which will be dedicated to a new University bookstore, 20,000 of which will be dedicated to University administrative offices.

A portion of the structure will rise three stories, and that portion that rises three stories is 175 feet back from Main Street. After a lot of collaboration regarding the height, the height now stands at 53 feet which is the height of the Opera House and that is 10 feet less than was approved by the Board of

Adjustment when we applied for variances, a height variance, a side yard setback variance and variances for the number of loading docks and so the height has been reduced dramatically in the design process primarily at the request of folks on the Design Review Committee and others in the hearing process before the Planning Commission. Prior to this evening we met with the Design Review Committee of the Downtown Newark Partnership which approved the design, and I am just going to quote from a letter from the Chairman on March 2. "The Committee applauds the design team and welcomes the unique and creative design that will add to the architectural diversity of the Downtown district. They create an inviting, pedestrian-oriented public space." That was the Design Review Committee. I think you all got an e-mail or a memo on Friday from the Downtown Newark Partnership stating that the Partnership unanimously approved the project as well. In addition to the process with the Design Review Committee with the Downtown Newark Partnership, we have been before the Planning Commission. Several of the changes respond to things that were said at the Planning Commission hearing, some of which had been said at other meetings as well. But one of the features of the design you are going to see tonight was, I will say, handcrafted by the Chair of the Planning Commission who suggested a solution that we ultimately adopted to the issue of truck access to the loading docks, and we'll talk about that in a minute. In addition, we've been before the Board of Adjustment as I said and received the three variances that I just identified. At this point, rather than hear me talking, I would like to introduce Mark Sanderson from DIGSAU, the architects who have produced this design and Mark, I would like you to walk all of us through the current design noting in particular the changes that have occurred since we started the design process and the changes which has responded to the comments that we have heard.

Mr. Mark Sanderson represented a small group of the members who collaborated and designed the building being presented this evening.

Mr. Sanderson: I'll quickly run through the design here but as Bill mentioned, I think a big part of this design process has been a collaborative one and one that did involve members of the Downtown Newark Partnership and specifically, many of the changes or modifications to the design tonight are in response to some of the comments from the Design Committee.

So the site as it sits is Main Street is to the top of the page to the north, Academy runs from the south, and Delaware is to the south. The plot is represented by the red line.

I think early in the process we identified there are several historic buildings that surround the site that we identified or that had a significant impact to the development. (inaudible) with this thing above me which is actually part of the development, the Opera House which is on the corner of Main and Academy, the Fire House to the south and the Academy Building over to the east, those four buildings and specifically the Christina Building, the Opera House and the Academy Building have largely influenced what is the courtyard development in terms of the access off of Main Street down through to Academy. This sketch here represents what that development and that circulation and the response to the urban fabric around it allowing a generous entry off of Main Street as well as Academy.

Looking at a three-dimensional overhead view of the development, Main Street to the bottom here and Academy Street moving up here, the bookstore café which is a part of the bookstore (it's not a standalone café establishment, it's an internal café that happens to serve Starbucks coffee is part of the bookstore development but fully owned and part of that development. Behind it is a one store link which, I believe in some of the earlier plans that were shown at the height of that as was pointed out earlier this evening by Jean White, the height of that is indicated at, I believe, 30 feet. The adjacent building, the historic Christina building, is 27 feet and as you can see through the development and the design

that the intention of that building is actually a one-story link which would be significantly below that historic element (inaudible).

There were a variety of sustainable features. The project is not pursuing a LEED certification, but there are several initiatives associated with the project. Specifically, I think in the courtyard development, the reduction of impervious surface, there is quite a robust integration of native plant species in that area to the south and this was the recommendation of the Downtown Newark Partnership to incorporate sunshades. There are a variety of recycled and local materials wherever they can be used and to the great extent possible high insulation values and efficient mechanical equipment.

Focusing on the courtyard and the entries into the building, right off of Main Street a primary entry would be preserved to the school building. The existing bank building which wraps around the Opera House would be removed as part of the development, will be opened up to a generous courtyard with a good deal of planting and benches and upper space. There would be a raised seating area that could be part of the café as well as some lower seating areas as well.

The entry into the bookstore is focused on that main entry passageway through as well as a shared vestibule off of Academy Street, and the academic space which is occupying the third floor of the three-story portion of the building would be accessed from this tower element. It becomes a marker, an icon in the courtyard.

There has been a good deal of discussion with Parks and Recreation about trying to save the two trees on Main Street the two quite large specimen trees, and we have been working with them to try to preserve those trees which will certainly be a challenge, but one that we are willing to try to undertake as part of the development. They add a great deal of scale, and they are quite nice large trees on Main Street.

As mentioned before, the planters provide stormwater management - rain gardens is the current description of that but that works to filter the water through and bring it to a point that it can be properly cleansed before entering the City system, and based on those comments with the Downtown Newark Partnership, we increased that amount of impervious surface.

The elevation here is the previous elevation that was part of that Planning Commission presentation, and the building height as you can see in this image has been reduced – a variety of strategies for that reduction but it brings it in line with the Opera House matching the height of that building. Once again as Bill mentioned, that's behind, it's pushed back from Main Street 175 feet, so that particular façade is not likely to have a strong impact on Main Street.

As you enter the courtyard, that entry sequence does become revealed and you can see as part of the plantings this is intended to be a lush urban area that's populated and quite active.

This is a similar aerial view but this time looking from the south, with Academy Street running this direction and Main Street now up at the top of the page with Delaware Avenue to the south, the three-story portion of the building closer to the south now with the one-story wing that's below the café and that courtyard space development as indicated there is a portion of public parking to the south as well.

Looking at the Delaware Avenue Planning Commission elevation again, that's been reduced and lowered and in this case the sunshades have been added which provide additional detail and scale.

Moving over to the Academy Street elevation, again the Planning Commission elevation which has been reduced to align with the Opera House in a way that the proposed three-story building is now exactly at the same height as the Opera House.

There are additional alignments and scale elements in addition to the height. Some of the scale of the windows on the third level respond in some measure to the Opera House and the scale right next to the existing two-story historic Fire House also carries some of the scale, and we are hoping to carry some of the lines and detailing of that historic element into the brick patterns. One additional comment made by the design group was to add additional street trees along Academy so there were some adjustments to the building setback and those trees were integrated.

At nighttime this is also expected to be a very active courtyard space that continues to bring activity and life to the downtown. An additional element that was commented on by the design group was the link from the historic element to the new three-story and one of the comments on that specifically is that it lacked detail and seemed to “slam” into the existing building and that’s also seen again. This is the previous design. The proposed design allows for basically a stopping of the building and an adjustment there which is also picked up in some of the detailing in the courtyard, again seen in the (inaudible) here.

This is a view from Academy Street courtyard looking at that same link area, very lushly vegetated and back now looking towards the Opera House back towards Main Street with Academy Street over to your right and the link element resolving that condition at the historic element.

This is the final slide but this is the general plan which shows some of the context along with the parking and the courtyard development and I would offer to open to questions at this point.

Mr. Manning: If you all have questions about the design, Mark is available to answer them right now. I do want to say a modest correction to his remarks. Starbucks must have achieved such a status in our society that every coffee shop is referred to as Starbucks. The folks at Barnes & Noble would take great issue there. It’s not going to be a Starbucks, it’s going to be a Barnes and Noble coffee shop. I don’t think that matters materially, but I wanted to point that out. Do the members have questions about the design at this point?

I will just quickly show you what your Planning Commission came up with in terms of the solution to get to the loading dock. We were proposing that trucks coming off of Delaware Avenue either pull up here and back in or pull in forward and back out, and everybody reacted to that proposal with horror. At the Planning Commission meeting a suggestion was made that the trucks pull in, come around here, re-design the parking lot and loading docks so they are integrated so the trucks can actually pull through and back down to the loading dock and that turned out to be a pretty good idea so that we are no longer asking for any kind of approval or backing maneuvers on or off of Delaware Avenue. With that, I’ll repeat the question, do you all have questions about the design?

Mr. Tuttle: On the street trees along Academy, I assume this predates the addition of those, they don’t seem to.... are they just in the sidewalk there between the building and.....

Mr. Sanderson: Yes, they are in the sidewalk.

Mr. Manning: I think we pushed the building back in order to make room for those trees, am I correct?

Mr. Funk: There's a 50 foot right-of-way there, and it's only paved about 34 feet wide, so there's about 8 feet from the curb inward that the City owns and that's where typically they put the sidewalk. Any other questions for Bill?

Mr. Temko: Could you go back to one of the photos of the front of the building and comment what materials are used in the building construction.

Mr. Sanderson: What we are looking at here is a gray brick along this zone here on the lower levels up around the bay here and with the tower also in the back one-story portion and basically the portions of the building that interact closely with the courtyard and pedestrians along the street are either brick or storefront in order to allow the view in and out of the retail space. The upper portion of the building is a ribbed metal siding that has a variety of sizes and details associated with that.

Mr. Pomeroy: Question about the design. What I'm not noticing in any of the renderings, and I feel like maybe I'd seen at one point, was proposed signage and I'm curious as to what the plans or expectations are related to signage.

Mr. Sanderson: I think the question of the signage right now is still a very open question between the University, and it's under development with the University and Barnes & Noble, and I believe that would be resubmitted and go through the approval process in terms of the signage ordinance with the City under a separate submittal after that has been developed.

Mr. Pomeroy: You must have an inkling as there, I'm sure, are other examples and models out there of other university projects that are comparable. How have they been done and could you give us a glimpse into what that may be and how it would impact the.... just a rough sense, the designs or rendering.

Mr. Sanderson: I think there's a question as to if there is any particular signage along Main Street. I think the historic quality of the Christina building is one that provides a little bit more sensitivity with the signage there, but I think that's one that's probably going to be understated and scaled down whereas the retail group would like to see some sort of signage along Main Street that would allow vehicles to see the signage as they move by or pedestrians as the... the courtyard is something that they see as a positive in terms of the involvement and the way that it will engage the public but they want to make sure that they are still a visible presence. Along Academy Street there would be some signage located probably along this face of the building right here and in terms of what that signage would look like, what has typically been done when Barnes & Noble develops a relationship with the University and comes in as their vendor, they will oftentimes in a structure like present their name first, so it would be Barnes & Noble at the University of Delaware, and there are a variety of their own design guidelines that they feel are important to abide by.

Mr. Pomeroy: Sure. Just two very quick questions still on this one topic then I'll defer to another Council member.

Mr. Manning: While he is attending to his visuals here, let me just add in response to Councilman Pomeroy's question. That is a matter that is usually negotiated in the agreement. The agreement has not yet been.... well it certainly hasn't been signed, it hasn't been fully negotiated so....

Mr. Pomeroy: Just for clarification, I apologize, but you're talking about the agreement between yourselves and Barnes & Noble is what I'm assuming, correct?

