

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

March 12, 2012

Those present at 7:00 pm:

Presiding: Mayor Vance A. Funk, III
District 1, Mark Morehead
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: Interim City Manager Carol Houck
City Secretary Patricia Fogg
City Solicitor Bruce Herron
Assistant to the City Manager Charles Zusag
Communications Affairs Officer Dana Johnston
Finance Director Robert Uyttebroek
P & D Director Maureen Feeney Roser
Planner Mike Fortner
NPD Police Chief Paul Tiernan

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

2. MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT ITEM 8-A-2, RESOLUTION NO. 12-D, IN MEMORIAM VALENTINO "VAL" W. NARDO, SR., BE ADDED TO THE AGENDA AND MOVED TO ITEM 4.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

3. MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: THAT ITEM 8-A-1, DISCUSSION RE CITY MANAGER SEARCH, BE MOVED TO ITEM 5.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

4. **8-A-2. RESOLUTION NO. 12-D: IN MEMORIAM VALENTINO "VAL" W. NARDO, SR.**

00:52

The resolution honoring Valentino "Val" Nardo was unanimously endorsed by Council. Mr. Nardo was recognized posthumously for his service to the community as the founder of "Val's Needy Family Fund", an organization dedicated to feeding the needy since 1968. Mr. Nardo's family was present to accept the resolution from Mr. Funk.

(RESOLUTION 12-D)

5. 8-A-1. DISCUSSION RE CITY MANAGER SEARCH – BOB SLAVIN/RANDI FRANK

06:02

Mr. Slavin and Ms. Frank were present from Slavin Management Consultants. Mr. Slavin said they had a revised City Manager recruitment profile and asked Council to provide some insight into what might entice people to take a second look at Newark and what they were looking for in a new City Manager.

Mayor Funk provided the following:

- The City won the Great American Main Street Award and interested applicants could view the video produced that reflects the spirit of Newark.
- The City was on solid financial ground
- The City has a strong working relationship with the University which has allowed partnerships such as special events and police services.
- A new City Manager needed strength in budgeting and experience in utilities.
- Experience in a college town was not as important as it was 3-5 years ago because of the good relationship that now exists with the University.
- A City Manager with a warmer personality.

Mr. Athey provided the following:

- Town & Gown experience was a plus but not necessarily a condition of employment.
- A City Manager who was innovative and would rock the boat. Gave an example that the former City Manager came to Council on a number of occasions with drastic measures, for example, the outsourcing of refuse removal which never actually went to Council. (It was noted by Mr. Morehead that this ideas was poorly presented with no public interaction and thus was shot down.)
- Four years ago they wanted a City Manager who would come in and take a top to bottom look, and he did not think much was done. However, he did not want to see a situation where somebody new came in with the perception that all sorts of changes were going to happen when it may not.

Mr. Tuttle provided the following:

- Town & Gown experience was desirable.
- A City Manager with some creative thinking about future revenue sources.

Mr. Temko provided the following:

- Applicants needed to be aware of a pending lawsuit.
- The City's strength was in its open space, parks, and recreational activities.
- The City was a great place to raise a family.
- Government in Delaware was unique with its small, personal government.
- Noted the personnel change with management staff.
- Would like to see increased interaction/collaboration with community stakeholders.
- Financial management and communication skills were essential.
- The ability to engage citizens and community agencies.
- A City Manager comfortable creating and sustaining a collaborative culture in City Hall among employees.
- A City Manager who would bring numerous ideas forward even though all would not be popular.
- Council needed to develop performance measurements and accountability standards.
- A City Manager who promotes strategic planning and vision for the community.

Mr. Clifton provided the following:

- A City Manager with an engaging personality who was capable of engaging all stakeholders (including citizens and employees) so they were comfortable bringing issues to the City Manager.
- An individual who would move issues forward for the City with a proactive, assertive approach in establishing and maintaining relationships.

Mr. Markham provided the following:

- A City Manager who would push Information Technology because the City was lagging behind in this area and had a lot of information that was not being utilized.
- Background in economic development and who could do more intergovernmental work.
- The City was facing challenges with municipal electric rate discussions.

Mr. Morehead added the following:

- Concurred with Mr. Markham's comment about IT. Currently the City did not monitor it, did not manage it and did not check it for reliability, resulting in areas where improvements could have been made if we had looked at the data.
- Believed the City was somewhat entrenched in its ways and wanted someone willing to rock the boat to come in and have a good look at what we do and how we do it and whether it made sense and whether change needed to be made.
- Looking for someone with university experience.
- Looking for someone with good financial solving and resolution experience.

