

CITY OF NEWARK
DELAWARE

COUNCIL MEETING MINUTES

March 25, 2013

Those present at 7:00 pm:

Presiding: Mayor Vance A. Funk, III
District 1, Mark Morehead
District 2, Jerry Clifton
District 4, David J. Athey
District 5, Luke Chapman
District 6, A. Stuart Markham

Absent: District 3, Doug Tuttle

Staff Members: City Manager Carol Houck
City Secretary Renee Bensley
City Secretary Patricia Fogg
City Solicitor Bruce Herron
Community Affairs Officer Dana Johnston
Deputy City Manager Andrew Haines
Finance Director Lou Vitola
Assistant Finance Director Wilma Garriz

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1. The regular Council meeting began with a moment of silent meditation and the Pledge of Allegiance.
 2. MOTION BY MR. CLIFTON, SECONDED BY MR. MOREHEAD: THAT ITEM 4, FINANCIAL STATEMENT ENDING FEBRUARY 28, 2013, BE REMOVED FROM THE AGENDA AND THAT ITEMS 8-A-1, RESOLUTION 13-E, RETIREMENT OF PATRICIA M. FOGG AND 8-A-2, RESOLUTION 13-F, IN APPRECIATION TO DAVID J. ATHEY, BE MOVED TO ITEMS 3 AND 4.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

3. **8-A-1. RESOLUTION 13-__ : RETIREMENT OF PATRICIA M. FOGG, CMC, CITY SECRETARY/TREASURER**

The Resolution honoring City Secretary/Treasurer Patricia M. Fogg for 34 years of service to the City of Newark was unanimously endorsed by Council.

(RESOLUTION NO. 13-E)

4. **8-A-2. RESOLUTION 13-__ : IN APPRECIATION TO DAVID J. ATHEY, COUNCIL MEMBER FOURTH DISTRICT**

The Resolution recognizing Council Member David J. Athey for ten years of service to the citizens of District Four was unanimously endorsed by Council.

(RESOLUTION NO. 13-F)

5. OATH OF OFFICE – RENEE BENSLEY, CITY SECRETARY/TREASURER

Mr. Funk administered the Oath of Office to Ms. Bensley.

6. 1. ITEMS NOT ON PUBLISHED AGENDA

A. Public

13:06

Paul Pomeroy, former City Council member, said he had the privilege of presenting Mr. Funk with the Free Enterprise Award bestowed upon him by the New Castle County Chamber of Commerce. He thanked City Secretary Pat Fogg for the incredible work she did for the City and also acknowledged Dave Athey's retirement from Council and said it was a high honor and a pleasure to work with him.

7. 1-B-1. UNIVERSITY

15:05

Mark Brainard distributed quick facts with enrollment statistics, phone numbers, websites, etc to Council. He also thanked Ms. Fogg and Mr. Athey for their hard work. Mr. Morehead asked how many students resided on campus at the University. Mr. Brainard responded there were 7,200 beds on campus.

8. 1-B-2. STUDENT BODY REPRESENTATIVE

16:56

Jessica Graham informed Council that she spent some time at the last Graduate Senate meeting introducing the Senate to the City, explaining different departments, Boards and Commissions and showing the interconnection between student life and the City. Student Senate was putting together an outreach strategy in order to connect graduate students to the life of the City.

9. 1-C. COUNCIL MEMBERS

18:34

Mr. Clifton

- Mr. Clifton congratulated Newark Police Department for their hard work on St. Patrick's Day.
- Mr. Clifton said Ms. Fogg will be missed and that she should be very proud of the work she has done for the City.
- Mr. Clifton noted that a hallmark of Mr. Athey's service on Council was the time he spent working in Pascagoula, Mississippi which was devastated by Hurricane Katrina.

10. Mr. Morehead

- Mr. Morehead attended the Skate Spot Design Review meeting which was well attended and well received. He commended Staff for doing an excellent job in getting the word out and said the representative from Grindline connected with the audience.
- Mr. Morehead told Ms. Fogg she would be missed and thanked her for her service.
- Mr. Morehead said Mr. Athey was a shining example and a leader and would be missed.

11. Mr. Markham

- Mr. Markham recognized Representative Baumbach and thanked him for his efforts on the PILOT (payment in lieu of taxes) program for the City.
- Mr. Markham recognized new Finance Director Lou Vitola.

- Mr. Markham thanked Ms. Fogg for helped him and wished her well in retirement.
- Mr. Markham congratulated Mr. Chapman for receiving professional recognition in being named one of the 2012 Freshman Five by his employer.
- Mr. Markham expected the solar project presentation to be ready for the April 22 Council agenda.
- Mr. Markham thanked Mr. Athey for the good conversations they had during their seven years together on Council.