Mr. Manning: Yes, and I should have said that, I apologize. You can expect Barnes & Noble to want more signage. You can expect the University to resist. We understand the obligation, we understand what the City rules and regulations say. We'll certainly comply, and there will be a City approval required whether

it's in the building permit or at some separate point there will be an approval required for the signage.

Mr. Pomeroy: How about on the tower, is there typically signage on the tower?

Mr. Sanderson: Currently that was actually a suggestion of the Downtown Newark Partnership, was actually to add three-dimensional signage onto the tower. That currently has not been explored or pursued at this point, and I think probably out of respect of that request we'll take a look at that but it is not currently part of the plan.

Mr. Markham: Councilman, did you have more on signage?

Mr. Pomeroy: No, please go ahead.

Mr. Markham: I had a couple comments. I think, in my opinion, we are looking at things that are sized to Main Street. You won't see too many of the large signs up top on the tower. Personally, I would discourage that, and I would also discourage kind of the neon, very much Trabant Center signs, so I'll go on record on that one.

Mr. Pomeroy: I would go on the record. I think that the community members, I understand the University's desire to see a.... and being in marketing I understand the value of branding, but I do think that many in the community are interested in perhaps more the Barnes & Noble aspect of it than they are the University element of it, but it's at least good to know that from a co-branding standpoint that there is at least.... in such an arrangement that oftentimes there are, it is a co-branded arrangement.

Mr. Manning: There's a level of cooperation that has to be worked out between the University and Barnes & Noble. It happens in every one of Barnes & Noble's college.... they have a whole division devoted to college bookstores and so we'll have the conversations. I should point out that the University quickly and voluntarily agreed to the preservation of the front portion of this structure. Having done that and about to spend a lot of money preserving it and pulling it into the new structure, it's not about to mar that with a sign that is inappropriate to that particular location and so the negotiations are about to take place on that issue and the City will hear about the result and have the opportunity to say yes or no.

Mr. Athey: You had one of your slides looked like it was kind of a night scene if you will along Academy. Could you.... cause I think kind of goes part and parcel with the sign aspect of it and somebody already brought up the "Trabanting" of Newark. Have you gotten any sort of hours of operation or if I go down Academy Street at 11:30, is this thing going to be.... frankly, I think a lot of people in town, frankly myself included, were kind of shocked if you will when Trabant opened up cause it was, you talk about a contrast. I was at the Planning Commission meeting and the discussion of contrast with buildings came up and I know Dr. Ames basically stated as I guess his theory that when you have historic structures if you try to mimic them and, please correct me if I am mischaracterizing it, you don't want to mimic them, you want if anything to draw a contrast to them and I think that makes a degree of sense at least to me from a material standpoint, ball, kite things like that but this bright lights whether it has a neon sign or not next to the Fire House, I'm having a hard time with that just seems like it's exceedingly contrasting. I don't know if you can even comment on that or....

Mr. Sanderson: Sure, I think what an image like this intends to display is that as night falls that life goes on in an urban environment like Main Street and there will be the view inside to that life and that space from the outside and that's something that we felt was an important part of that design and not certainly these computer images bring on a contrasty quality to them but as there is any storefront along Main Street that has life and activity and people shopping on the

inside, you would be able to view into that type of environment as you are on the street in the evening whereas in the daytime that was not.... and that's what the intention of this view is that the courtyard space that is this threshold of private and public space into the retail area carries some of that activity and life from the inside.

Mr. Athey: I think the difference is I can't think of a business on Main Street that's over two stories high with windows. It's one thing to walk past one of the restaurants or even one of the mercantile stores. Yes, they're open, you can see what's going on but this to me, this really jumps out at you.

Mr. Sanderson: I think maybe just one follow-up item that is also related to Mr. Temko's comments about the material and your reference to the design. One of the things that I think I maybe glossed over at the beginning was certainly a fundamental design aspect of what we are doing and that is the materiality and the tone of the one-story link and the three-story portion of the building certainly is intended to be a background or a scrim to the primary historic elements in the buildings around it as well as that active, urban courtyard space. So the colors and the tones are muted intentionally so, and the materials are intentionally complimentary but in contrast to the historic elements that surround it.

Mr. Athey: You have a good counterpoint.

Mr. Pomeroy: I have additional questions, I'm not sure if we are going to go through them now or let the public go but I'm going to at least fire out a couple more that are specific in keeping with the generic theme of design. Mr. Manning, you said it was not actually going to be a Starbucks, but it's a contractual café that is....

Mr. Manning: It's a Barnes & Noble house brand café.

Mr. Pomeroy: Question related specifically to that and the negotiations therein. One of the things that we certainly have plenty of on Main Street and as an avid coffee drinker I appreciate it very much, there are plenty of coffee shops. There is that space.... I was under the assumption, and I'm sure that Starbucks perhaps is the provider of the service at the café but my question for you or for somebody I suppose is related to the contractual arrangement you end up having with Barnes & Noble, is there flexibility as to what ends of being defined as café, what is actually offered at the café, to what extent is the café something that is very rigidly designed in the arrangement meaning it's going to be a coffee shop vs. perhaps some other service driven amenity that still fits the mold of café but perhaps offers something that is just not another coffee shop.

Mr. Manning: I have to tell you in candor the agreement hasn't been completed and I know it as a coffee shop you will see in Barnes & Noble's everywhere – a place to sit down and have a cup of coffee and read a book. I think it's intended to be the same. I would say if there are particular sensitivities about these other services or goods that you have in mind, let us know. We should at least know that going into these final negotiations, but I think it is intended to be what you find in virtually every other one of these Barnes & Noble bookstores.

Mr. Pomeroy: Understood. It's not as if there is a shortage. I was curious as to whether or not you were limited in the nature of the amenity that could be offered in there or could it be some other sort of, even if it was food or beverage oriented business if you needed to rigidly apply it as being a coffee shop. Could it be something else that was complimentary to the bookstore environment but was not just essentially a Starbucks? I'm familiar with naturally other Barnes & Noble's since I've been in there.

Mr. Manning: I suppose if we had a request that something be added, we could make it and Barnes & Noble would see whether it fit into their program. I suspect Barnes & Noble is going to be fairly aggressive in sticking to its stock offering of

coffee and coffee related, coffee cakes, that they do everywhere because these organizations, they don't want to vary from location to location. But as I say, we really haven't, at least I'm not aware that we've gotten that deeply into it and I'd be happy to report to the City on what emerges as the plan.

Mr. Pomeroy: Along those same lines and because I'm familiar with the fact that there are a lot of different, I know that Barnes & Noble obviously as a corporate entity that deals with bookstores, and I've been in several of them at university towns, so very familiar with them. I also know that there are nuances to each of them and you had mentioned that you are still sort of in the final stages of the negotiations. How would you characterize this bookstore as sort of striking a balance between it being something that is a university bookstore vs. something that is truly intended to be an amenity equally so or otherwise for the community?

Mr. Manning: Let me answer that question with the data that we collected so that we could think about parking because it's the same data. According to Barnes & Noble, 8.9% of the total volume of sales will be to the general public. In other words, this is a college bookstore which Barnes & Noble enhances with these facilities that you see in front, the café will be part of the historic structure, the Christina School building, and the items sold to the public that aren't textbooks and related student materials will be in what we call the connector right behind it. The best answer I can give you is what Barnes & Noble's answer to your question is, less than 9% is expected to be sales to the general public.

Mr. Pomeroy: And I understand it from the sales standpoint. I'm curious because I've been in some that really do feel as if, when you go in there, their services that are there and it's really for the community that clearly has, for example, like the one that I visited recently in Georgetown was also, I believe, run by Barnes & Noble. You went in there and it was a bookstore. It was something that you went in there, it was like you were in a Barnes & Noble. You go up to the second floor, the large volume of course of the sales were in textbooks but clearly when you walked in you felt as if you were going somewhere that was a perceived benefit to the community for having that service there.

Mr. Manning: That's why Barnes & Noble is excited about the new location. Barnes & Noble is running the bookstore now. This is the same contractor, same vendor running the same bookstore operation in a new location, and they are excited about that because of this relatively small, but material to Barnes & Noble addition to what's there now.

Mr. Temko: Can I follow up on that because I'm still just a little confused on.... because I understand the sales figures are obviously also with textbooks, there is a certain time at the beginning of the semester where there's lots of people purchasing textbooks and that's not as continual but were you saying that the one-story connector is the only place that there is non-textbook books. Visually, what, how much, obviously you don't know the details of what the layout will be.

Mr. Manning: Here's what my understanding is. If you enter the café you will see a café-like setting that you see in a lot of Barnes & Noble's. When you travel back to the main part of the building, you will go through what I call the connector, and I think there you will see books and merchandise that is intended for the general public, not that college students can't buy those or don't want to buy those, but these are books and book-related items that you will find in a Barnes & Noble, whether it's a college Barnes & Noble or not and then you go deeper into the facility and you will begin to see more traditional bookstore items. Now the stacks of textbooks, I think Andy if I'm right, will be located largely on the second floor of the larger portion of the facility. So it will look a lot like a Barnes & Noble looks at other places. We think it will have a dramatically different patronage than, for example, the Barnes & Noble at the mall because it's Newark, because of the pedestrian character of Main Street, because it's a college bookstore, all those things will give it a dramatically different mix of

patrons, but you will see Barnes & Noble operations intended for the general public. They'll be very apparent to you as soon as you enter if you enter on the old school house side of the building.

Mr. Athey: Are you basically done your presentation?

Mr. Manning: No, thank you.

Mr. Athey: Because we haven't even talked about parking waivers and some of the really juicy issues.

Mr. Manning: As Mark wrapped up his presentation, I wanted to invite questions about the design. Perhaps it was a dumb idea on my part. I apologize if I've thrown you guys off. I have a couple other things to say and then we'll take your non-design questions.

Mr. Markham: Actually, I do have a design question, sorry. Just looking at this building, I'm not an architect but it just seems to me that there's a lot of right angles in this building in terms of how it fits into the area. Have you thought about finding ways to soften the look, I mean you've got a lot of office building feel here. To the architect, is there a way to soften this?

Mr. Sanderson: Certainly the design process as mentioned earlier was one that involved a great number of people, a good deal of input from the University back and forth. A whole variety of designs were evaluated with the whole range of materials and I think after very careful evaluation, a good deal of comfort and consensus was reached with the design that's presented tonight. I think some of the improvements in terms of scale and softening the building were presented this evening we feel was a great improvement to be able to lower the height so that it matches the Opera House and really strengthens that dialog between those building and creates that dynamic space in between. We feel that the lush planting in the courtyard also does a great deal to....

Mr. Markham: Those are all givens, lowering the height, having the trees, having the open space, all that's great. My comment is just that it's lots of angles. I know Roy is in the building and that after a Council approval there is always changes, so I would encourage you to look at ways to soften the angles of the building.