The Chair opened the discussion to the public.

Rick Celeste, a Newark resident, thought there was value in having an individual who was interactive but felt the City needed a strong manager. He believed some of the change that has occurred in the Planning Department should continue to be driven with data instead of "just throwing ideas out". He said the rubbish proposal was not presented well and there was never a test to see if there was any support when it should have been vetted with the citizens and other stakeholders.

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

Mr. Slavin stated he would get the revised City Manager recruitment profile back to Council in draft form very quickly.

6. 1. ITEMS NOT ON PUBLISHED AGENDA

A. Public – None

44:55

Rick Celeste, a Newark resident, announced that he was running for District 5 City Council.

7. 1-B. UNIVERSITY

46:40

1. Administration – Mr. Armitage announced this would be his last Council meeting to speak publicly on behalf of the University since he was retiring on June 30th. Mr. Armitage represented the University at City Council meetings since 1994 and attended more than 400 meetings. He enjoyed representing the University and watching the relationship grow between the University and the

City during that time. He was thankful for the dedication and the public service commitment which he said made the City of Newark a special place.

8. 1-B-2. STUDENT BODY REPRESENTATIVE - None

9. 1-C. COUNCIL MEMBERS

49:03

Mr. Temko

- Mr. Temko said the deadline to file for City Council was today, and he acknowledged the following candidates for District 5: Rick Celeste, Luke Chapman and Ed Smith. He thanked them for running and encouraged District 5 residents to vote on April 10 for their next Council member.
- Mr. Temko credited Mr. Fortner for work on the Comprehensive Plan where there will be substantial opportunities for community input.
- Mr. Temko noted there would be a public workshop on skate spots on March 29 at 7 p.m. in the Council Chamber.

10. Mr. Markham

- Mr. Markham attended the Wawa opening and said it was good to have Wawa in the City.
- Mr. Markham announced the Nefosky Police Memorial Walk and 5K Run was scheduled on Friday, April 13 and was a worthy cause.
- Mr. Markham also announced the Downtown Newark's Annual Wine and Dine on Saturday, March 31.
- Attended a University of Delaware student degree concert at Sharp Bayard Hall, and suggested UD music events be included on the City's community calendar.

11. Mr. Tuttle

- Mr. Tuttle joined Mr. Temko in encouraging attendance at the skate spot workshop which involves a number of locations throughout the community.
- Mr. Tuttle will be absent from the March 26 Council meeting. He bid farewell to Mr. Temko and said he enjoyed serving with him on Council.

12. Mr. Morehead

- Mr. Morehead discussed the orientation process for new Council members in light of the upcoming election in District 5. At his orientation "they told me what they wanted me to hear and I question whether or not we want to do it that way. It was not an education so much as it was an indoctrination." He felt if Council wanted more control of that situation they should exercise more input at this stage.

13. Mr. Clifton

- Mr. Clifton reported the Wawa grand opening was an exciting event and noted the store was well patronized since then.
- Mr. Clifton congratulated Messrs. Markham and Tuttle who were officially re-elected as of today. Both have exemplary records of service to the community.

- Regarding the workshop on skate spots, Mr. Clifton said the immediate neighbors will receive mail notification so they will be aware that their park is being considered for that use.

14. Mr. Athey

- Mr. Athey said Roy Lopata’s retirement farewell was one of the most uplifting events he ever attended and thanked all who were involved in the planning.
- Mr. Athey said he recently rode his bike on the Pomeroy Trail, and he was looking forward to its completion.
- Mr. Athey requested that contractor Kevin Jones (who was renovating a house in his district) be allowed to speak regarding the purchase of contractor bonds. The bonds were categorized by the amount of the renovation – either \$100,000 or \$1 million at a cost to the client of \$100 or \$1000. Mr. Jones asked Council to consider adding one or two interim steps on behalf of residents who were impacted by this requirement. Levels of \$100,000, \$250,000, \$500,000 and \$1,000,000 were discussed as were project-based bonds. Ms. Houck and Ms. Roser will explore this further.

15. Mr. Funk

- Mr. Funk wrote a proposal about amending the comp time policy for management employees which he requested be given to Mr. Zusag to review and then report on to Council.