12. Mr. Athey

- Mr. Athey said he regretted not having the opportunity to work longer with new staff members – Ms. Houck, Ms. Bensley and Mr. Vitola.
- Mr. Athey congratulated Mr. Chapman on his professional recognition.
- Mr. Athey recognized the presence of the University Police during St. Patrick's weekend on his block of Kells Avenue – it was a crowded and noisy day but incident free which he attributed to their assistance.
- Mr. Athey reported that the League of Women Voters would conduct a forum on April 1 for the four candidates vying for his Council seat.

13. Mr. Chapman

- Mr. Chapman noted that Wine and Dine went off well, and he heard only positive praise about the event.
- Mr. Chapman said he appreciated all Ms. Fogg's efforts on his behalf.
- Mr. Chapman appreciated Mr. Athey making himself available to meet with and learn from as a colleague.

14. Mr. Funk

- Mr. Funk thought this was one of the best Wine and Dine events – the quality of the wine and the food was very good, it was probably a record crowd and adding the two hours in the afternoon had the desired result.
- Mr. Funk recognized Ms. Fogg and Mr. Athey and said they would be missed.

15. 2. APPROVAL OF CONSENT AGENDA

31:39

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: THAT ITEM 2-C, PENSION PLAN REPORT 4TH QUARTER 2012, BE LIFTED FROM THE CONSENT AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Athey, Chapman, Clifton, Funk, Markham, Morehead.

Nay – 0.

Absent – Tuttle.

- A.** Approval of Regular Council Meeting Minutes – March 11, 2013
- B.** Receipt of Alderman's Report – March 8, 2013
- C.** Receipt of Pension Plan Report (4th Quarter 2012) - **LIFTED**

- D. **First Reading – Bill 13-09** - An Ordinance Amending the Comprehensive Development Plan by Changing the Designation of Property Located on the Suburban Plaza Property on Elkton Road – **Second Reading April 22, 2013**
- E. **First Reading – Bill 13-10** – An Ordinance Amending the Zoning Map of the City of Newark By rezoning from MOR (Manufacturing/Office/Research) to RM (Garden Apartment Zoning) 19.69 Acres and By Rezoning from MOR (Manufacturing/Office Research) to BC (General Business) 4.7 Acres at the Suburban Plaza Property - **Second Reading April 22, 2013**
- F. Resignation of Nadine Bangerter from the Conservation Advisory Commission
- G. **First Reading – Bill 13-08** – An Ordinance Amending Chapter 22, Police Offenses, Article XIV, Burglary and Robbery Alarm Systems, Code of the City of Newark, Delaware, by Adding a Definition for *Disability* and Amending the Qualifications for Waiving Alarm Registration Fees – **Second Reading April 22, 2013**
- H. **First Reading – Bill 13-11** – An Ordinance Amending the Zoning Map of the City of Newark, Delaware, By Rezoning from BC (General Business) to BB (Central Business District) 16.4497 Acres at the Newark Shopping Center Located at 230 E. Main Street – **Second Reading April 22, 2013**

Ms. Bensley read the Consent agenda in its entirety.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE CONSENT AGENDA BE APPROVED AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Athey, Chapman, Clifton, Funk, Markham, Morehead.

Nay – 0.

Absent – Tuttle.

16. 2-C. RECEIPT OF PENSION PLAN REPORT (4TH QUARTER 2012)

34:22

Mr. Markham observed that one of the funds consistently underperformed their benchmarks for each of four quarters and asked what the plan was to rectify it. Mr. Haines explained that the fund specifically referenced was the Russell Large Cap Defensive Equity. It did not meet the benchmark in three out of four quarters. Their key part was at the end of the year it was 13 basis points off from the benchmark of 13.24 at 13.11. The fourth quarter was where there was a telling sign that it was beating the benchmark in the fourth quarter. The City's Pension Fund had independent market investment advisors who looked at each quarter making sure there was not a knee jerk reaction on how well an individual advisor was performing, and they felt the fund was performing well.

Mr. Markham asked for more explanation in future reports regarding underperforming funds. Mr. Haines offered to send a follow up on this report to Council.

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: THAT THE PENSION PLAN AND OPEB TRUST INVESTMENT REPORTS, YEAR ENDED DECEMBER 31, 2012, BE APPROVED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Athey, Chapman, Clifton, Funk, Markham, Morehead.

Nay – 0.

Absent – Tuttle.

- 17. MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: THAT ITEM 9-A-1, RECOMMENDATION RE INSURANCE RENEWALS, BE MOVED AFTER THE CONSENT AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

18. 9-A-1. RECOMMENDATION RE INSURANCE RENEWALS

38:56

Ms. Garriz reported that for policy year April 1, 2013 – April 1, 2014, Willis (the City's insurance broker) marketed the different lines of coverage. It was a difficult year and a tough market, and most of the carriers declined due to inability to match current coverage or risk appetite. The increase in renewal premiums for the policy year was \$53,099 compared to the expiring premium, an increase of about 8%. Most increases were in the property and automobile line. In the property line there was a large increase in exposures for the old warehouse which was brought up from \$226,000 to the appraised value of \$2.4 million. Also coupled with that was recent claims experience in the treatment plant and the electric transformer. The automobile coverage increased about \$30,000, a 14% increase from the expiring premium mostly due to the previous 3-4 years of loss experience.