Mr. Manning: I think I've been invited to speak to the parking reduction, let me do that. I think your Code requires 237 spaces. Ms. White is correcting me – she says its 247, she's right according to Steve. Thank you. Apex has estimated that because of the large pedestrian traffic, and we have estimated the extent of pedestrian traffic from a lot of factors, one of which was the anticipated sales volume to the general public. Some of the general public will obviously be pedestrians. Nearly all the non-general public, the student purchases, will be pedestrians and based on data developed by Barnes & Noble, Apex has estimated that at peak for patrons that do come by automobile we will need 25 spaces. The design shows 36. Based on that dramatic difference between what this facility requires and the formula appearing in the Newark Code, we asked for a parking reduction for the following factors. 1 – This is almost exclusively a pedestrian patronized facility, I've already talked about that. 2 – The University has other structured parking facilities that its built throughout the area and buses to take patrons to Main Street if that's where they're bound and so alternative parking is being provided. In addition to that, at the recommendation of the Planning Department and its report to the Planning Commission, the University has agreed to dedicate the on-site parking lot to the City. That space is actually a City-managed parking lot right now but you pay the University rent. This dedication would relieve Newark of the need to pay that rent and so there's savings, I think of about \$10,000 associated with that parking area and it will become, as it is now, City-managed parking. In addition, the Planning Department asked that the University do likewise with a portion that's just to the

west along Delaware Avenue, a portion of Parking Lot #1. The University owns a part of that, and the University has agreed to do likewise there, and so those two areas will be, in the words of the agreement that we have seen in draft that's provided from your Planning Department and from your City Secretary, dedicated this space to the City, convey the other space to the City. The net savings to the City will be about \$22,000 of saved expenses and that we believe is the basis on which we ask for a reduction in the required parking from the City, parking that would otherwise be required from your Code.

I am going to cover one more matter and then I'll take all questions. Particularly after the Planning Commission hearing and at the Planning Commission hearing, there were comments made about property taxes. At that time, I could not answer them because it wasn't clear how the University was going to develop this property. There was thought given to developing it in joint venture with a profit-seeking entity. The University has concluded that it won't do that, that this facility will be exclusively owned by the University and/or may be owned by a 100% owned subsidiary of the University and in any event there will be exclusively University interests there. The present bookstore is exempt from property tax, and the relocation to Main Street doesn't change that. By the way that proposition that I just said that I don't think this facility would legally be exposed to property taxes, that's something that isn't going to be decided tonight. Newark is free to take an adverse position. We'll decide that at another day. But because that's the University's expectation, we've heard some say, well maybe, maybe not. You may be legally correct, maybe you're not but you can't deny the fact that this bookstore is different simply because it is 175 feet from Main Street at the corner of Main and Academy and it's been suggested that if you're anticipating new sales volumes, you consider a payment in lieu of taxes that is determined by the proportion of those new volumes to the current volumes. It's been suggested that we look at square feet, the square feet of the café and connector and compare that to the square feet of the entire facility. We've done both of those things. We've first determined what the likely property tax assessed would be if this were a taxable property. We used traditional tax assessment evaluation and techniques and we concluded that it's going to be somewhere in the neighborhood of \$28,000. Barnes & Noble expects an increase owing to the new location that works out to be about 15% of the total sales volume. If you take the connector and the café, they are about that same 15% of the square feet and so we took about 15% of that expected tax, the tax that would be otherwise due if this was a taxable facility, and we ended up with a figure that was roughly \$4,000. Having checked that with both a square footage ratio and a sales volume ratio, we concluded that we were in the right neighborhood. In order to be conservative on the side of the City, we arbitrarily decided to increase that payment in lieu of taxes to \$7,500, and so the University is proposing to pay, in addition to the current subvention that gets paid annually, that amount of money (\$7,500). I wanted to explain how we got there in case you all had any questions. With that I think I told you everything I can think of to tell you about the project and would be happy to take any questions that the members might have.

Mr. Clifton: Question for you. You made a comment a few minutes ago when discussing parking and parking options that the University had other parking lots and so forth. Are you suggesting that if I were to park in the Haines Street parking lot close to Delaware Avenue that I wouldn't be ticketed by University Police if I were over at Barnes & Noble?

Mr. Manning: I was thinking of the structured parking which is open to the public.

Mr. Clifton: Which is the parking garage.

Mr. Manning: Well there's one when you go west on Main Street and there's one behind the current student center, the Perkins Center, there's one other one by the new art center. Those are available to the public and for university community members who use those or any of the other parking facilities, there's

the jitney or the bus service that gets them around town. I didn't mean to suggest, and I'm glad you corrected me, if I did suggest that all of that is open to the public, but my point was it helps to reduce the demand for parking on this site.

Mr. Pomeroy: I have a question related to the parking issue. Council member Athey, you had the same page opened, so please chime in if you did. For clarification that's in the agreement, item #6 on page 2, and it has to do with the conveying of the space to the City, and I want to ask for clarification from you and/or Roy on this and maybe further explanation on it. It says that "In addition, the Developer agrees to convey to the City the lands currently leased by the City from the Developer for portions of Municipal Parking Lot #1 subject to a requirement that the City reconvey said lands to the Developer for its use upon written request by Developer." I understand that we have a unique arrangement in Municipal Parking Lot #1. My question for you, are you saying that in this #6 that conveyance of space could be rescinded for both of the plots being conveyed to the City or just the one that's specific to Municipal Lot #1.

Mr. Manning: Just the one that's specific to Municipal Lot #1. As long as this bookstore is there, that parking lot will be there for the City. I think that may have been why in the draft agreement the word "dedicate" was proposed, but in any event, Roy and I have compared notes on this very point today and we both agree that the University can't do anything with this parking lot that you are looking at right now unless, of course, they redevelop the whole site which is certainly not something that is going to happen in the foreseeable future given the expenditure the University is making to build this site. And so, for as long as that bookstore is there, that parking lot is there for the City.

Mr. Funk: You used the word "dedicated".

Mr. Athey: This lot. I just want to make sure I'm clear, cause you're right I had the same paragraph. As long as this facility is here that parking lot that we are looking at will be there. My question, kind of similar to Councilman Pomeroy's is, with Parking Lot #1 if I'm reading this, and, thank you, Roy, I see you are already making your way to the microphone, that this basically says that upon written request by the developer, it gets reconvened. So, seems to me that's fairly open ended. Two questions 1) under what circumstances would that occur, and 2) does that mean that part of the million dollar plus parking waiver we've been asked to waive gets reverted back to us. Part of it is based on that lot being provided for the City use seems only fair....

Mr. Lopata: Let me give you the background here, how we wound up with this. Obviously, this is a large parking waiver and a large parking waiver fee. Our traditional approach to parking waivers not unique to this site at all, we've done it on numerous occasions as Council knows, is requested that the land associated with that project be dedicated to the City for parking so we would operate it. We've done it on numerous occasions in the past. That's what we did here. In light of the size of the parking waiver, we felt that some additional compensation of some form, parking related, ought to be made for the City. So the Planning Department came up with the idea, you know we also lease other land from the University that we are paying for on an annual basis that's part of another lot downtown, off-site, not directly associated with this site, that we felt could be considered to be dedicated as part of this project. Bill and I talked about it. The first reaction was, not surprisingly somewhat negative, because it was atypical request, and I felt it was atypical request because it was such a large parking waiver. It seemed to me it was something that could be justified, so as part of our discussion, Bill raised the issue which I presume reflected his discussions with other folks at the University, that if the University for some reason wanted that land which is behind the two buildings on Delaware Avenue between Delaware Avenue and the Galleria, that they would like to be able to have the opportunity of retaking that property, and I felt that since the key element of this parking waiver was the lot on East Delaware Avenue that that was not an

unreasonable condition and quite frankly I also felt and I told Bill and I'll tell you and the community, it seems to me somewhat farfetched to imagine that the University would want that property back and destroy the most important parking facility we have in the City. I think that is an illusionary clause. We can discuss it if it makes the University officials happy, that's all well and good, but I would be stunned if that ever occurred. I think that some future Council, future City Manager, future Planning Director and more importantly a future community would be up in arms if that parking facility was in any way jeopardized by University action. Having said that, the clause is in there because they want it.

Mr. Athey: I understand the logic of maintaining a clause as it exists today. My concern would be unimaginable or not, if that situation ever does come to pass, the way I read it is the land is yours, it's reverted and on April 26, 2010, we waived a million dollars that is partly based on our ability to use that land. And so what I see is you could rescind that ability and we can't go back in time and change anything we're doing tonight. Am I misreading this.

Mr. Lopata: That's a policy decision.

Mr. Athey: So I'm not misreading it.

Mr. Lopata: No, that is what the clause calls for. I think it's an unlikely situation, so I felt it was reasonable. We discussed it at the staff level and felt it was not an unreasonable clause in light of the fact we were asking for something beyond what we normally ask for and that was the key ingredient as far as I was concerned. We have never before asked someone to make what I would call an off-site donation to the City, not directly on the property.

Mr. Pomeroy: Just to clarify it because I wanted to make sure that, cause I still read it to be a bit ambiguous, the ability to take back is specific to the property in Lot 1, correct.

Mr. Lopata: Correct, two different clauses.

Mr. Funk: In fairness that CVS building, that's a huge building and we've got what, about 12 spaces behind there. We've done this consistently.

Mr. Athey: Right, but unless I'm forgetting the developer at CVS can't within written notice take.... that was a deal we cut, but this is a deal that's open ended.

Mr. Markham: It was a much smaller waiver, too.

Mr. Funk: The on-site is not open ended, just the off-site.

Mr. Athey: I understand that but it is still one of the basis for this fee or the recommendation to waive the fee I should say is partly based on two lots, not just the one.

Mr. Markham: The CVS parking waiver was much smaller than what we are looking at here. I think it was \$125,000 or something like that or was it more than that?

Mr. Lopata: It was about \$270,000. But that actually proves the point. We have waived pretty large fees in exchange for land dedication, relatively small parcel, that was an on-site land dedication. This is a different animal, and in this case we are also asking the University to put in the parking facilities which Bill did not mention.

Mr. Funk: (inaudible) the parking garage ends up in Galleria 1.

Mr. Athey: Actually that's a really good question now that you bring it up is I know we don't even have a preliminary plan but if the footprint of this future

parking garage with that... you know you can't reclaim land that has a parking garage on it. How would that affect our long-range plan?

Mr. Lopata: Councilman, that was kind of the point I was making. I find it hard to fathom that the University which has expressed interest in the construction of such a facility has supported that would turn around and take back the property that would make it possible.

Mr. Athey: But administrations do change. And I guess phrased a different way if we do want to put a garage in whenever we have enough money in 20 years or whatever... who is going to actually own the land, is it an eased land to another party or who is actually going to own....

Mr. Lopata: It is conveyed to us for the time being until such time that they request it back. I don't think they are going to request it back, but Councilman, that's ultimately up to you. That's a clause we have in the agreement, they've asked for it. We felt it was not a totally unreasonable request in light of the circumstances here.