16. 2. APPROVAL OF CONSENT AGENDA

- A. Approval of Regular Council Meeting Minutes – February 27, 2012
- B. Receipt of Alderman’s Report – March 8, 2012
- C. ***First Reading – Bill 12-11 – An Ordinance Amending the Amended Pension Plan for Employees of the City of Newark, Delaware, Regarding Disability Pension and Survivor’s Pension – 2nd Reading 3/26/12***
- D. ***First Reading – Bill 12-13 – An Ordinance Amending Chapter 19, Minors, Code of the City of Newark, Delaware, By Bringing the Code Into Conformance with State Code with Regard to Providing Alcoholic Liquor to Minors – 2nd Reading 3/26/12***
- E. ***First Reading – Bill 12-16 – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Revising the Pay Plan for Management Employees, Effective January 1, 2012 – 2nd Reading 3/26/12***
- F. Receipt of Planning Commission Minutes – February 7, 2012
- G. Approval of Polling Place for April 10, 2012 Election
- H. Cancellation of April 9, 2012 Regular Council Meeting
- I. Reappointment of Steven Dentel, Bob McDowell and Cara Lampton to Conservation Advisory Commission – 3 Year Terms to Expire March, 2015

1:08

Ms. Fogg read the Consent Agenda in its entirety.

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

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

17. 3. ITEMS NOT FINISHED AT PREVIOUS MEETING: None

18. 4. FINANCIAL STATEMENT:

1:10

Mr. Uyttebroek presented the Financial Report as of January 31, 2012 which at one month into the fiscal year was somewhat distorted based on accounting entries made with deferred revenue and capital expenditures.

One area of concern, and was a nationwide issue, was the cost of gasoline and diesel fuels. Over 167,000 gallons of fuel were used last year by the City's 139 vehicles and 4 motorcycles combined between diesel and gasoline. Last year ended with the line item in the General Service fund for fuels, coolants and lubricants about \$70,000 over budget and this was a concern. Mr. Uyttebroek will be monitoring costs and reporting back to Council on the issue.

In regard to the fuel increases Mr. Markham suggested expediting the purchase of the hybrid vehicles. Mr. Temko emailed Ms. Houck with an "outside the box" idea where some municipalities started producing biodiesel from waste vegetable oil as an actual cost saving for their diesel fleet.

Mr. Funk noted there was no transfer tax collected according to the report. Mr. Uyttebroek said this could just be a late entry and he would get back to him with further details.

MOTION BY MR. TUTTLE, SECONDED BY MR. CLIFTON: THAT THE JANUARY 31, 2012 FINANCIAL REPORT BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

Nay – 0.

19. 5. RECOMMENDATIONS ON CONTRACTS & BIDS: None

20. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING:

A. Bill 12-02 – An Ordinance Amending Chapter 32, Zoning, Code of the City of Newark, Delaware, By Reducing the Permitted Rental Apartment Density and Providing Density Bonuses for Owner Occupant Multi-family Housing in the BB Zoning District

1:15

MOTION BY MR. TUTTLE, SECONDED BY MR. ATHEY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 12-02.

Ms. Roser reported that there were three public meetings that led to this public hearing on this bill. The first was a Council workshop held in August where rental housing and tools to regulate apartments in the BB district were discussed. During the workshop Council indicated that steps should be taken to reduce the overall density allowed in BB districts and to find a way to encourage owner occupancy by offering density bonuses for developments of owner occupied units and a density reduction for rental properties.

On September 26th Council again addressed the issue of density providing clarification that the issue was more complicated than just unit count per acre but that the type of unit had to also be considered. In other words a one bedroom unit and a four bedroom unit were both still one unit but their impacts were quite different. After the Council meeting the Planning Department did some research on how to address the matter and met with developers to get their input. The matter was then reviewed and recommended by the Planning Commission on December 6th.

The objective for this ordinance was to reduce permitted downtown apartment density, to encourage owner occupancy and small apartment style housing downtown through bonuses and penalties and to modernize floor to ceiling downtown height requirements. Currently in BB districts up to 145 units

per acre are allowed. There was also a parking waiver system in place where a developer can provide cash in lieu of providing the required parking spaces. Height bonuses were also given for on-site parking garages, plaza, exhibition space, etc. for up to 7 stories at 11 feet per story, or a total building height of 77 feet was permitted.

To meet the objectives, four amendments to the BB zoning district were proposed.

1. Reduce the density allowance for apartments with three or more bedrooms each to 24 units per acre.
2. Provide a density bonus for up to 60 units per acre for apartments with a maximum of two bedrooms or a maximum of 4 tenants in each.
3. Provide a density of 90 units per acre for owner-occupied apartments and to those limited to two tenants each.
4. Amendment 1 contained a formula to calculate the permitted total number of units for apartment buildings that may be a mixture of unit types.