A change was recommended in the third party administrator to SISCO which would result in a reduction in the annual fee and hopefully better service from the new carrier.

Compared to the budgeted policy period 2013-2014, the renewal premiums were slightly under budget by about \$1,700. The original proposal would have been a 9.4% or \$64,000 increase – this was reduced by about \$11,000. Mr. Garriz reported that based on concerns about rising insurance costs, management had discussions about increasing self retention in the future to drive the premiums down and also planned to increase safety training.

The second table contained a recommendation for the property damage coverage for the Smart Meter Project. This was \$10,677 for the year and was required by the Bank of America lease and property damage coverage needed by the City as well. Ms. Garriz recommended approval of the recommendation.

Mr. Markham asked what impact a reduction in the City's fleet would have on automobile insurance. Ms. Garriz replied it would take a reduction of five vehicles to see a significant decrease.

Mr. Morehead questioned the 55% accident ratio last year. Ms. Garriz confirmed there were three bad years and noted this year with the expiring coverage, the loss ratio was about 11%. Ms. Houck added this brought to light the need for more training and linking the losses by department to impact departmental budgets. She hoped to be able to make a decision when something happened with a car whether the City should fund it or put it through insurance. By having some reserves to tap, it would be easier to make those decisions.

Ms. Garriz mentioned that industry standard increases of 10% were on clean accounts with no losses.

Mr. Morehead said we chose to take a higher deductible for accidents and he asked for those numbers. Ms. Garriz responded that the City owned about 138 vehicles with roughly 20-25 vehicles involved in accidents. Mr. Morehead said an extra \$1,000 hit on each one would mean an increase of about \$20,000 to the City.

MOTION BY MR. CLIFTON, SECONDED BY MR. CHAPMAN: THAT THE RECOMMENDATION DETAILED IN MS. GARRIZ MEMO DATED 3/21/13 FOR INSURANCE COVERAGE FOR 2013-2014 BE APPROVED.

MOTION PASSED. VOTE: 5 to 1.

Aye – Athey, Chapman, Clifton, Funk, Markham.
Nay – Morehead.
Absent – Tuttle.

19. **3. ITEMS NOT FINISHED AT PREVIOUS MEETING:** *None*

20. **4. FINANCIAL STATEMENT:** *None*

21. **5. RECOMMENDATIONS ON CONTRACTS & BIDS:**

A. Recommendation on the Award of Contract – Contract 13-02 – The Rewind and Overhaul of a 3000/3750/4200KVA Outdoor Type Single Circuit Unit Substation

48:28

Ms. Houck referred to Mr. Vitelli and Ms. Wright's memo of 3/7/13 which recommended awarding Contract 13-02 for the rewind and overhaul of a single circuit unit substation. This contract would put back in service a transformer that failed at the West Main Street substation last December due to an internal short circuit. Three sealed bids were received and Chubb, the insurance carrier, will pay the repair minus the \$10,000 deductible. It was therefore recommended to award the contract to Jordan Transformer, LLC for a total price of \$97,568.

Mr. Markham referenced issues three years ago with hazardous materials on the transformers and asked if this bid covered disposal of such materials. Ms. Houck did not believe any hazardous materials were involved.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT CONTRACT NO. 13-02, REWIND AND OVERHAUL OF A 3000/3750/4200KVA OUTDOOR TYPE SINGLE CIRCUIT UNIT SUBSTATION, BE AWARDED TO JORDAN TRANSFORMER, LLC FOR A TOTAL OF \$97,568.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

22. **5-B. RECOMMENDATION ON RFP NO. 12-05 – ENGINEERING SERVICES AND PROJECT MANAGEMENT FOR PUBLIC WORKS AND WATER RESOURCES PROJECTS**

50:03

Mr. Simonson noted that 11 firms responded to the RFP. There was a previous contract similar to this for the last four years where various engineering projects were accomplished through the outside assistance of an engineering firm. The proposals were reviewed and ranked. Funding was available in various capital projects, and two firms were recommended that would provide flexibility to spread the workload between them and assign projects where they felt the firm had the best capability to get the project done. Pennoni and Associates and Johnson Mirmiran and Thompson were the firms recommended.

Mr. Clifton clarified this was being approved with no retainer fees or any cost basis for them and that through projects already approved in the Capital Program, the engineering would be done by only one of these two firms versus bidding it out each time. Ms. Houck explained when outside engineering was needed, this would allow quicker response to a problem. Mr. Funk added that under State law the ranking had to be considered rather than pricing.