Mr. Athey: And the odds that are so slim is what you are saying.

Mr. Lopata: I think the odds are extremely slim.

Mr. Funk: Plus you have the statement from the Executive Vice President of the University that if we were going to build that parking garage this year, they were going to dedicate those two buildings and that piece of land to the City for the garage. It's one more reason why we should have built the garage this year.

Mr. Clifton: I have a question for Roy and I hate to digress back to previous conversations but I would just like kind of an overview, a quick clarification if I could concerning the signs. Can you give me somewhat of a quick overview of what the restrictions and parameters are of signs that would apply to this building.

Mr. Lopata: Councilman, I wish I could give you specifics in terms of size but I will tell you they will be limited in terms of wall signs, projecting signs and so on. They are relatively limited if you look on the signs on Main Street and Academy Street. This property will be treated like any other property downtown.

Mr. Clifton: I know we've crossed issues of backlit signs before and so forth and I just wanted to digress to this, I know that things are generally done quite tastefully although when the Student Center was brought up I look at the neon circus up there and kind of... leaves that to be suspect to some extent.

Mr. Lopata: They will have to meet the sign code through the building permit process, the normal process.

Mr. Athey: I don't know if you can answer this or not, I was up on Main Street for a while Friday afternoon talking with some of the merchants, actually a few of them I see here this evening and this concern about the level playing field or the possibility of it no longer being level, the tax exemption, things along those lines. If I go into a Barnes & Noble college bookstore in D.C. where Georgetown is or go to the Barnes & Noble at Christiana Mall, are the prices of the same products going to be the same or are prices set by facility. In other words, if there is a (for argument's sake) an unlevel playing field being created by this scenario, does that really translate through on the pricing mechanism for this facility or is it nationally set that the new CD by whomever is going to be \$11.99?

Mr. Manning: The answer is no. We've had discussions with Barnes & Noble on this point. They are not going to localize their pricing structure. You will see the prices charged here that you see prices charged everywhere. Now, I should say, that many of the Barnes & Noble college bookstores are also in completely tax

exempt facilities, and I'm not sure how many universities in that situation have offered to make a payment in lieu of taxes. But, the answer to your question is Barnes & Noble is going to charge the prices that Barnes & Noble charges, I'll say nationally, but my guess is there may be a regional difference. I don't want to put Barnes & Noble in a corner that they don't want to be in but they won't be tailored to Newark.

Mr. Temko: At college bookstore cafés or at national just regular retail Barnes & Noble cafés, or are you saying those are the same?

Mr. Manning: This is a division of Barnes & Noble that does nothing but run university bookstores. The prices that you'll see in this facility are going to be the prices dictated by that division and will apply, I'm told, to their other facilities as well. There's no distinction.

Mr. Athey: Last question or statement just to make sure because I have a feeling this may come up in a moment. The University gives the City what is commonly referred to as a subvention that's ballpark about \$250,000 a year right now that's been developed by various formulas and this and that. Rick, you're shaking your head, am

Mr. Armitage: \$204,000.

Mr. Athey: OK, I stand corrected. I believe what you stated is that you would do a payment in lieu of the property taxes of roughly \$7,500 that you would basically add to that amount, is that essentially what you are talking about?

Mr. Manning: Yes.

Mr. Athey: One of the things that I think has been a concern of certainly some constituents I've spoken with and frankly I think people up on Council is and I've been sitting at this table now for about seven years and I don't believe that subvention has ever increased. It's not tied to any cost of living adjustment, etc. Would the University consider making some sort of a.... let's take a deep breath on this whole subvention thing, not just this component of it, and look at a formula where that can get readjusted annually because let's face it, inflation kicks in all the time.

Mr. Manning: That is a subject that... first of all it's the first time I've heard the question and I can't answer it here tonight, I think that goes way above my pay grade. So, I have to end our proposal with that which we put in front of you for this occasion and on this project.

Mr. Clifton: One quick question if I may. The change in subvention is in perpetuity, correct, forever?

Mr. Manning: Yes sir.

The Chair opened the discussion to the public.

Arlene Eckell: I am a 38-year resident of the City of Newark. I have some experience on Main Street. My husband and I owned Newark Newsstand for 19 years. I owned Volume 2 Books for six years. I do have a lot of experience with Barnes & Noble's, with Borders, with the University. I am upset about the additional traffic that this will bring to Main Street. Main Street is a disaster now when you try and get up and down the street. I am concerned about the unfair tax advantage that Mr. Athey talked about because that does exist. You have now on Main Street, Newark Newsstand, Lieberman's Books, Delaware Books, National 5 & 10, Rainbow Records, the Learning Station and six cafés that will be affected by your decision. The City fathers have spent a lot of time and money trying to make Main Street viable through the Newark Partnership, and one of the things that you should be doing is trying to increase business on Main Street. I

stand here tonight, and I can guarantee you that after this Barnes & Noble bookstore comes in, not all of these stores will be in business a year later and you will be losing a tax base and you will be doing a disservice to the City residents of Newark and to the businesses on the street, and I ask you to reconsider.

Jan Baty, a Newark resident: I first wanted to ask you a question. I didn't quite understand on Academy Street, were they actually going to push the plan back a little bit to allow room for planting there or were they just going to plunk trees in the street.

Mr. Sanderson: I believe the building has been adjusted slightly back, but they would be more typical of street trees in grates that you see along other streets, but I do believe the width of the sidewalk there might be in the 10-12 foot range so it gives you a good portion of travel by those trees.

Ms. Baty: As I was there today I noticed the sidewalk was rather narrow, and I thought if the building were pushed back and the green were continued into that walkway, it would also give the Fire House some breathing room, so I was hoping that you were doing that enough to make a difference. Whether we're aware of it or not, we are all constantly influenced by our environment, in nature and the built environment. I've been in small towns and large cities all over the country and in Europe where pedestrian scale and historic context is deeply respected and encouraged and where the buildings are beautiful and inviting. So I was very curious in looking at the University plan for a bookstore what elements of beauty I would sense in the design, what would draw me in, whether they would be including solar panels or a green roof or something to set a standard for green architecture since I've heard that's one of the directions that the University is going in. So my first reaction when I looked at the building itself, not the greenway, was one of dismay. As I understand that once a building is presented to the Planning Commission it is generally only tweaked before it comes to the City Council, and I felt the design of the building was seriously flawed. I can appreciate that the University decision makers and architects wanted something contemporary that would not detract from the surrounding character of historic buildings but be a backdrop to them. That's a difficult task. However, what I see is a heavy, sharp-edged, cold-looking building. If I get that reaction from the drawing, what would the building itself project? I was curious to see how others would react, so I started showing the plans around. Here's some responses I got, just a few.

Oh, is that a helicopter landing pad.
Looks rather industrial.
Parking garage with windows.
Monolithic.
Brutal.
Cold.

I also know that the University has the power to build what it wants, regardless of public input and Council decision. So, I'm wondering, how dedicated is the University to a decision-making process that truly values responses from people living in town. There is a delicate balance between a small town and a large university that seems intent on growing ever larger, particularly when the University is building in the downtown area. What might be next, and I might refer to the Planning Commission minutes where Mr. Manning referred to this as the eastern gateway to the campus. I found that rather disturbing. I heard recently that Penn State also built a Barnes & Noble. However, they said they would not put it in the downtown but keep it on campus. I thought that was respectful decision making. I would like to experience the University, student government and residents working together. Adversary doesn't interest me. There are many intelligent, knowing, creative people in this community that, if given the opportunity, could help to create a living environment we could all appreciate so when we are all dead, artists could still paint pictures of Newark that the (inaudible) would be happy to hold up and be photographed

with. For that to happen, we need more opportunity for citizen input earlier in the process. At the beginning of the design stage, I would suggest having a charrette, a meeting open to the public, where concepts could be presented in sketch form and allow citizens to be part of the creative process by giving their feedback. (Inaudible) Planning Commission, by the time the City Council would receive the plans, the community would be excited by it. So at this time for the University bookstore, I would suggest that the Council reject this plan in the heart of our historic district and ask for something else, perhaps something more soft edged, with a better process in place to shape the design. However, if all we can do is to treat this design, I would ask for some solar panels on the roof or for a green roof or for rain water to be collected to flush the toilets. Some new buildings do that and much more. The tower itself – I think its size and 9:26:14 (inaudible) contribute greatly to the cold edge feeling of this building. If we can't change the tower, perhaps we could use it as backdrop to make a beautiful mural. Citizens could all contribute to that. I also feel like it would help if the courtyard could have something round in it, like maybe a sculpture or a water fountain.

Will Hurd, a Newark resident: I am the owner of an architecture firm here in Newark, and I have a strong interest in keeping the downtown area healthy. Through my family, I have a long relationship with the University as a resident of Newark. My father and mother-in-law both work at the University. My wife and her brother-in-law both received two degrees from the University. I would love to be hear speaking in favor of the new building that was developed in collaboration with the community that will provide new commercial opportunities and amenities to the downtown area, but I'm pretty sure that's not what we have here. I am concerned that this project has reached a point in the process with very few chances for the public to even get a sense of what the building will be like, let alone provide comments. The University speaks of collaboration in the process, but it seems to only be within their team. Throughout this process they haven't sought public opinions beforehand nor did they seem to engage with suggestions and comments that run counter to their existing scheme. I feel that they have made no substantive changes to the building in the course of this process. To make this process fair and beneficial to all of us, the University must be required to follow all of the City's procedures and be bound by the decisions of the City just as if they were a for profit developer. I know that the University feels that they do not need to follow the City's Zoning Code, but by choosing to locate in the downtown commercial core, they must recognize that they have left the academic world and entered the commercial. In this location they cannot be allowed to develop as they see fit and for their own needs exclusively. All along this process, it has felt to me that the University has already decided what they are building and are mainly seeking a rubber stamp of approval. Please do not give them that. They must justify this building just as others must. They need to provide fully complete information about how the building will be occupied and operated. While we could make reasonable assumptions about a commercial development, we need to know exactly what they consider this building to be. One of the many things that is unclear is how much of this building would be considered commercial as opposed to academic. The number quoted at the Planning Commission was 6,000 square feet which is about 10% of the building. Barnes & Noble says 9% of sales. A building of this size must contribute more to the area, or it should be built elsewhere. If the University is allowed to build in the commercial zone with that small percentage of commercial space, what will the next building they build be like. And the general merchandise should be away from the main entrances. I would like to see the University and City have a conversation about using this project as an opportunity to provide the community space within the building, perhaps something to provide non-drinking options to the students. It would be wonderful for the University to provide something to the City that a commercial developer couldn't. We need something that increases the vitality of the downtown, providing something that we don't already have a surplus of. We don't need another coffee shop and we don't need an undersized bookstore. If they will be providing space, they must not be allowed to claim this building as academic. The City will lose too much potential revenue from that.