Ms. Roser said they heard from developers previously and then again when they spoke to them after the September Council meeting that the floor-to-ceiling height of 11 feet often made it difficult to meet modern construction best practices and to provide unique and aesthetically pleasing building designs, particularly for mixed-use buildings. Therefore, they proposed Amendment 2 to address building height concerns.

Amendments 3 and 4 focused on the parking waiver system and while they do not directly deal with apartment density, parking waivers were discussed by Council at the workshop session and in the meeting with developers. They need to be considered together because they both address changes to the parking waiver system. The amendments would change the waiver system for residential uses in BB. Small apartment-style buildings proposed with deficits would be required to pay an automatic fee that would be considered part of the regular subdivision and development approval process as opposed to a separate parking waiver process. Just as we have a payment in lieu of providing open space for developments of a certain size we would have an impact fee assigned to any residential development downtown with a parking deficit using the same formula as was presently used without a separate process. Council would consider the project on its merits which would include outlining the parking deficit and the amount of the parking impact fee charged based on that deficit when it considered the approval of the development through subdivision and the BB required special use process for apartments. This would simplify the system and how it related to the objectives of encouraging owner occupancy and small apartment style housing while penalizing large apartment developments. These amendments provide a disincentive for all apartment development proposals with more than three bedrooms each by requiring that a developer of this type building not only pay the parking impact fee for all required parking but also supply all required parking on site. This requirement would make it extremely difficult to build apartments with lots of bedrooms downtown.

Since the Planning Commission meeting there were conversations with members of the public and Council about Amendment 2. The community expressed concern about allowing a 90' maximum building height. If Council wished to provide height bonuses for owner occupancies and small apartment style housing downtown, Ms. Roser suggested the proposed 15' per floor be changed to 13' for up to three additional bonus floors providing a maximum height of 78' for a building - just one foot more than presently allowed by Code for bonuses that do not relate to density, tenancy or size.

For comparison purposes, Ms. Roser said Washington House was approximately 69 feet in height.

Mr. Temko asked what would happen with parking waivers in a mixed-use project with commercial and residential if this passed. Ms. Roser said the commercial portion would still go through the regular parking waiver process but the residential would not have to – there would be a set fee. Mr. Temko asked Ms. Roser to elaborate on height bonuses for parking. Ms. Roser reported if 60% of floor space was used for a parking garage, the project could go up another story and with a large lobby or an exhibit area exceeding 59% of a floor, the project could go up another story.

Mr. Morehead asked why this was being proposed before the revision of the Comprehensive Plan (2013). Ms. Roser said this proposal was in response to discussions at the Council workshop. Mr. Funk added it was in reaction to Council learning for the first time that there could be 160 units per acre in BB. Mr. Athey said if the Comp Plan was halfway done he would be tempted to let it go, but the process was not even started so he thought something should be done now. Mr. Clifton remembered in looking at the number of student rental houses in 1999-2000 Council collectively said they needed to do something to turn this tide. Some examples of density – 102 E. Main Street was 20.83 per acre; 108 E. Main Street was 14.7 per acre; 129 E. Main Street was 34.68 per acre; Christina Mills was 8.69 per acre; Campus Edge was 28.24 per acre and Amstel Square was 17.17 per acre. Fountainview was a four-story building with density of 24.65 per acre. He added if Council was serious about changing direction and trying to target a different market, he did not think the 24 and the 60 units would have any impact. Mr. Clifton suggested going back to what Mr. Lopata originally suggested – go back to the 16 units and reduce the 60 units to 30. He would also reduce the 90 to 60.

Mr. Athey reiterated Mr. Clifton's logic. If this passed, nothing would change because everybody was more or less coming in around 24, but going down to 16 would change the game.

Ms. Roser pointed out that was the original proposal of the Planning & Development Department but it was not clear from Council members that 16 was what they wanted which is how they got to 24.

Mr. Temko was not sure he wanted to put new buildings downtown with significantly less than 16 units. He thought Council should consider whether they were trying to encourage developers to do something different or whether they were saying this was the only way you can build in our downtown. He thought Council wanted to promote owner occupancy, smaller apartment-style housing and downtown living. In his view it was a positive to have more people living downtown. He thought Council should be realistic with this proposal and did not think they should allow a bonus for 78 feet if they were never going to approve a 78-foot building and look closely at the parking issues to make sure they were not just being realistic but transparent with developers about what they were expecting and what had a chance of being approved if developers made an investment in it. He thought it was important that this be addressed now, particularly because of the disparity between the one and four bedrooms and how that played out in density. With regard to Amendments 3 and 4, he found it curious that a parking impact fee was allowed in lieu of the parking waiver process for parking deficits in the smaller apartments occupied by young professionals, families and seniors – people who were more likely to need a car but then required parking for the 3 to 4 bedroom apartments occupied by students living downtown where they did not want them to bring a car.