Mr. Athey recused himself even though his employer was not one of the two firms recommended since they maintained professional relationships with some of the firms on the list.

MOTION BY MR. CLIFTON, SECONDED BY MR. MOREHEAD: THAT THE CITY MANAGER BE AUTHORIZED TO ENTER INTO CONTRACTS WITH PENNONI AND ASSOCIATES AND JOHNSON MIRMIRAN AND THOMPSON FOR ENGINEERING AND PROJECT MANAGEMENT SERVICES IN ACCORDANCE WITH RFP NO. 12-05.

MOTION PASSED UNANIMOUSLY. VOTE: 5 to 0.

Aye – Chapman, Clifton, Funk, Markham, Morehead.

Nay – 0.

Absent – Tuttle.

Abstain – Athey.

23. 6. ORDINANCES FOR SECOND READING AND PUBLIC HEARING:

A. Bill 13-07 – An Ordinance Amending Chapter 11, Electricity, Code of the City of Newark, Delaware, By Applying the Residential Service Electric Rate to Residential Development Signs

54:34

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 13-07.

Mr. Herron explained that it was not clear in the Code whether the residential service electric rate or the commercial rate applied to residential development signs. Staff consensus was that the residential rate should apply, and this amendment provided that clarification.

Mr. Markham asked if anybody would be affected by this change. According to Ms. Houck, the higher commercial rate was now being charged.

The Chair opened the discussion to the public. Beth Sheridan, President of Arbour Park Civic Association, said the change would lower the rate by 2.5 cents per kilowatt hour for their Civic Association.

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

Mr. Clifton added that in the past, commercial rates were charged for common areas in condominiums which clearly had no commercial component – that was amended 10-12 years ago.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Athey, Chapman, Clifton, Funk, Markham, Morehead.

Nay – 0.

Absent – Tuttle.

24. 6-B. BILL 13-05 - AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE, BY REZONING FROM RD (ONE-FAMILY SEMI-DETACHED RESIDENTIAL) TO RM (MULTI-FAMILY-GARDEN APARTMENTS) THE .546 ACRE PROPERTY LOCATED AT 30, 34, 38 AND 42 CHAMBERS STREET (SEE ITEM 7-A)

57:53

NOTE: The public hearing for items 6B & 7A were held at this time.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR ITEM 6-B.

Lisa Goodman, attorney for the applicants Matt and Susan Dutt introduced Tim Anderson, Project Engineer from Karins Associates and Alan Hill, Project Architect from Hillcrest Associates. Ms. Goodman reviewed a PowerPoint presentation.

The project required a rezoning from RD to RM and a subdivision plan approval for a .546 acre property of four parcels with eight townhouses.

Each townhome would have two interior parking spaces as well as 14 spaces in the rear, or a total of 30 spaces – 24 were required by Code. The site currently contained smaller, older homes which were in poor repair. The rental office would be on site. The four rental properties would be demolished and converted to modern housing stock. The exit and entrance would be off of Benny Street. The proposed zoning from RD to RM was consistent with the Comprehensive Plan which called for multi-family residential, medium to high density which the Comp Plan defined as 11-36 dwelling units per acre. This proposal was for 14.65 dwelling units per acre. The plan was for two five-bedroom units and six six-bedroom units. 13 of the 15 houses on the street currently were rentals, and the two owner occupants who remained were supportive of the project. The Dutts agreed to deed restrict the project to the equivalent of one person per bedroom or a total of 46 occupants.

In reviewing the legal standards, Ms. Goodman noted that the property currently contained single family units and was not consistent with the Comp Plan which called for multi-family residential, medium to high density. The project would make it conform with the Comp Plan and was consistent with surrounding properties and with the larger area.

The Chair opened the discussion to the public.

Lauren Mizikar, UD student said the Dutts were her landlords, and she supported the housing since it would provide more options for nice, safe housing for students. She felt the project would give the whole street a sense of community and hoped Council would support the project.

Tom Passmore, 39 Chambers Street, lived across the street from the proposed plan and was one of two remaining residents on the street. Mr. Passmore was in favor of the plan which would offer better housing.

Jessica Graham, UD Graduate Student Government representative, questioned the deed restriction of one person per bedroom which she thought would exclude future owner occupants with families. Mr. Herron explained the restriction was for unrelated tenants and thus would not apply to a single family.

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

Mr. Markham asked if the uniformity across the back of the houses could be broken up since the location was visible to the public. Ms. Goodman responded that the architect would work with the Planning and Development Department to modify the design in the rear to make it less uniform. Mr. Chapman had a similar suggestion for the architect, especially for the second and third floors which would be highly visible from the back.

Architect Rick Longo thought the garage doors made it look monotonous and suggested placing some small roof lines above the garage doors that would provide a little more variety. Also they could use some dividing lines between the units with different materials and trim.