Any space within this building could become commercial space at a later date without any review by Council. They also should not be allowed to bypass the parking waiver fee of \$1.1 million that the developer would be subject to. That is money that the City desperately needs. The Council must make the University realize that within the bounds of the downtown area, the rules are the rules, and they must play fair. Playing fair means committing to the approval process, paying commercial rates for electricity, providing all required parking spaces, paying licensing fees for all businesses within the building and paying all taxes due on the land and building. This project must be kept on a level playing field to allow other businesses to compete fairly. As to the building, I feel that while the design team has made small changes since the Planning Commission review, they still have not designed a building appropriate for this historic area of town. I would like the University to design a building that is in compliance with the intent of the design guidelines. Reviewing the comments from the DNP Design Committee, I note that the building fails in several crucial areas: composition, rhythm, proportions of openings and materials and color. These aspects of a building are essential to its relationship to Main Street, and any of these can be achieved without copying other buildings along Main Street. What we have though is a building that is a modern style, a building with an interesting skin applied to it while within a well-considered building. What I would wish for is that this project becomes an example of the best way to develop space on Main Street, an example of how all of us, residents, business owners, elected officials and University representatives....

Paul Baumbach, a Newark resident: A classic Calvin and Hobbes cartoon has a father coming home to find his son with a sign that reads, "Love the sinner, hate the sin." I love the University of Delaware. I earned my first degree at the UD. I've lived less than two miles from campus for the past 20 years, 13 of those years as an owner of a business on Main Street, and yet I oppose this bookstore proposal. Now, what's wrong with being a schoolyard bully? You get your victims to agree to do what you want, you get their lunch money, maybe they do your homework, even if those actions are certainly not the actions the victim would have done without your pressure. Admit it. Each of you has thought, hey, even if I vote against this proposal, the UD will build it anyway. (Inaudible) have already considered accepting the role of the victim by approving this deeply flawed plan based solely on the presence of the University's bullying pressure. If the University needs to be a bully to building this project, then let it be clear to all, including our legislators in Dover that the University is that bully. Refuse to play the victim by cooperating with the bully. Cooperating with the bully solves nothing and merely encourages and empowers them. Now I'm certain the UD doesn't feel that it's being a bully. However, that is how it feels when we are repeatedly told the UD has a court-affirmed right to do as they please in expanding their campus wherever and however they pleased but are willing, for the time being, to work within the City's zoning rules. So let me offer a novel request. Let's take the UD at its word tonight. They claim to be dedicated partners with the City, and they claim to be committed to abiding by the City's Zoning Code for the moment. Thus I beg you, make your decisions tonight based on the UD's word and therefore based on the rules and procedures of our City as applied to the written proposal before you. View this just as any large development proposal affecting the Central Business District from just any developer. Please make your best decision based on merits, or lack thereof, of this proposal, not based on conjectures such as what the UD would do if you reject this proposal. Conjectures are not on tonight's agenda; this proposal is. Finally tonight we've learned that this is a 91% college bookstore that expands the college campus into the Central Business District, squeezing out economic activity that serves the community. Won't your constituents be upset when they find that rather than a consumer Barnes & Noble, what is being built is a college bookstore taking up prime space in the Central Business District without serving them, your constituents? This would be no better than if a high-rise college dorm was built there. Are you satisfied with approving a proposal that the City's Planning Commission rejected? The minor changes made this month don't come close to addressing the shortcomings noted at their meeting last month.

What are you telling future developers about the Planning Commission's function? Are you satisfied with this shell game, this structure of the temporary conveyance from UD to the City of parking area which can be requested back by the UD at a moment's notice and without any compensation? Would you let any other developer give you property in return for monies owed the City, subject to a developer's right to receive that property right back from the City whenever they wish? Are you satisfied with approving a proposal that fails to meet the design guidelines on quantitative, not subjective, issues such as building materials, guidelines created to insure that such a new property would fit in well with neighboring properties? Have you considered how much more difficult it would be in the future when the next developer proposes another project that thumbs its nose at the design guidelines if Council ignores this proposal's total disregard? Are you satisfied with waiving over \$1.1 million due to the City due to the proposals woefully inadequate parking when the introduction of this 60,000 square foot building will undoubtedly create massive changes to pedestrian, bicycle and car/truck traffic and to downtown parking, changes which will require a large amount of the City's money to lessen the negative impact to Newark's Central Business District. Where is the money going to come from to make the changes that this project will require of the City's infrastructure? How will you reject the next proposal that comes up 200 parking spaces short? Will your constituents be satisfied if tonight you vote to give up the City's right to \$1.1 million. But please take the University at their word. They wish to follow the City's zoning rules, at least for tonight. Have they satisfied our City zoning rules tonight with this incredible parking insufficiency, with the quarter-acre shell game and with the industrial building materials. If this were any other developer, would you approve this proposal? No they haven't, and no you wouldn't. You should only go for this proposal if it meets the City zoning rules and regulations. It is clear that it doesn't. Vote against this proposal tonight.

Donna Friswell: I own Charlie B Travels and have been located on Main Street in Newark for 40 years. I try to be a good neighbor, and my building is the neighbor to the old Christina School District building, and I want to basically express my displeasure in the lack of communication regarding what has been termed going on for this demolition and new building proposal. As a neighboring building, it was not until I contacted my attorney that I was finally informed by the architect and by the University what they were planning to do, and I was very concerned because my building is right next to the Christina School District building. Not only that, but behind my building where the demolition is going to take place is a parking lot that I own with complimentary parking for my tenants. I was told after I met with the architect and he actually walked backed there and saw that the demolition was going to be right next to my parking lot that, there's going to be a fence put up there. Well, a fence isn't going to stop concrete blocks and dust from landing on my tenants' vehicles, and I was then told that, oh, we will probably relocate them to another lot complimentary until the building is all completed. Well I was also told the building was going to be demolished by the end of April, which is this Friday, and yet I have not been advised when my tenants are going to be moving, and as a good landlord, I think it will be appropriate to let them know that they are not going to be able to park there, and I am just very frustrated in being a neighbor to this project and not being informed of any of the goings on. I also was rather offended week before last when I was approached by someone on the Planning Committee whose statement to me was, why don't you just sell your building so the University can have it for a parking lot and that way it would make that whole new project so more aesthetically pleasing. My building was built in the late 1800's and the extension that my late husband put on the back, I feel, is very aesthetically pleasing, and I am just offended at the way this whole project is going on.

Boden Day, a Newark resident: To follow with what Pat Wisniewski said, in the words of a very wise 13th century Jewish philosopher, be kind. For everyone you meet is involved in a great struggle. I myself often forget as some of my acquaintances would tell you, I often forget this bit of kindness. What I'm asking you the Council to do is just inflict a little bit of kindness into this whole debate.

By kindness, I don't mean just a nice Brady bunch kind of kindness but really thinking about how this is going to affect people who live here, and I know you've done that, but just give a little deeper thought perhaps. Also, this is following on what Paul Baumbach and Jan Baty suggested, and this is a real question. It's not a rhetorical question, but it's 2010, where would the energy collecting solar panels be located in the 60,000 square feet of space? That's a real question. Where would they be located? I didn't hear anybody mention solar panels. This is 2010. I think Newark should be at the forefront of solar panels, solar energy, things like this. Maybe I'm being naïve, I don't think so, and my sainted late father had a saying. When he used to attend our council meetings when I grew up in Pennsylvania, he would say, "After all is said and done, often it's done before." This is another non-rhetorical question. Is this really a done deal, and if it's not, why is it not a done deal?

Jean White, a Newark resident: The area that we are talking about is our most historic core of Main Street and Academy with eight buildings in the vicinity that are on the National Register, and the University is inserting this project right in the middle of it. We understand that every new building should not look like a 100-year old building, that it may be modern (but there are many types of modern buildings), that it should have a contrasting kind of materials. Yes, you kept the Christina Building – actually the University didn't really have the right just to tear that down because it was on Newark's register which does have a great protection for historic buildings. But a new building in the midst should not overpower its surroundings, it should not dominate the landscape and should not so brutally put its foot forward but should compliment what's around it. I did a little calculation in terms of how much it might dominate or how much it might overpower, and I calculated.... oftentimes, it is said that for the Opera House it is about the same height, actually according to the plan it's 50.2 feet high. The building that is being built has been reduced to 53 feet so it's still almost three feet higher, but I calculated right before I came the cubical space of the Opera House and I came up with, if I did it correctly ten minutes before I came, 286,140 cubical feet and the three-story portion of the bookstore building I got 970,500 which is 340% bigger in volume, so when I'm talking about massive overpowering, I'm talking about that cubical space, not just the height of the building.

I have a suggestion. That is, people talk about this as the bookstore building, and many people in town don't know that the third story is going to be the Development Office which has nothing to do with either the café or the bookstore and, take it out, put it someplace else. These functions apparently are in the George Evans building, in Rees Hall, the one story little building that's behind the Charlie B Travels building which is going to be demolished. Put it someplace else. Put it in the Perkins Student Center which is going to have the bookstore vacate that space. Put it on the top floor of some other buildings which the University is planning to build, and if the Development Office must be on Main Street, put it back into the Academy Building where it was up till about 2004 and move what is there now, Communications and Marketing, someplace else. Getting rid of the third floor would give the architect a lot of flexibility in coming up with a different design. There could still be some three-story parts of it, but it might be possible, for example, not to have the building wrap around our historic little school house which (inaudible) although two and a half and 33 feet is overwhelmed by the 53 feet building which is on its one side and the back. My following remarks are not to be misunderstood. We all in Newark feel that the University provides us with many positive things – educational opportunities, employment and other things, but that does not give the University the right to invade our most historic area and disregard the community. Others have already said how early on the community could be involved. The settlement of the Christina building, for example, was done in August 2009 and apparently before that, or possibly RFP's already went out to architectural firms. Everybody was involved with this except, we, the public, who didn't really start to get involved until the Board of Adjustment meeting February 18th. The nature of power institutions – the University of Delaware is a powerful and wealthy institution. It is

incumbent upon the powerful to take great pains not to pray on and take advantage of those less powerful but to bend over backwards to solicit comments, to seriously consider input and to do so in a very fair-minded manner and where is common courtesy. I was shocked at the Planning Commission meeting to hear, I believe it was the owner, of Grass Roots say that it was just that day at 11:00 that she was notified about the meeting and also learned that the building that actually touches her building, the old Farmer's Bank, whatever building, is going to be demolished. How rude.... I hope that Council will table this.

Lindsey Melvin, University of Delaware Junior: My only concern is that earlier it was mentioned by the presenters that they expect a lot of pedestrian traffic which I completely agree with. I currently walk everywhere on campus but at the time that this, I assume, will be finished, I will have moved off campus, and I won't be walking and if it is open after hours when it is dark (10:30-11:00) I think all of us know that Newark is not always the safest place. Things happen which is fine but I just want to understand that parking is validated at City lots, but is it also validated at University parking lots because I think students are concerned about walking if it's cold, rainy, whatever the case may be and they do decide to drive, are they going to be validated for their parking. So I think that both University and City lots should be validated for both students and the public who decide to attend the new store.