Mr. Athey thought Amendment 3 and 4 were unclear and did not object to excluding them. Mr. Funk was in agreement.

Mr. Clifton said if the 90 units were dropped to 60, Fountainview's density could be doubled and Washington House's density could almost be doubled. He thought there was an untapped market this could potentially address. Mr. Funk thought a project that size would have a hard time getting the financing.

The Chair opened the discussion to the public.

Jeff Lang, a Newark resident and developer, said he was involved in the developers' meeting where the density issues were discussed. They discussed how to incentivize the private community to create the product that fit the needs of downtown while being acceptable to Council. He said the number of units in typical development projects downtown vary somewhere between low 20's to low 30's. Reducing this to 16 or 24 for a certain type of product would discourage developers. He felt the number could be reduced to 16 for four-bedroom units, but Council wanted to incentivize developers to build one and two-bedroom units for young professionals, graduate students and hopefully for a condominium market when it rebounds. Another area of concern was meeting the parking, and how to tie parking into unit density and get the product type you want. He said if the desire of Council was to have two spaces for every unit no matter what size unit was built, you would not get a lot of smaller units but would get marginally larger units based on the value of parking spaces.

Mr. Lang said Council should think about this because downtown development would not happen at 16 since land was too expensive and no one could currently afford to build owner occupied units as there was no financing available.

Regarding 108 E. Main Street, Mr. Lang explained that the height variance made that building habitable for the office tenant on the second floor. He suggested a height limit of 4 stories at 15 feet per floor or 60 feet maximum downtown. He did not believe parking on the first floor was very good and thought Council wanted businesses on the first floor. However, the City provided a bonus for that design.

Rick Celeste, a Newark resident, asked for clarification regarding how the densities calculated into per acre with parking or commercial on the first floor.

John Horner, a Newark resident, agreed with several statements made by Mr. Lang. He felt Mr. Lang was correct that owner-occupied housing had to provide parking for the residents. However, all students in four-bedroom apartments did not need cars, but they all brought them and were putting them someplace.

Mr. Horner was concerned that the Kate's Place project where there will be two-bedroom apartments without parking would not attract owner occupants and would become student housing.

Mr. Horner observed that everybody had their opinion on what this ordinance should be, but he did not think there was enough thought put into it. He said Council should consider tabling it for further consideration. Regarding height, he said taller buildings on Main Street would block all the sunlight to the street level.

Regarding the density of 24 units, Chris Locke, a Newark resident and representative of Lang Development, said Council should also think about the small infill projects on Main Street. He believed everything possible should be done to avoid having cars on Main Street and to reduce the traffic impact.

Mr. Athey suggested changing Item 1 to 16 units and Item 2 to 30 and keeping Item 3 at 90 units. He felt lowering everything was contradictory to what Council was trying to do.

Mr. Funk said if Council did not take any action tonight, a moratorium should be declared on apartment rezoning.

Mr. Markham's concern was in doing something too drastic, and he said Council would not be having this conversation if the current renaissance on Main Street and Elkton Road had not occurred. He did not want to kill the golden goose by going too drastic and suggested either thinking about it more or going with the recommendation of staff.

Mr. Morehead said Council was talking about six different things all mixed together. For that reason alone he did not want to tamper with the numbers. He said it was important to accommodate cars to encourage owner occupancy. He had a problem with the automatic parking waiver because that would take away one of the tools that Council used all the time. He would agree to either set this aside to give it more thought or send it back to Planning for another recommendation.

Mr. Clifton agreed with Mr. Funk that if this bill did not pass, there should be a moratorium with a set time frame.

Mr. Tuttle thought it was important to have a better mix with units that catered to year-round residents. He was not sure if this proposal went far enough in providing the incentives. However, he believed it was well thought through by Staff and said they were better served on moving on this than in proposing a moratorium. He would decouple Amendment 3 and 4, as he thought there was another way to address the parking.

Mr. Athey agreed that imposing a moratorium was not the right move to make. Instead he suggested bringing the bill back in two weeks to give Staff more time to consider Council's comments. He was leaning towards Mr. Clifton's proposal to reduce the units based on the data he presented.

