

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**August 12, 2013**

Those present at 7:00 pm:

Presiding: Deputy Mayor Jerry Clifton, District 2  
District 1 Mark Morehead  
District 3, Doug Tuttle  
District 4, Margrit Hadden  
District 5, Luke Chapman  
District 6, A. Stuart Markham

Absent: Mayor Vance A. Funk, III

Staff Members: City Manager Carol Houck  
City Secretary Renee Bensley  
City Solicitor Bruce Herron  
Deputy City Manager Andrew Haines  
Finance Director Lou Vitola  
IT Manager Joshua Brechbuehl  
Planning & Development Director Maureen Feeney Roser

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1. The regular Council meeting began with a moment of silent meditation and the Pledge of Allegiance.

2. Mr. Clifton read excerpts from a Press Release issued by the City announcing that Mayor Vance A. Funk, III would officially end his term effective September 30, 2013. Mr. Funk changed the date to accommodate the necessary process for selecting a new Mayor to lead the City's seven-member Council. A special City Council meeting would be held at 6:30 p.m. on 9/30/13 to set the date for a special election that would be expected to be held on 11/26/13. These dates were consistent with the City of Newark Charter provisions.

3. Mr. Clifton addressed a correction made to the agenda for the 8/12/13 meeting. Item 7-B, Bill 13-19, second line "By Rezoning from BC (General Business)" was changed to the correct zoning of BN (Business Neighborhood).

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THE 8/12/13 CITY COUNCIL AGENDA BE CORRECTED BY CHANGING THE BC ZONING TO BN ZONING UNDER ITEM 7-B, BILL 13-19.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

4. Mr. Clifton announced that public comment on agenda items would be limited to three minutes.

5. **1. ITEMS NOT ON PUBLISHED AGENDA**

A. Public

**03:21**

Jim and Carol McKelvey, Winslow Road, said they formed a coalition with several other residents of old Newark in May to make visible their opposition to gas pumps at the Apple Road and South Main Street corner because of safety reasons.

Mrs. McKelvey commended City staff for their courtesy, knowledge and organization. They attended Planning Commission and City Council meetings since May and studied how things were run and how their oppositional position would fit in with some force if WAWA did begin again. They observed City Council members demonstrate their preparation and their dedication at Council meetings, and their respect for City Council grew. They commended Ms. Houck for her depth of understanding and her tact and discipline. Recently they learned that Mayor Funk had some serious health issues which were cited as his reason for resigning along with stress about their organization. Mrs. McKelvey said they were not anti-WAWA; they were anti gas pumps. Their signs were to inform the public of their focus and dedication. At Newark Day, Mr. McKelvey wore a sandwich board and was seen by their neighbors and by two other members of Council being his friendly, engaging self. He did not stalk the Mayor or anyone else. They learned that the Mayor said he received harassing phone calls which he attributed to their group. They hoped he notified the police and wished he had chosen to notify them so they could issue a public statement against such uncivil behavior. They never attended the Wine and Dine. The members of the South Main Street Coalition for Safety were assembling information that supported their position that gas pumps would be unsafe at this location. They were publicly showing their position through free speech.

6. Steve Hegedus, Manns Avenue, discussed concerns with the 240 megawatt power plant that might be built on the STAR Campus. He was worried about water usage, noise and scale. Water usage – all thermal power plants had to be cooled; if they were not sited on a body of water like the Delaware Bay they had to use evaporative cooling. Using typical industry numbers of 200 gallons per megawatt hour, a plant of this size would use about 400 million gallons of water a year if operated 24/7, about one-third of the City's water usage. Since this was a dual-use system that could be used both internally for their own needs as well as selling power to the grid, they had a much higher likelihood of a high run time. Noise – he found reports of a similar facility in North Carolina where the residents were initially in favor of it but soon after realized they made a mistake due to the constant roar from the turbines. Mr. Hegedus noted that Arbour Park, Devon, Binns, some of Casho Mill and some of Elan were within a mile of the location. He was concerned about scale as this would be a big, complicated power plant in a small town. There would be issues with emissions, water usage, noise and grid connection. He hoped City staff had expertise in these complicated issues and if not, he encouraged the City to consider getting the assistance of a consultant. Mr. Hegedus did not want the City persuaded by the offer of jobs and upgrading the City's infrastructure as the residents relied on the City to look out for their quality of life and questioned whether this was the right project in the right place.