Mr. Morehead inquired about screening off the mechanical equipment and trash receptacles. Mr. Hill reported the air conditioning units would be on the end of the units and would be landscaped to screen them from view. Individual trash cans would be stored in the garages as there was no central trash collection.

Mr. Clifton approved of the project since it would be consistent with the Comprehensive Plan and offered more safety features such as sprinklers and modern technology and materials.

Mr. Morehead noted this project had multiple variances for setbacks, lot coverage, etc. and that concerned him. He also noted the huge increase from 16 to 46 occupants although this was the area where the City wanted the density. He requested the use of more permeable surfaces in the extra parking area where possible. He agreed it was good to come up to current technology as far as energy usage and safety items and thus was in favor of the project.

Mr. Markham said he walked the properties and they needed help. He thought it was unusual for a landlord to agree to one tenant per bedroom which he was pleased to see. Clearly this was a student rental area, was adjacent to University property, local owners supported it, it brought the Comp Plan into consistency and the surrounding area was very similar, so he would support the project.

Mr. Funk supported the project which was consistent with what the City wanted in that area and would greatly improve the appearance of the neighborhood.

Mr. Athey supported the project since it was consistent with the Comp Plan, a neighbor spoke in favor of it, the Dutts were attentive landlords and the increased density was where the City wanted it.

Mr. Chapman planned to support the rezoning and the proposal. He agreed with everything shared by other Council members.

Question on the Motion for 6-B (rezoning) was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Athey, Chapman, Clifton, Funk, Markham, Morehead.

Nay – 0.

Absent – Tuttle.

(ORDINANCE NO. 13-05)

Question on the Motion for 7-A (resolution) was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Athey, Chapman, Clifton, Funk, Markham, Morehead.

Nay – 0.

Absent – Tuttle.

(RESOLUTION NO. 13-G)

25. **6-C. BILL 13-06 - AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE, BY REZONING FROM BLR (BUSINESS LIMITED RESIDENTIAL) TO RM (MULTI-FAMILY-GARDEN APARTMENTS) THE .8476 ACRE PROPERTY LOCATED AT 221 MURRAY ROAD (SEE ITEM 7-B)**
-

01:19

NOTE: The public hearing for items 6C & 7B were held together.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR BILL 13-06.

Lisa Goodman, Esq. represented Chatham Bay Construction LLC. The applicant proposed the redevelopment of an existing apartment complex of 16 units with a townhouse development of 13 units. Also proposed was a rezoning from a non-conforming zoning of BLR to a conforming zoning of RM. The project was located on South Main Street at the intersection with Murray Road and took access from Murray Road. The site was currently improved with three buildings and 16 apartment units that were about 30 years old.

Ms. Goodman reviewed the renderings which included two different design plans. The applicant selected the more traditional architecture for the project which was approved by the Design Review Committee. The project was .85 acres and received some minor variances and proposed 52 parking spaces – 26 in the garage and 26 surface spaces. Four bedroom units were proposed with a limitation on the number of bedrooms plus two per unit or a total of 78 tenants. The dwelling unit density was being reduced from 18.88 per acre to 15.33 as a result of going from 16 to 13 dwelling units.

In terms of the legal standard, the Comp Plan called for multi-family including towns which was consistent with the current and proposed use. The project was consistent with the surrounding property and the existing use, was consistent with the pattern of non-single family development along South Main and was consistent with the larger area.

Mr. Morehead asked how many bedrooms were in the current units. Ms. Goodman said it was a mix and these were proposed to be four bedroom units. She felt the City agreed this type of density was reasonable and thus they thought it was a good use.

Mr. Markham questioned whether there was a height difference between the two different architectural styles. Ms. Goodman clarified that both designs were the same height.

Mr. Chapman noted the loss of some of the added design aesthetics with solid siding on the second and third levels. He requested that the design be brought all the way around. Additionally, he opposed the dark colors and asked to see lighter colors used in the design aesthetics all the way around. Ms. Goodman said they would work with the Planning & Development Department to address those issues.

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

Mr. Chapman felt the project made sense in conjunction with other development in the area and the redesign of South Main Street. He thought the project did a nice job of updating the property and fit the Comprehensive Plan, so he planned to support it.

Mr. Athey observed that some of the older properties were being taken down and replaced with much nicer facilities. One of the things he heard from residents was concern over a commercial creep coming in from Elkton Road. He believed this development further solidified the residential aspect in the area and might make it more likely that a residential use would go at the corner when it developed. He would support the project.

Mr. Funk would support the project because it was consistent with what was being done on South Main Street and based on the variances, it did not make any sense to do anything else with the property.

Mr. Markham would support the project which currently had apartments on it, was a down zoning and fit the area.