Kristina Jackson, a Newark resident: I hadn't planned to talk because I sent you all a letter. I'm not sure if you had a chance to read that today or yesterday, but there's a couple points that I just want to go back over. My first was just commented on. When we talk about 25 spaces, I don't know the exact number of how many students live off campus. But I live on Tyre Avenue, and there are many students on my street. They all have cars, and they use them constantly. So I know that just being a student doesn't mean that you are a pedestrian, and I think the numbers are great and I think making sure there is parking for the students, the 91%, needs to be rechecked in the calculations. Hyatt Palma reporting was done, I think about 13 years ago, and one of the statements in there was that the University should not be placing offices on Main Street. So that goes to Jean's comment about putting that third floor on for offices. I wouldn't mind having the third floor on – I think you need to go up to have a smaller footprint, and I think that the back of the building should be reduced. Textbooks can be on the second and third floors and that way you have more parking available to the customers. The church preschool borders the property, and I would like to know that there is a substantial fence between the two properties. We watch our children. I have a four-year old there right now, and we watch our children, but if a big truck comes along I don't want to see a child mesmerized and pulled away as quickly as they can and they move fast towards a truck. I think that needs to be looked at and definitely put in the plan. The courtyard security – I know when Chief Conway was here he talked about putting benches and things along Main Street and little parks along Main Street and the problems they would cause for the Police Department. I am worried about the security in this courtyard. I think there needs to be an extra look at that. Cameras, whose going to be manning it. I put in the article in the Post, some of you may have read it, about the real parking lot that's going to be affected which is Lot #3, and the reason I know that is when I used to go to the Christina School District office (I'm a retired reading specialist from Christina, so I love books), but if I was going there for a meeting, I would be directed to Lot #3 right across the street because the employees were behind it and there's only two spots for anybody visiting. That's where bookstore people who are driving up Main Street are going to go and that lot is overused already. I have suggested, and I really would like the University to consider, putting an extension on the back of that lot. It doesn't have to be two story at the moment but that's where when we get to the point of building a garage, that's where it needs to go. That's the heart of the City. Fraser Field is now being used, so those tennis courts (and I did have classes there when I was a student), they are tennis courts. They could be relocated. There's already a little tiny road that could be improved but there

would be a way down there to have a ground floor parking area that would serve this building. That's the parking lot that people need to be able to use, and I don't know that because there haven't been a lot of meetings if some of these ideas haven't already been thrown out there, and I really wish the University, I know you want the bookstore by 2011, but I really wish you would take time to think about some of these ideas tonight and table this yourselves to go back and really think it though.

Mr. Manning: Two things seem to have emerged from the comments that you heard in opposition to the project. One is the....

Mr. Athey: I'm sorry, frankly we always traditionally say anybody else who didn't sign up, and I think obviously there is at least one person in the audience who wanted to comment.

David Robertson, a Newark resident: First of all I want to say that it must be very hard to sit and listen to people criticize your creative energy and efforts. I'm not going to do that, but I am going to say that I don't think that this particular design fits this location and I say that because of what many people have said tonight about the historic buildings on Main Street. I don't see diversity in these buildings, despite the Tuscan (inaudible) of the Post Office and the plain solidness of the 18th century Academy building. I see order. I see order where horizontals and verticals are balanced and the windows make a pattern that please the eye. I don't know what you can do with horizontals and verticals, so not being an architect, I'm not going to suggest anything to you, but I wish you would think about it. The easy question for the University and maybe Rick can answer it. Some of you know about the Building Responsibility Coalition that existed for ten years here from 1995 to 2005. I was a member of the Activities Committee, and we worked to provide off-campus, alcohol free venues for students late at night. I would like to know if the café, whoever is going to run it, would be a place where there could be musical events (not just for students, but I would think for the community at large – that would be a service to the community, and I think of bookstores, I always think of readings, I think of book discussions. Would that be possible in this Barnes & Noble bookstore?

For the Council I have two questions, both have to do with the future, but reminding the Council that this is the historic center that we're talking about. Jean White talked about some of the buildings there. Other than four or five that have been mentioned, I will remind you that places are also historic like the Academy green, being the market where Newark first got its charter in 1758. I would like to suggest to Council that consideration given to this part of Newark be created as a historic district. A little late in the day, but there is no reason we can't do it.

The other suggestion is related. It has to do with buildings on the National Registry. I think the last time buildings were put on the National Registry in this town was 20 or 30 years ago. I am sure there are buildings that are eligible now, so this I urge the Council to think about.

Joe Charma, Downtown Newark Partnership Design Group Chair: I just wanted to let the public know I heard a lot of comment tonight that there is no opportunity for public input. I take that as a personal aside. Our committee meets the first Tuesday of every month and usually there is one member of the public at that meeting every month when we review these issues, so there is opportunity for the public to review the plans and look at these things, and that's when they should come forward, so I would urge the public to attend those meetings. The City publishes those notices, they're on the website and we encourage that, we would like to see more public participation – it makes our job a little easier because design by committee as you see tonight is very difficult.

Secondly, just as a note about the building, the design guidelines. The design guidelines were written with respect to our downtown as it exists, and our

downtown is quite an eclectic collection of architectural styles. I mean it's very different when you ride down Main Street. Two of the comments that we hear and you've all heard many, many projects is, there's too much red brick on Main Street, and all the buildings are starting to look alike. So now you have an opportunity to look at a building that's very different, it's a contemporary style, and that's how we reviewed it. We looked at that project and we said it doesn't meet many aspects of the guidelines, but as a building by itself, it has merits. Councilman Temko, you're one of the proponents of using different materials. It uses different materials, and it is very different than the buildings adjacent to it. Be that what it may, I think that Council should consider this carefully. We all remember the Washington House, the great, great pains that we all sat through talking about that project, the scale of the project, the way it looked and how the building could be tweaked, and I think at the end of the day when you look at that building, it's a pretty nice building. It is large but it turned out pretty nice and I think you should be applauded, the public and Council and everyone who was involved in that and gave comment, that it turned out and I think there's an opportunity here for that same kind of partnership to occur. I encourage you to take those comments into consideration as you are making your vote.

Mr. Clifton: Joe, as an aside, what time does the Committee meet?

Mr. Charma: We meet at 8:00 am, and we frequent all the coffee shops up and down Main Street.

Mr. Clifton: Do you think that might be a reason why most of the working world can't make it?

Mr. Charma: That could be possible, but if you have comments you can find out when the meetings are. We can send you material. You can write us letters, you can do anything you want. On occasion, if someone solicited us to have a meeting or a workshop, we would certainly do so cause the Design Committee oftentimes has sub committees formed to discuss specific projects, and we do meet at 4:00 or in the evening or whenever it's convenient. So we can be flexible.

Pam Lewis, a Newark resident: I had a design question and it has to do with the loading dock which you don't want to discuss which is probably what should be discussed. I also have a question about delivering supplies to the café from Main Street. There's already so much double parking which ties up traffic, so I think the loading and unloading – that whole building is going to be full of books, full of supplies for the café, and I think the loading issues need to be looked at.

Sheila Anderson, a Newark resident: I'm going to have to break this tradition tonight. Once we built the Washington House, things changed. The scale changed, the design changed, and Newark grew up. I think this building is very handsome. It is a contrast. You think about some of our big cities. The World Trade Center has the little tiny Trinity Church from the Revolutionary period two blocks away. Think about Independence Hall. Great big huge buildings are all around it. Go down to Washington. You see very old colonial buildings next to brand new modern structures. It happens the world over. It's happening in Newark, and my concern here is while I think the size (and I see they worked very hard to get it down to something reasonable with the Opera center) – I like the materials, I think they marry nicely to some of the materials that are also on Washington House. That big glass piece that someone called into question earlier tonight is looking at a parking lot, so we might want to go back and think about how this looks in relation to where it is. I think it might be refreshing. Didn't think I'd ever agree with Joe Charma. Miracles do happen right here in City Council. My concerns are more with the business people, how it affects them, the tax structure and the parking.

Mr. Manning: I think anyone who proposes to develop real estate is in for some criticism, and that comes with the territory. I wanted to respond to a couple

overarching things that I've heard here tonight. The University's been called a bully because it has a charter that permits it to ignore all of us. But the University decided not to because the property was on or near Main and Academy. It's gone through the process. It went before the Board of Adjustment. It went before the Planning Commission. It had, I think I'm correct in saying, more than one meeting with the Design Review Committee. It's supported by the Downtown Newark Partnership. So I don't think it's fair to criticize the University for being a bully when it had the option of saying we're just not going to do any of that but elected to go through this process voluntarily.

The second thing you hear time and time again tonight is that the University has disregarded the community. Well that's not so. What the University has done is gone through your process, obtained approvals by those you ask who are part of Mr. Charma's group who represent the City in thinking about the design of things that are built on Main Street. I don't know what else we were supposed to do, we certainly did that and gained their approval. Instead of disregarding the community, those who have created this design simply disagree with the critics of the design. You will find disagreement about design matters all the time. I'm not surprised by them. I respect those who do disagree with this design, but the University has been aggressive in selecting a high-quality design team in designing something that served the objectives they talked about and then vetting that design with your Downtown Newark Partnership's Design Review Committee and got rave reviews, and I think that rejects the notion that the University has been a bully and has "disregarded the community."

I want to say one other thing. The parking lot that falls out of your formula would have been, as Mrs. White corrected me, 246 spaces. To give you a size of the scale of that, parking lot #1, the whole parking lot, not just the area that is owned by the University, the whole thing has 172 spaces, so this is nearly 50% larger than that for this one facility. I submit that, given who is going to shop there, it's an unfair requirement, and I think the recommendation to the Planning Commission and to the Council has been to reduce that requirement, and I think it's a fair requirement.

Councilman Athey asked about the potential for what happens if you all want to build structured parking on Lot #1 and quite frankly I signed off on the draft tendered to me by the Planning Department. It simply doesn't deal with that possibility, but you've heard somebody else quoted the EVP of the University saying if that's what you want to do, the University is going to help with that property. I think we can shape the agreement to take that into affect. In other words, because it's silent on that now, I didn't mean to suggest, and the University doesn't mean to suggest that it's going to renege on a commitment already made by a senior University official, so I think what ought to happen is that the University and Planning Department revise that particular provision of the agreement to give the City the comfort that you are talking about.

Mr. Funk: That's very important to me.

Mr. Athey: I guess I had two components of that is, would we ever be not able to build the parking garage there, and I believe that was what you just expressed, I guess what I was also seeking and I was sitting here contemplating what kind of language I could insert in this agreement of.... the thing that frankly I'm just not comfortable with, Roy's words of "can't fathom" or I forget how you characterized it is, who knows what happens in 20 years that if the University ever wants the land back, today in 2010 we've potentially waived that fee and if part of that fee is based on that conveyance of land, if that land ever reverts unless there's a provision, are we going to get some of that money back. I think there needs to be, minimal chance or not, some protection for the City that....