Mr. Clifton encouraged Mr. Hegedus (or anyone else present) to share any information such as this with Council and thanked Ms. Houck and staff for coordinating a presentation about the proposed Data Center project on Tuesday, 9/3/13 at 7 pm at the George Wilson Center on 303 New London Road.

7. Brett Zingerelli, Barksdale Road, said, in his opinion the WAWA project was free market capitalism. More than likely all the other gas stations on Elkton Road would close because WAWA had cheap gas and good food and push out other vendors.

8. Cathy Johnston, Rahway Drive, commended the McKelveys for learning the process, and she felt this was about being able to live in Newark, speak to the Council and make a difference. In her opinion the campaign to impact the decision about possible gas pumps at the Park and Shop location has been one of the most civilized campaigns she has ever seen and has seen no contention. She said this was not about Mayor Funk but was about gas pumps being placed where they felt they did not belong. She hoped the bigger issue did not get lost.

9. Amy Roe, a District 4 resident, questioned the proposed Data Center meeting on 9/3 at the George Wilson Center and asked if the public meeting meant that the final plans were in. Ms. Houck said the plans were not in but expected to have the as built next week. She said the City was eager to have a meeting so everybody would be able to be informed about the project and the impact it may have in order to make a decision about whether this would be a good project for Newark. She clarified that if the Data

Center came to Newark, the City would not supply water but would be a United Water customer. Ms. Roe asked if DEMEC signed a purchase power agreement with the project and Ms. Houck replied they did not.

Ms. Roe thanked Ms. Houck for the Data Center meeting and thought that kind of transparency was important in this case. Ms. Roe reminded Council that it recently reduced public comment time to only three minutes which she felt restricted the amount of time the public could submit informed testimony on complex issues. Ms. Roe urged the City to consider quality of life of residents, the noise, the pollution and the water consumption prior to becoming the public sponsor.

10. Dr. Erin Cox, Main Street Dental, E. Main Street, addressed the recommendation to incorporate an exit onto the Center Street lot. Mr. Clifton noted that subject would be discussed under item #4-A-3.

11. Martin Nicholson, greater Newark area, said he saw a lot of changes in the last four years in Newark. In regard to WAWA, from what he understood there were no plans on the table yet. If anything happened, WAWA would come in to present their plans, have updated equipment as opposed to the outdated equipment at surrounding stations and would probably put the one and two-man operations out of business. WAWA would generate 15-25 jobs and revenue for other businesses in the area. He said the more the City got from the local businesses, the less they would take from individuals.

12. Nancy Willing, Barksdale Estates, agreed with Amy Roe and the McKelveys, but said if the meeting on 9/3 was going to be about the company coming in to talk about giving information, she said Mr. Baumbach had pointed out items which probably led the City to start the processes with the DEDO Committee and other things which was an opinion by the attorney that this is auxiliary and an auxiliary use and she thought that was incorrect. She said there seemed to be a perception that Council would not be involved in the decision but there was also an understanding that this was a rezoning which would be a Council issue. She requested that if those issues were not planned on being addressed on 9/3, please do plan to address those issues.

13. Jeff Morton, Cheltenham Road, said parking was worse than ever on Main Street and the driving on Cleveland Avenue was the worst he remembered. He agreed there should be an exit if anything was done to the parking lot. Also, he would not allow any expansion or additional apartments on Cleveland Avenue since it was almost impossible to drive that road at rush hour. He felt traffic issues were quality of life matters that Council should consider before agreeing to any expansion.

14. Paul Baumbach, State Representative, spoke regarding the power plant. He appreciated the opportunity for the public meeting in September and encouraged Council to be diligent in understanding the City's role in such a project. He knew there was a lot riding on the Court of Chancery decision from the 1970s and encouraged looking into the Gaston case decision. He thought it was clear from the zoning of the parcel that a power plant was not a permitted use, and that a power plant in the City was against planning goals. He encouraged the City to make sure they know their legal rights and not to accept every legal opinion on the face value.

15. Chris Locke, Cambridge Drive, commended the Newark National Little League team for making it to Williamsport and suggested that Council recognize this phenomenal feat. They were only the second Delaware team to make it to Williamsport.

16. **1-B. UNIVERSITY**

(1) **Administration** – There were no comments forthcoming.