Mr. Morehead planned to support this – was concerned with the appearance as well. This was an upgrade, safer, new technology, more efficient and highlights how the unit count fails us as a City because, although we are going to a lower unit count, we are increasing density from a head count perspective and that gets lost in the shuffle. He thought that was something to look at in the new Comp Plan and hope we have actual numbers in the future.

Mr. Clifton said this did parallel the Comprehensive land use plan and the customer base coming in to Newark at this point was more demanding than ever, and we see other people other than undergraduate students who want to rent places close to campus, including the graduate student population, and a building that has outlived

its useful life and is not a very inviting environment. This was a good example of how we need to shift with that customer base.

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

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Athey, Chapman, Clifton, Funk, Markham, Morehead.

Nay – 0.

Absent – Tuttle.

(ORDINANCE NO. 13-06)

Question on the Motion for 7-B (major subdivision) was called.

(RESOLUTION NO. 13-H)

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Athey, Chapman, Clifton, Funk, Markham, Morehead.

Nay – 0.

Absent – Tuttle.

26. 7. RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:

- A.** Request of SMD Contractors for the Major Subdivision of .546 Acres Located at 30, 34, 38 and 42 Chamber Street In Order to Construct Eight New Townhouse Style Apartments In Place of Four Single Family Rental Homes to be Known as Rupp Farm (***Resolution & Agreement Submitted***) (***See Item 6-B***)

Note: The public hearing for item 7-A was held under item 6-B.

(RESOLUTION NO. 13-G)

- 27. 7-B. REQUEST OF CHATHAM BAY FOR THE MAJOR SUBDIVISION OF .8476 ACRES LOCATED AT 221 MURRAY ROAD (FORMERLY HANCETON COURT) IN ORDER TO DEMOLISH THE THREE EXISTING APARTMENT BUILDINGS CONTAINING 16 APARTMENTS AND REPLACING THEM WITH 13 TOWNHOUSE STYLE APARTMENT UNITS TO BE KNOWN AS SOUTH MAIN COMMONS (***RESOLUTION & AGREEMENT SUBMITTED***)(***SEE ITEM 6-C***)**

Note: The public hearing for item 7-B was held under item 6-C.

- 28. 7-C. REQUEST OF TERRY LANE, LLC, FOR THE REDEVELOPMENT AND MAJOR SUBDIVISION OF .781 ACRES LOCATED AT 107-131 NEW LONDON ROAD IN ORDER TO CONSTRUCT A THREE STORY SINGLE STRUCTURE WITH 12 TOWNHOUSE APARTMENT UNITS TO BE KNOWN AS CAMPUS WALK (***RESOLUTION & AGREEMENT SUBMITTED***)**

Lisa Goodman, Esq. represented the applicant, Terry Lane, LLC. Also present was Matt Longo, Project Engineer and Architect from Hillcrest Associates. The project was not a rezoning and was a by-right plan. Only subdivision approval was requested to permit construction of the proposed plan of 12 townhomes on .78 acres. The property was currently zoned RM.

The site location was on the west side of New London Road at the corner of New London Road and Corbit Street. Ms. Goodman referred to visuals showing the current and surrounding properties. The project proposed to redevelop seven current parcels totaling .78 acres and would demolish five existing single-family homes on the property

and construct 12 townhomes. There would be 50 parking spaces on the site including three garage spaces per unit which was 14 more spaces than required.

The access was off Corbit Street which would allow the elimination of five curb cuts on New London Road.

At the Planning Commission, six bedroom units were discussed. Community members spoke about their unhappiness at the change in the neighborhood over time, and Mr. Mayhew heard their concerns regarding density. Even though this was a by-right plan, Mr. Mayhew concluded that he could build the project with as low as five-bedroom units and proposed that with a plus one for each unit (an overall total of six persons per unit or 72 total occupants).

The rendering of completed units was reviewed, and Ms. Goodman explained it was designed to look like individual homes built over time echoing some historic Newark designs. The plan was Code compliant. DeIDOT agreed to grant a 10' wide easement along the front. Mr. Mayhew was agreeable to the left turn out only which was proposed at the Planning Commission.

Mr. Funk questioned the number of occupants. Ms. Goodman said because this was a by-right plan, her client need not have an occupancy restriction. However, he offered a voluntary restriction of 72 people total (six per unit) although for flexibility they would like this stated as an overall number.

Mr. Clifton asked Mr. Herron to explain the meaning of Code compliant and by-right plan for the public's information. Mr. Herron advised a by-right plan meant that Council could not reject subdivision applications for permitted uses where all applicable Code requirements were met based on general considerations. In this situation, Council's discretion was very limited as far as placing reasonable conditions on the subdivision approval. Mr. Markham asked for a few examples where Council could make restrictions. Mr. Herron stated that each case was different as to what was and was not reasonable. Mr. Morehead questioned whether the office was compliant in an RM zone. Ms. Goodman responded that an onsite rental office was permitted as an accessory use.