Mr. Manning: I understand your point. I would say two things. 1) 246 spaces is a requirement that is out of all proportion with what's about to be built on this site, and so I think the fee or the spaces that are the equivalent of that fee is just

(inaudible) of magnitude too high for this space. 2) I will tell you candidly the University's instinct – we simply responded to the proposal made to us by the City, and in response to the proposal that the University simply give land to the City on a parking lot that has nothing to do with this facility, the University said, well, gee, I guess maybe we ought to do that but we can't give it away in perpetuity. We own the land, we have it for University purposes.... maybe someday.... there's no plans for it and, quite frankly, the practical difficulties of developing that are enormous and so I have the same suspicions that Roy does. But say to the University you gotta give us this land fee simple forever is really a different thing. I believe in what I've said that when, as and if the City is prepared to build structured parking as it hopes to do some day on that site, we can have a provision in this agreement that says that the University then will contribute that land because I've been reminded that the EVP has said that would be so, and I want an agreement that conforms to what the University has already said. We basically signed off on the draft that was given to us. I am happy to revise it further to treat this concern.

Mr. Athey: So what I believe you said is if we ever do build Lot #1, then it would be given to the City in perpetuity because clearly you can't revert land that you have a parking garage on so....

Mr. Manning: At that point it should be fee simple.

Mr. Athey: But, and I guess I'm starting to belabor a point now and no one else is chiming in, so I guess I'll make it for the last time, what if that parking garage doesn't get built and in 20 years you want the land back, we've still granted this very significant dollar amount and what I was going to suggest was just for the interest of....

Mr. Athey read the following from the draft agreement:

Agreement Item 6, line 6 "In addition, the Developer agrees to convey to the City the lands currently leased by the City from the Developer for portions of Municipal Parking Lot #1 subject to a requirement that the City reconvey said lands to the Developer for its use upon written request... and added the words, ***"and payment of appraised value..."***

Mr. Athey: If the University ever does want that land back we at least get something in return for it.

Mr. Temko: Or if it's so unfathomable that they're going to be using it, why even have them be able to request it. They could purchase it from us outright.

Mr. Manning: The instinct that responds to that question is, you're just very reluctant to give up land that you own and that you paid for and that was what was really driving the University's response to the proposal made by the Planning Department, and that's what we've done. We've responded to proposals made by the City. This proposal was with respect to a piece of ground that had nothing to do with the site that we're developing. We thought it was extraordinary, but we said yes. There can be further discussion of that provision in the draft subdivision agreement. I've already suggested to you one change that the University will commit to. I'm just not authorized here tonight to say, what the heck, we'll just give it to you. But everything that has been said supports the notion that Newark is going to be able to do with that property what it wants.

Mr. Athey: And I understand it was our document that we asked you to review so I know it wasn't generated by the University but frankly I seem to be the only one who has this concern so I'm going to drop it.

Mr. Funk: Those two houses on the land behind them, it's a million dollars they're willing to give us if we build that garage. If they're willing to put that in writing, that's a big deal.

Mr. Athey: I agree.

Mr. Funk: Because right now we only have the verbal.

Mr. Athey: I understand that but there's another concern but again, I'm not hearing any agreement, so I'm dropping it.

Mr. Pomeroy: I have some questions that I'd like to ask just for clarifications and it touched on a couple of the issues that came up. Just for the record and everyone's been dancing around it but just to get it out there, your legal contention is that you are going through the process voluntarily that the University is not obligated to abide by our zoning laws and you are doing this voluntarily.

Mr. Manning: Yes.

Mr. Pomeroy: Right, okay. Can you touch on briefly because I had this issue come up a couple times and somebody, maybe Jan....

Mr. Manning: Would you like me to expand on that first answer?

Mr. Pomeroy: I think everybody knows, but you can if you wish.

Mr. Manning: It was an interesting call when this was going to be a project that was joint ventured with a profit-seeking organization.... the University and.... it's in my view not a very difficult call now that the University has decided that it will own this 100%.

Mr. Pomeroy: I had a couple folks ask me and I would like to get, even if it's in very base terms and I'm not sure to whom this can be directed, the whole concept that this would perhaps be a gateway, even with the short-term vision plans are related to or any future plans related to the University's expansion on Main Street.

Mr. Manning: I wish I had never used the words eastern gateway, and I'm not going to identify where I picked up that term but I didn't see the significance that has been placed on that, and I'm happy to eat those words. It is what it is. In response to your question, there are no plans that the University has to develop in the area of this building that would have several other University facilities....

Mr. Pomeroy: Further increase the footprint or anything of that nature, there are no plans. I'm going to try and do these rapid fire.

The issue was brought up and I thought it was a good one related to the prospect of community space and whether or not in a structure of this size there could be some accommodation made to the community as to whether or not (I'm not even saying a dedicated space) but whether or not there would be an opportunity, is that something that at least is on the table for consideration.

Mr. Manning: I want Mark and Andy to check my answer, but the interesting thing about this park that you've seen is there's been conversations about having movies there at night using the wall on the Opera House, the new wall that would be prepared when the bank goes down, seating areas provided for that, and so this is exactly what's being proposed to you is a space that would be.... there's outdoor café features.

Mr. Pomeroy: How about inside the building as I was also....

Mr. Manning: I just can't answer the question, I don't know, hold on.... I am advised that the interior of the café is designed for readings and other public events which is part of the game plan by Barnes & Noble.

Mr. Pomeroy: One of the issues is whether or not UD buses would have a bus stop or there would be accommodation made somewhere near either immediately near the vicinity of or somewhere in the general area of the bookstore.

Mr. Manning: Actually, there already is a bus stop in the vicinity of the bookstore now but to the extent demand changes regarding the routes that those buses take, then the routes will change.

Mr. Pomeroy: These should be pretty quick yes or no answers now. The first one – Roy, my understanding is that the electric rate issue specific to the commercial would not be subject to University rates but would be more traditional.... is that your call, does anybody know, is Dennis gone?

Mr. McFarland: My understanding is it would fall under the University U rate.

Mr. Pomeroy: It would fall under the U rate, the non-commercial components?

Mr. McFarland: (Inaudible) University account.

Mr. Pomeroy: The issue of validation was brought up as to whether validation would occur in the lots.

Mr. Manning: I apologize, I have no idea.

Mr. Lopata: Paul, we typically require that.

Mr. Pomeroy: Could you quickly, and I can't remember who brought it up but maybe she had missed the first part, it may have been Ms. Lewis, the issue of the loading issue, maybe very quickly recap that.

Mr. Manning: This was an entire conversation between us and the Board of Adjustment, and the Board of Adjustment did review the plan, did make sure that we had adequate loading facilities. All the materials going into the facility, whether it's the bookstore or the café will come through the loading dock, not from Main Street and so a lot of attention has already been paid to that issue. That's why we got the variance.

Mr. Pomeroy: She had asked, I just wanted to make sure that was reiterated for her. Those were my quick questions.

Mr. Clifton: It was mentioned earlier and quite frankly I had forgotten about this about the day care, I think it is next door. Is there any plans to put some sort of protective device, a fence or something, between those two properties.

Mr. Manning: It's the first time I've heard the question, I see some huddling going on.

Mr. Sanderson: I believe currently right now there is not a fence there, but I think it would only make good common sense to try to make sure there is adequate protection there and it's not a dangerous situation.

Mr. Clifton: Could we do something about that?

Mr. Manning: We can and will.

Mr. Markham: On pedestrian traffic, the one thing I was thinking about is that where the current bookstore is now, the sidewalks are very much University sized and crosswalks, control and traffic is a lot less. I'm thinking about we're going to have a lot more students at the beginning of the year, at the beginning of each semester headed downtown crossing at Delaware Avenue. I'm concerned about the number and the crosswalks and the control there because it's not like

the middle of Delaware Avenue on the Green or the mall, whatever we call it right now. We don't have that size and control. Have you thought about that situation?

Mr. Manning: I don't know that the volume of students crossing Delaware Avenue is necessarily going to be increased. Their trips will just change. These students cross Delaware Avenue on a regular basis now but let me just say if that becomes an issue I think the University will do what the University has always done is work cooperatively with City officials to come up with the most appropriate solution, and I don't have a better answer for you on that. You are correct about your description of the current location. Of course that location also has a whole lot of other things going on in it. When I was there, it was the Student Center, but this is an issue that hasn't been brought to our attention yet. If it becomes an issue, it will be resolved.

Mr. Funk: It looks like the distance from the curb to the edge of the building is almost 18 feet, so it sits back pretty far.

Mr. Markham: I was thinking down at Academy and Delaware Avenue, that crossway there.

Mr. Funk: Those buildings across from the Fire Hall, they are on the Historic Registry I think.

Mr. Markham: I'm just concerned about the volume of the people along there.

Mr. Funk: Anyone else. Ready to vote?

Mr. Temko: I'd like to share my feelings on it before we just vote. So, I would first start by saying that there are a lot of aspects of this project that I do find exciting but that I also have a lot of concerns about this project, many of which have been expressed and on the concept of validation was brought up to us, so in City lots, my understanding is you'll be able to be validated whether UD garages or UD lots choose to participate in the future in the validation program is up to them and their initiative of that with merchants, etc. But I thought you had a good point about that. I was thinking when I was in grad school at UD and I worked at the DGS annex right next to Perkins and sometimes when I had textbooks I did buy them at the UD bookstore and those were the days if I was choosing to bike or drive I drove because I did not have a basket to put them in. I did not want to have to carry them all back and so that was a time where I actually drove and so I think taking that into account just in terms of thinking about the parking waiver, taking that into account and that other uses are going to be similar to how people get to the five and dime, how people get to cafés on Main Street, so I'm sure there will be walking, I'm sure there will also be parking. In terms of just the size and magnitude of this project, it does seem like a massive footprint that does dwarf neighboring buildings, and I question whether we have a need for that or not. When I think about a project of this size what comes to mind is Washington House and when I think about Washington House, having a project of that magnitude I feel like (and I wasn't on Council at the time), but we went forward with that because it was a vision to move forward our downtown and I want to compare that to this. I mean part of this project what makes it so big is that offices are contributing to its size, and is that a necessary part of contributing something of this size to our downtown. Washington House also has a very beautiful design in my view. In terms of the design of this building, I really do like the courtyard. I think that adding green space to our downtown is essential and is somewhere that we do need to go. I really do like the gray brick and do appreciate that it's not red brick, and I was just on a field trip with my students at Swarthmore and you could see there they have stones that are brick but it's the same color and that with the landscaping is a very nice fit. I do think the third floor and the metal there is somewhat unnecessary and it contributes to the size issue and the visual issue and it does come off as industrial and boxy and it reminds me kind of a built library at my undergraduate

college that people thought was kind of boxy and was supposed to be modern at the time but didn't really last through that. So I think there's aspects of it that are very beautiful, but I don't think that overall it's been accomplished to be that kind of exciting, modern one. I think Jan Baty's idea of the tower, the big one, being like a mural – that would be a lively, exciting idea. I think there are very good ways to make this something that works very well.