AMENDMENT BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT AMENDMENT 1, ITEM 1 BE CHANGED FROM 24 UNITS TO 16 UNITS, ITEM 2 BE CHANGED FROM 60 UNITS TO 30 UNITS AND AMENDMENT 3 AND 4 BE DELETED. (AMENDMENT 2 REMAINED UNCHANGED.)

AMENDMENT PASSED: VOTE: 4 to 3.

Aye – Athey, Clifton, Funk, Tuttle.

Nay – Markham, Morehead, Temko.

(Secretary's Note: The public was permitted to comment.)

Mr. Locke said there were about a dozen participants in the meetings where this subject was discussed, and it was a very well thought out proposal. He said the reason Newark was so successful with less than 3% vacancy in commercial space on Main Street was because of the residential apartments, and part of the reason Newark won the National Main Street Award was because of the residential apartments. He said a developer would not be able to build with these limits and that was why they came up with the various numbers to provide incentives. He implored Council not to pass the legislation as amended. Instead he suggested sending it back to Ms. Roser for a more cohesive plan.

Mr. Locke cited a number of developments that would not exist under the 16 unit limit and said the developers would not be incentivized to take the risk of doing smaller units. Mr. Locke said he was not arguing so much about taking the 24 units to 16 but taking the 60 to 30 ruined the dynamics of what the City was trying to create.

Mr. Temko did not think there was a crisis right now in terms of development and did not believe a moratorium or a rush to make a decision was wise.

Mr. Morehead did not want to lose sight of building heights and the inner floor height which he said was critical to how these buildings would go through their lives. He said many variables were being discussed all at the same time and felt they should be voted on one at a time and progressively such to allow a little time to figure out how one decision impacted the next decision.

MOTION BY MR. ATHEY, SECONDED BY MR. MOREHEAD: TO TABLE ITEM 6-A TO THE MARCH 26, 2012 COUNCIL MEETING.

Ms. Fogg pointed out that Councilman Tuttle would not be present for the discussion at the next meeting.

MOTION PASSED: VOTE: 6 to 1.

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

21. 6-B. BILL 12-06 – AN ORDINANCE AMENDING CHAPTER 2, ADMINISTRATION, CODE OF THE CITY OF NEWARK, DELAWARE, BY ELIMINATING CERTAIN MANAGEMENT POSITIONS, REVISING THE TITLE AND PAY GRADE OF A CERTAIN MANAGEMENT POSITION AND ADDING A NEW MANAGEMENT POSITION

2:43

Ms. Fogg read Bill 12-06 by title only.

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 12-06.

Mr. Zusag explained this amendment resulted from the deletion of the Building Director position and the combining of the Planning and the Building Departments. As a result, the Planning & Development Department was being restructured, deleting the Assistant Planning Director position and creating a new Development Supervisor position.

Mr. Morehead commented that the organizational chart had the appearance of a functional organization chart and asked for corresponding names. Mr. Zusag reported the Director was Maureen Feeney Roser Roser, under the Development Division was Mike Fortner, Economic Development was Ms. Roser and Mr. Fortner, under Parking was Marvin Howard and Code Enforcement was Steve Wilson. Ms. Houck added that recruitment was ongoing for the Planner position to replace Mr. Fortner.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

(ORDINANCE NO. 12-06)

22. 6-C. BILL 12-07 – AN ORDINANCE AMENDING CHAPTER 32, ZONING, CODE OF THE CITY OF NEWARK, DELAWARE, BY ESTABLISHING A NEW ZONING CATEGORY TO BE DESIGNATED AS STC (SCIENCE AND TECHNOLOGY CAMPUS DISTRICT) AND BY DELETING LIMITED COMMERCIAL LABORATORY DISTRICTS

2:47

Ms. Fogg read Bill 12-07 by title only.

(NOTE: THE PUBLIC HEARING FOR 6-C AND 6-D WERE HELD AT THIS TIME.)

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 12-07.