Mr. Markham questioned whether any existing houses were on the historic registry. Ms. Goodman felt it was unlikely, and Mr. Funk agreed that in that block of New London Road, there were no houses on the registry.

The Chair opened the discussion to the public.

Paul Baumbach, Newark resident and State Representative, spoke in opposition to this request. He was disappointed to learn at the meeting about the change from 36 tenants to 72. He referenced Mr. Morehead's issue of unit head count and said he thought car count was just as important. He felt the roads could not handle that kind of traffic, and the Police Department report reflected concerns when the head count was at 36. He said Ms. Goodman mentioned left turn out but thought she meant right out which was the recommendation from the Planning Commission. Mr. Baumbach was very disappointed in the process and in the variances that were granted including waiving the minimum acreage. Further, the density was inconsistent with the Comprehensive Plan which he believed for this area was up to 10 units and this was closer to 16. He understood it was consistent with the zoning and said this was another example where the Comprehensive Plan and the zoning were in conflict. He felt that was problematic and would like to see some progress made in reducing those inconsistencies. He emphasized that traffic in the area was horrendous and created a quality of life issue for residents yet the City's hands were tied. Mr. Baumbach would like Council to take the hard steps to make sure the City was not faced with this type of situation going forward.

Mr. Funk said the real problem was that people don't show up for the Board of Adjustment meetings.

Mr. Markham noted that by State law the City could not change the Board of Adjustment's recommendations. Mr. Baumbach told Council to let him know what needed

to be changed to be a more effective City Council, and he would do what he could at the State level. Mr. Morehead added it was State law that the Comp Plan be reviewed every five years, and the City was currently reviewing the Comp Plan which provided the opportunity to make all this reasonable. Mr. Clifton pointed out that the Board of Adjustment was a quasi-judicial board and were supposed to consider true hardship cases and in some respects he saw cases where they had a very liberal interpretation of hardship.

Mr. Clifton thought the right turn out that was suggested should be lifted and felt it would be more appropriate to have either no restriction at all or a left out based on the heavy traffic in the area.

Mr. Chapman served this district and had conversations with residents in the neighborhood about Corbit Street and the traffic flow. He was uncomfortable about restricting traffic in any direction and thought it made sense to be able to make a left or a right since forcing everyone to the right would cause a possible heavier traffic issue at the light at the end of New London Road. Based on experience with Mr. Mayhew's other projects in that area, he rarely saw vehicles traveling in or out of those properties. Mr. Baumbach added a clarification that he was talking about the exit from this development onto Corbit Street – that was the one the Police Department said should be a right turn only. Mr. Mayhew had no objection to allowing turns in either direction traffic flow either way.

Amir Hampton, a Newark resident, was opposed to the houses being demolished in favor of student housing since he felt they were historically valuable and there were still families living on the street. He wanted to honor history and not destroy it.

James Roy, New Castle, said in regard to the quality of life his family had been in the area since 1946 and his mom still lived there. He did not think this was a good project due to the creation of more vehicular and pedestrian traffic and more density to the area. He questioned the impact on the Police and Fire Department's ability to respond to emergencies in the area. He thought this was a public safety issue in a community of seniors, youth, church congregations and UD students.

Jessica Graham, UD Graduate Student Senate, noticed there was a lot of talk about traffic and cars and parking spots but had not heard any mention of bicycles. She knew that Newark developed bicycle lanes to encourage bicycle commuting and asked if bicycle storage was considered in the planning.

Kate Feldman and Samantha Haslebeck, residents of Campus Side, said they and their roommates have five cars but only used them for getting home. Some also had bikes. They felt the project would complement the UD campus.

Syl Woolford, a New London Road resident thanked Paul Baumbach for serving the community and addressing this issue. Mr. Woolford's home was located at the top of the hill where the road became one way, and over the past five years, two cars ran into his house and caused considerable damage. He said this particular road was broken, dead ended where it should not dead end, had a hotel and conference center on it as well as major commuter traffic and people travelling the wrong way on the one-way street. His objection was not to student housing but to safety and the lack of common sense being used on this project regarding density.

Richard Burris, a Newark resident and electrical contractor, said if the project goes through it would provide work and jobs and that upgrades were well done by the developer.

Joseph Word, former Newark resident and 55 Church Street property owner, said there were people who grew up in this neighborhood who were great athletes, and asked about preserving some of the area for them to walk through. He believed there was a big dash to recoup income lost by Chrysler and letting everybody come in to rebuild which would push him and others out who could not compete.

Sal Mannino, landlord of several single family houses in Newark, believed there was more housing than students based on vacant properties in the City. Mr. Morehead had a similar concern and said that is why he asked the number of housing units owned by the University. The numbers provided were 21,856 students with 7,200 freshmen housed by the University. Mr. Mannino stated his house with two full bathrooms and four bedrooms was limited to three tenants because of zoning laws. Mr. Clifton clarified the discussion early on was that the law is the law regarding occupancy restrictions – his point was that people should come to the Comprehensive Plan review to get laws changed.