I would also say that in terms of the process, I do appreciate that the University went through the Council process and the Design Committee and the Planning Commission, but I think that there are other things that could have been done. Frankly, when developers come here and they haven't really forthright from the beginning talked with their neighbors about the project, I think there ends up being a big difference in terms of how their neighbors end up feeling about it, what the project ends up looking like, and we see developers that do and do not do that. I also think that having some type of public workshop at the start of this process would have led to the concerns that a lot of people have expressed not necessarily being here because, again, I do agree that once it gets to a certain process, there's a lot more tweaking than revisioning.

In terms of the use, I guess the Christina School District building my understanding was that it's deed restricted to be educational. Obviously, this is technically educational but I also feel like that portion of this is not different in terms of its educational value that a Brew Ha Ha or a Central Perk, etc. and on the retail use side I see where the University is coming from on their property tax issue. I would say that in terms of just adding it to the subvention, Councilman Clifton said well would you do that in perpetuity, and we don't have that as a contract in writing, and I believe it was just this year that UD tried to reduce their subvention and I am pleased that, and much credit to the Mayor, that they did not reduce it but frankly that's something as Councilman Athey said that there needs to be further discussion on about whether or not that should be increased and just saying, well we're going to add this, you know next year if we say well we need to have a serious discussion about the subvention I mean UD spending X dollars on this project, X dollars on Chrysler they might say we don't have money for that, we're not going to be able to do that and we just increased it \$7,500. So I think that this needs to be kind of separate and the language needs to be tightened up on that.

In terms of the parking waiver, I think that regardless of how we talk about it there are people who work in those offices who are going to find parking and obviously it's not their issue but if they rent a monthly permit pass from the City that are parking there and I don't think that turning the lot over to the City or not turning the lot over to the City I think there are definitely issues with that clause about parking lot #1 that needs to be changed before we adopt this but I don't feel like that's an even trade to the reduction from the million dollar parking waiver fee, and I think that it goes back to what is the purpose of these parking waivers, and I feel like part of the purpose of us waiving this is so that we have these funds in order to address the parking issue downtown and that's something that we need to be working on wholeheartedly, and I have concerns that there is another project that we might be discussing in the future where the developer or not necessarily reasons that I find justified once you reduce their parking waiver fee just so that they can pay less money in order to come here, and I don't think that's the direction where if we're going to set here's what it is, I think there needs to be really good reasons for it in terms of actual project for us to say well, we're going to take a major step back in that side.

This is a very big change to our downtown and I would love for a change like this to our downtown to have at least a good portion of our community excited about it, so I feel like again there are really good ideas in this design, in this project, in this concept, in this vision. I feel like there's also some not so good ideas and this did go through our process and the Planning Commission recommendation was not to recommend in favor, it was split, and so I feel like this plan is not yet ready for our downtown. I feel like it's on the path to getting

there. I don't feel like it's a dead plan, but I feel like a lot of community members talked about working together in partnership with the University to really get this to where it can be a really strong, vibrant asset and something that everybody is proud of in the community, and I feel like that could happen with more time and more discussion.

Mr. Athey: Would you entertain a motion to put the language that Mr. Manning suggested on Item 6 here or are you confident it being a matter of the public record that....

Mr. Funk: Well it's in the public record, but if you want to make a motion that's fine.

AMENDMENT BY MR. ATHEY, SECONDED BY MR. POMEROY: THAT ITEM 6 OF THE SUBDIVISION AGREEMENT BE REVISED BY ADDING THE FOLLOWING WORDING AT THE END OF SENTENCE THREE. ...**"SUBJECT TO THE UNDERSTANDING THAT IN THE EVENT THAT THE CITY OF NEWARK BUILDS A PARKING GARAGE AT THIS LOCATION THAT THE UNIVERSITY WILL DEDICATE THE TWO BUILDINGS AND THE ADJACENT LAND TO THE CITY AT NO COST."**

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Question on the Motion as Amended was called.

MOTION AS AMENDED PASSED. VOTE: 6 to 1

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

(RESOLUTION 10-M)

18. 8. ITEMS SUBMITTED FOR PUBLISHED AGENDA

A. Council Members:

- 1. Discussion re Charging for Collection of Commercial Refuse from Various Non-Profit Institutions**

3:07

Mr. Sonnenberg explained that City Code provided the City may collect commercial refuse for a fee, and the definition of commercial refuse included refuse from non-profits, churches and schools. The City had been collecting refuse either by cart or by dumpster from a number of churches, a few non-profits and the schools for free. The issue for Council was whether the City should begin to charge these institutions for refuse collection as stipulated by the ordinance. The non-profits receiving the service included Aetna Fire Company, the Senior Center, Emmaus Shelter and the Century Club. The public schools received the service in return for the City Parks and Recreation Department having free Saturday use and first priority use of school facilities for recreation programs.

Mr. Funk noted the lack of consistency in charging and felt there should be a consistent policy with the different groups. He said Mr. Emerson pointed out that the school district was getting the far better deal on free trash versus what the City was receiving from them. Mr. Sonnenberg felt it was hard to put a value on the first priority use of the facilities.

Mr. Temko asked if all the entities who received free services were notified in advance of the discussion, and Mr. Sonnenberg confirmed that notification letters were sent.

Regarding the Fire Company, Mr. Funk stated it was a volunteer agency, and it made sense to provide their collection at no cost. He also noted that the Senior Center provided space and services to the City.

Mr. Sonnenberg confirmed that not all religious institutions were getting free trash collection.

The Chair opened the discussion to the public.

Nathan Hunter, of Prayer Temple Ministries, said his church was not being charged for trash collection. They had two trash carts and a person at the church took their recyclables. He suggested that Council take into consideration the many contributions of churches and non-profits in the City. For example, his church was very involved in the Thanksgiving Day breakfast.

Michael Salemi, a Trustee of Redeeming Grace Church Ministries which used two trash carts, had concerns about being charged for refuse collection as a matter of fairness. His concern was how fraternities and some other non-profits that have neighborhood houses would be affected by the fee. He pointed out that the amount of refuse produced by the church was not even close to what was generated by parties at nearby fraternity houses.

Mr. Funk felt if the trash services were free, there should be a requirement to recycle to reduce the City's tipping fees. Mr. Markham said that offer would have to be made to all the non-profits.

Mr. Clifton wanted to see an inclusive list of the churches and non-profits receiving free trash collection from the City and the services they provided to the City. He felt the issue should be looked at a little more holistically since a lot of community partners would be affected.

Mr. Funk was bothered by the fact that the Century Club (which used carts) received free services because it was a rental property.

Mr. Athey wanted to avoid creating different pricing mechanisms for every entity because it would be difficult to handle administratively. He thought some arrangement could be made for entities that provided services to the City such as some kind of waiver.

Mr. Temko suggested churches/non-profits using two carts or less in combination with recycling could be considered the same as residential. Any additional usage could be charged for. He said if the entity provided services to the City, perhaps the City should look at other ways to offer them support rather than free refuse collection.

Chris Locke, a Newark resident, found it disconcerting that the businesses who were paying property taxes had to pay the trash impact fee while churches and non-profits who were not paying property taxes did not have to pay the trash impact fee. His request was that the City treat everybody fairly and equitably.

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

The subject was referred back to staff for further study.

19. 8.A-2. STORMWATER UTILITY UPDATE AND NEXT STEPS

3:27

Mr. Sonnenberg reported that staff had been working towards developing a stormwater utility ordinance and requested Council to confirm whether they wanted to continue pursuing the ordinance this year. He said staff had been meeting on a weekly basis on the stormwater utility, and it was important to know a schedule for possible adoption in setting priorities.

Mr. Temko asked Mr. Sonnenberg if his recommendation was to proceed. Mr. Sonnenberg felt it was a viable option for another revenue source in the future. However, he said Council needed to make the policy decision regarding when to implement the stormwater utility.

Mr. Clifton saw valid reasons for looking into this, but believed the City needed a revenue neutral year so as not to put any more financial burden on residents.

Mr. Pomeroy could not support any new surcharges on residential and other entities in 2011. However, if Council wanted to look at the stormwater utility as a possibility for subsequent years, he thought it was something that warranted continued exploration.

Mr. Tuttle said the decision was not necessarily whether the utility was implemented this year or whether it was designed this year because this was a time-consuming process. He felt Council needed to think about the revenue source for next year and the budget to be adopted in the fall because the City was staying afloat right now by deferring capital costs. His question was how this fee would compare to a property tax increase in terms of impact.

Mr. Athey did not think Council was making the up or down actual decision at the moment, but was rather giving staff direction that they liked the way the stormwater utility was designed and thought it was worth further consideration. He thought yes, but said ultimately it would have to come back to the table for a vote.

Mr. Temko thought there was still interest in pursuing the utility for 2011 or 2012, whatever the target was to phase it in over five years.

Based on the time involved and the preceding discussion, Mr. Funk said implementation would not be possible until 2012.

Mr. Markham noted there would be a long education process required and agreed this was not a front burner issue.

Mr. Athey suggested bringing this back to the table when there was a lighter agenda to decide if the outline met Council's expectations, regardless of the time frame for implementation.

20. 8-B. OTHERS:

1. Authorization to Execute Agreement with Aetna Hose Hook & Ladder Company

3:34

Mr. Akin advised he reviewed the federal statute that required a local volunteer fire company to secure an agreement with the municipality it was serving in order to qualify for low interest funding to purchase major pieces of equipment.

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT THE CITY MANAGER BE AUTHORIZED TO SIGN THE AGREEMENT WITH WITH AETNA HOSE, HOOK AND LADDER COMPANY.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

21. 8-B-2. RESOLUTION 10-__ : ADOPTING AN ALL HAZARD MITIGATION PLAN FOR THE CITY OF NEWARK

3:34

Chief Tiernan explained this was an updated New Castle County mitigation plan. Adoption of the plan would allow the City to be eligible for federal and state grant funding. Mr. Athey clarified that this was consistent with the City's own emergency management plan.

MOTION BY MR. ATHEY, SECONDED BY MR. MARKHAM: THAT THE CITY OF NEWARK ADOPT THE ALL HAZARD MITIGATION PLAN DATED JANUARY 6, 2010.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

(RESOLUTION NO. 10-N)

22. 9. SPECIAL DEPARTMENTAL REPORTS

A. Special Reports from Manager & Staff: None

23. Meeting adjourned at 11:01 p.m.

Patricia M. Fogg, CMC
City Secretary

/av