Ms. Roser reported as a result of the University's acquisition of the former Chrysler site and MOPAR plants facilities and following detailed discussions with University of Delaware officials, the Planning Commission recommended the establishment of the new zoning category for land with the special characteristics of the proposed Science and Technology Campus at the Chrysler location. In recommending this new zoning category for the property, the Planning Commission took into account the existing zoning (MI or General Industrial) and the relationship between the University's ownership of the site and the City's land use regulatory authority for the location. Because the property was purchased by the University which is exempt from the City's local zoning codes for those uses that would fall within the University's exemption, the University would be able to develop the Science and Technology Campus according to its own standards subject only to debate on whether specific uses fall within that exemption. For example, Ms. Roser explained that developing classroom space would clearly fall within the exemption, but a large shopping mall with no connection or benefit to the University other than financial would fall outside. However, there were many uses which would fall in between those two categories that would have to be decided on a case-by-case basis and could result in potential litigation, something that the University and the City would like to avoid. Thus, the proposed zoning category was designed to establish a set of standards for all agreed-upon permitted uses including those uses that the University might, under current law, pursue without reference to the City's Zoning Code. By adopting this, the City permits a broad range of uses to suit UD's vision for the campus, some of them as a matter of right; others with a Council approved Special Use Permit, thereby providing the City with some protection. It allows the City to provide some guidance for the campus including smart growth and transit-oriented development initiatives. If a project on the campus met the standards set in the new Zoning Code category, the project would be permitted with a building permit and subject to the technical requirements of the subdivision process without formal approval by Council.

Assuming approval, Mr. Clifton questioned the next step and whether there would be a Memorandum of Understanding between the University and the City. Ms. Roser said a letter would be signed that will formally bind the City and the University to this Zoning Code category.

Mr. Morehead asked about the possibility of a residential use at the site. Ms. Roser replied the University was looking at transit-oriented development as a possibility at the site. Mr. Morehead asked if the City's Code would apply to residential use. Mr. Funk advised that the regulations regarding health, safety and welfare, even though they were imposed by the State or the City, were binding.

Andy Lubin, University of Delaware Director of Real Estate, said the concept plan for the Science and Technology Campus incorporated a number of different anticipated uses, limited to the academic side in a very small capacity. The goal of the Science and Technology Campus was to expand and exploit the

research taking place on the main campus. This was not to create another campus for the University but would include different types of research and technology with businesses that could take advantage of hiring students both from the training point of view to graduate programs to ultimately full employment. Through the biotechnology side and through the bioengineering side and the College of Engineering, the University hoped to have different levels of students involved at Bloom Energy in research side and technology.

Mr. Lubin explained once the University was able to stimulate the opportunity with commuter rail, there might be potential for market types of housing (not undergraduate housing) but perhaps graduate and employee types of housing. With the opportunity of attracting MARC and expanding Amtrak and Septa, at some point with the Tiger II and with the Tiger IV that they were applying for, the site would be in the middle between Baltimore and Philadelphia and become a logical place for people to live and commute to. Thus, the transit-oriented development community was interdependent on bringing vehicular traffic and rail traffic to the site in a convenient way. Mr. Lubin added that the vast majority of the development of this site over the next 25 years would not be academic.

Mr. Lubin explained they would start with the rehabilitation of the Administration building and the high bay area behind it, a portion to be used by the College of Health Sciences at the graduate level and at the level where it integrated with the community.

Mr. Lubin pointed out that the for-profit entities locating at the site would be taxed which presented opportunities for the City and for New Castle County.

Mr. Temko asked if it was common for public universities to be involved in owning and creating this type of project. Mr. Lubin said through best practices and lessons learned and looking at other research centers, they have been populated either by pure business or pure research/academic. The University was trying to integrate the two and was starting to see that occur more often regionally. The mission from the Trustees was to make sure that 25 years down the road when some new technology was developed there would be a spot for it at this site.

Regarding the binding agreement, Mr. Temko asked if that meant the City could never make any changes to this Zoning Code. Mr. Lubin said the City always had the right to make changes to their Zoning Code. What the University was going to try to present in terms of the binding agreement was clearly there is a charter to the University and the charter gave the University some flexibility and some immunity. The University would generally be cooperative with changes made over time.

The Chair opened the discussion to the public.

Rick Celeste, a Newark resident, asked if this was the first instance where non-students would live on university property and if it would it be taxable. Mr. Lubin said it was not the University's intention to construct market housing. Rather, it was the University's intention to identify a site that may be convenient to the proposed new rail station and elsewhere on the site, go through an RFP process and then have a private developer provide that type of housing. The University would be looking for strategic partners for the vast majority of development of this project.

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

Mr. Temko thought it was good for the City to have a cooperative partnership with the University. Since General Industrial zoning substantially

limited the usage here, he thought the newly created zoning made sense for the use that would be on the site.

Mr. Markham felt it was in the best interest of the City and the University to have this cooperation, and he would support the new zoning category.

Mr. Tuttle thought the new zoning was in the best interest of the City and District 3. He said it was very positive because the transition of ownership to the University was perceived by many to be the end of taxable activity at the property, but this project encouraged taxable activity.