Freeman Williams, a lifetime resident of the City, said he learned an important lesson from this experience. While he wanted the University students to have a successful and enjoyable time while in Newark, he also believed there was a responsibility to the needs of the long-term residents of community. He felt the balance was out of sync and would work collectively to get the balance back. He acknowledged that the citizens had to be involved earlier in the process.

Jill Fall, 15 Emily Bell Place, expressed her support for the Campus Walk project and talked about the quality of the homes and the sense of community they fostered.

Chris Locke, a Newark resident, travelled New London Road at least twice a day, and said traffic was an issue early in the morning and around 5-6 pm, especially on Friday nights. He echoed what the students said – it was very rare to see cars coming out of Campus Side. To minimize the impact of traffic, he suggested looking at development and parking requirements to restrict the students from bringing their cars into the communities. He totally supported the project.

Mr. Chapman observed from the printed presentation that the area primarily consisted of rental properties with the exception of the corner which was owned by DeIDOT. He asked for an explanation of the original sewer laterals. Ms. Goodman said this was a drawing found in City records showing when the property was mapped out for sewer it was originally envisioned as having 12 residents in the area and those were the original laterals for that area. Mr. Chapman said the aesthetics of this project seemed to be unique to anything he saw while on Council. He thought Mr. Mayhew raised the bar permanently for all future projects and was proud to have this proposed in his district.

Mr. Funk said in terms of the resolution there were two inconsistencies – the tenant limit of 36 versus the 72 and the right turn restriction. Ms. Goodman explained the City usually prepared resolutions based on Planning Commission recommendations. She said the number being proposed by the applicant was 72.

Mr. Markham discussed a reduction in density by 3 to 69 overall, maintaining a financial threshold that would still work for the developer. Ms. Goodman reported the original proposal was to have each unit be six bedrooms with 7 people per unit, so Mr. Mayhew dialed that back as far as he could go and still build a project of this quality which was five bedrooms plus one or six people per unit.

Mr. Athey asked the number of occupants at Campus Side. Mr. Mayhew responded that total occupants for Campus Side were 96 and 60 at Emily Bell Place, a total of 156.

Mr. Clifton opposed the right turn out of the complex and suggested releasing that restriction altogether and noted six tenants per unit was consistent with many other projects Council approved. He asked Mr. Herron if a project was Code compliant if there was any flexibility at all on the occupancy. Mr. Herron said you would run the risk of being considered unreasonable.

MOTION BY MR. CLIFTON, SECONDED BY MR. MOREHEAD: TO AMEND THE AGREEMENT AND RESOLUTION TO DELETE THE TURN RESTRICTION AND CHANGE THE TOTAL OCCUPANCY FROM 36 TO 72 TENANTS.

MOTION PASSED. VOTE: 5 to 1.

Aye – Athey, Chapman, Clifton, Funk, Morehead.
Nay – Markham.
Absent – Tuttle.

Question on the Motion as Amended was called.

MOTION AS AMENDED PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

29. 7-D. REQUEST OF CAFÉ OLÉ RESTAURANT (CAFÉ OLÉ, LLC) FOR A SPECIAL USE PERMIT TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES AT THEIR PROPOSED NEW RESTAURANT LOCATED AT 170 E. MAIN STREET (FORMERLY GROUCHO’S DELI)

Ms. Roser introduced the Special Use Permit request for the sale of alcoholic beverages at Café Ole, LLC at 170 E. Main Street. Ole Tapas Lounge on Kirkwood Highway was also owned and operated by the applicant, and this would be their second location. City departments reviewed the application and had no concerns with the Special Use Permit, and the Planning & Development Department indicated the restaurant would expand dining options downtown. Café Ole was already operating and received their State liquor license but could not operate with alcohol until Council approved the SUP. The business was open 7 days a week from 10:30 am – 10:00 pm.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE SPECIAL USE PERMIT BE GRANTED AS REQUESTED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

30. 8. ITEMS SUBMITTED FOR PUBLISHED AGENDA:

A. Council Members:

1. **Resolution 13-__:** Retirement of Patricia M. Fogg, CMC
City Secretary/Treasurer

(See Item #3)

31. 8-A-2. RESOLUTION 13-__: IN APPRECIATION TO DAVID J. ATHEY, COUNCIL MEMBER FOURTH DISTRICT

(See Item #4)

32. 8-B. OTHERS: None

33. SPECIAL DEPARTMENTAL REPORTS:

A. Special Reports from Manager & Staff:

1. Recommendation re Insurance Renewals

(See Item #18)

34. Meeting adjourned at 9:37 pm.

Renee Bensley
City Secretary