Mr. Funk said based on the University's plans this was a fantastic deal and he would support it.

Mr. Morehead thought the zoning classification made good sense and given the University's plans for the site and the fact that the old zoning no longer made sense, he planned to support it.

Mr. Clifton believed this new category made sense, supported it and applauded everyone involved in the effort.

Mr. Athey said this was a win-win situation - it was good for the University and good for the City, and he planned to support it.

Question on the Motion was called. (6-C)

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

(ORDINANCE NO. 12-07)

23. **6-D. BILL 12-08 – AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE, BY REZONING FROM MI (GENERAL INDUSTRIAL) TO STC (SCIENCE AND TECHNOLOGY CAMPUS) A 221.2864 ACRE PARCEL LOCATED AT SOUTH COLLEGE AVENUE AND THE CHRISTINA PARKWAY**

3:09

Ms. Fogg read Bill 12-08 by title only.

(NOTE: THE PUBLIC HEARING WAS HELD FOR 6-C AND 6-D UNDER ITEM #22)

MOTION BY MR. TEMKO, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 12-08.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

(ORDINANCE NO. 12-08)

24. **6-E. BILL 12-10 – AN ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLES AND TRAFFIC, SCHEDULE X, CODE OF THE CITY OF NEWARK, DELAWARE, BY AMENDING THE TIME LIMIT IN CERTAIN PARKING METER ZONES**

3:10

Ms. Fogg read Bill 12-10 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 12-10.

Ms. Roser reported these were two hour meters and in some other cases close to the University they were three hour meters. Users of those spaces said they would be better utilized if the time limit was changed to four hours. In Lot #6 that made sense since it was off-street parking and it would give people more time to enjoy the downtown. In the University areas classes were often three hours long so a four-hour time limit allowed students to go to class and use the meter.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

(ORDINANCE NO. 12-09)

25. 6-F. BILL 12-12 – AN ORDINANCE AMENDING CHAPTER 17, HOUSING AND PROPERTY MAINTENANCE, CODE OF THE CITY OF NEWARK, DELAWARE, TO INCLUDE A PROVISION TO ALLOW AN APPEAL OF A PROPERTY MAINTENANCE CITATION IN THE ALDERMAN’S COURT

3:12

Ms. Fogg read Bill 12-12 by title only.

MOTION BY MR. MOREHEAD, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 12-12.

Mr. Tuttle proposed an amendment to clarify the addition of a \$35.00 Court cost when property maintenance citations were appealed and then the violation was upheld in the Alderman’s Court.

AMENDMENT BY MR. TUTTLE, SECONDED BY MR. TEMKO: THAT THE FOLLOWING LANGUAGE BE ADDED AFTER THE FIRST SENTENCE IN AMENDMENT 1.

“UPON APPEAL, SHOULD THE COURT UPHOLD THE ISSUANCE OF THE CITATION AND FIND THAT A VIOLATION HAS OCCURRED COURT COSTS OF \$35.00, IN ADDITION TO THE \$100.00 FINE, SHALL BE IMPOSED.”

AMENDMENT PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

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

Mr. Morehead was pleased with the clarification as he felt it went a long way towards improving transparency and eliminating any possible problems.

Question on the Motion as Amended was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

(ORDINANCE NO. 12-10)

26. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS:
None

27. 8. ITEMS SUBMITTED FOR PUBLISHED AGENDA

A. Council Members:

1. Discussion re City Manager Search – Bob Slavin/Randi Frank

(SEE ITEM NO. 5)

28. 8-B. OTHERS: None

29. 9. SPECIAL DEPARTMENTAL REPORTS:

A. Special Reports from Manager & Staff:

1. Pension Plan Performance Report 4th Quarter of 2011

3:14

Mr. Uyttebroek presented two schedules, one for the fourth quarter of 2011 and one for the entire year. Combined pension funds were \$39.1 million at the beginning of the year and ended the year at \$39.5 million. The third quarter was bad but rebounded somewhat in the fourth quarter. Since the beginning of the year the fund made an additional \$3 million.

Mr. Markham asked the percentage of funding currently in the Pension Plan. Mr. Uyttebroek said the actuaries were finalizing their numbers, and he would have that number for Council in the near future.

MOTION BY MR. MARKHAM, SECONDED BY MR. TEMKO: THAT THE PENSION PLAN PERFORMANCE REPORT FOURTH QUARTER 2011 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

30. Meeting adjourned at 10:14 p.m.

Patricia M. Fogg, CMC
City Secretary

/av