17. **1-B (2) STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

18. **1-C. COUNCIL MEMBERS**

**34:56**

## **Mr. Morehead**

- Mr. Morehead commended the Electric Department for their prompt response in an outage that occurred just before 3:00 pm and replacing the transformer and restoring power by 4:15 pm.
- Mr. Morehead said the Comprehensive Plan meeting would be held at 7 pm on Tuesday in the Council Chamber.
- Mr. Morehead announced there would be a College Park home ownership forum run by Mike Fortner on 8/17/13, at the College Park pavilion in Dickey Park from 1:00 – 4:00 pm.
- Mr. Morehead reported that the Battle of the Downtown Bartenders K-9 fund raiser would be held Friday night at the Marriott Courtyard at 5:00 pm.
- Mr. Morehead spoke about the expertise on staff and making sure to always use that expertise, specifically regarding the tree pits on Main Street. He expected since we have Code Enforcement and those people who daily understand the law regarding construction that we would use that when the City itself was building in the public domain. He requested the City Manager's assertion that the City will be doing that in the future. Ms. Houck said it was her belief that normally that was the case but she would reinforce that with Department staff.
- Mr. Morehead requested a conversation about getting a second opinion on The Data Center. Mr. Clifton noted a subject-matter expert had been employed in the past, and he supported the idea. Ms. Hadden felt she needed more information and would move forward with outside assistance. Mr. Markham thought second opinions were always a good idea and wanted Council to give better direction about what they wanted a second opinion on: what the City's rights are or to obtain another interpretation of the Chancery Court decision. Mr. Morehead thought if Council asked what their rights are it would include the court decision as it would apply. Mr. Clifton thought the predominant issues were 1) is this truly an accessory use under our Code and 2) that if it is, is the amount that they are selling back to the grid qualify as not an accessory use but a secondary business on the site.

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: TO HIRE OUTSIDE LEGAL COUNSEL TO EDUCATE CITY COUNCIL ABOUT THEIR RIGHTS CONCERNING THE DATA CENTER ON THE UNIVERSITY OF DELAWARE'S PROPERTY.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

## **19. Mr. Tuttle**

- Mr. Tuttle thanked Mr. Morehead for raising awareness about the home ownership program at Dickey Park.
- Mr. Tuttle recognized the work being done on the handicap curb cut this summer.

## **20. Ms. Hadden**

- Ms. Hadden thanked Messrs. Morehead and Tuttle for mentioning the home ownership session at the College Park pavilion.
- Ms. Hadden attended a workshop in July put on by the Public Works Department on drainage issues in the City.
- Ms. Hadden said she was proud to represent a group of constituents who exercised their democratic right to protest something they were not happy with and also to speak publicly about their beliefs.

## **21. Mr. Chapman**

- Mr. Chapman recognized Mayor Funk's long service to the City and said he has done a wonderful job. His resignation was a loss to the City, and Mr. Chapman was sorry not to be sharing the table with him any longer. He requested everyone to please make an effort to thank him.
- Mr. Chapman offered congratulations to the Newark National team and would like to publicly recognize them at a future Council meeting.

**22. Mr. Markham**

- Mr. Markham thanked the Finance Director for analyzing the application fee – he has several different scenarios based on Smart Meters and what Mr. Markham took away was this subject should be revisited upon completion of the Smart Meter project.
- Mr. Markham commented on security in light of the shootings in Pennsylvania and thought it was wise to proceed.

**23. Mr. Clifton**

- Mr. Clifton said he attended the Delaware State Police municipal police graduation ceremony, and the City had three new officers, Officer Daniel Bystricky, Officer Taras Gerasimov and Officer Aaron Olicker.
- Mr. Clifton, as a member of the Citizens Council, visited the Dow Chemical Plant Research Center in Collegeville, PA on 7/31. They will be feeding in to the Dow plant in Newark that works with polymers. He hoped this might translate to jobs for Newark.
- Mr. Clifton noted an increase of almost \$100,000 in next year's Municipal Street Aid for from \$383,000 to \$476,000. He thanked members of the General Assembly, including Representative Paul Baumbach who was present, for the increase.

**24. 2. APPROVAL OF CONSENT AGENDA**

**54:02**

Ms. Bensley read the Consent Agenda in its entirety.

- A. Approval of Regular Council Meeting Minutes – July 22, 2013
- B. Receipt of Alderman's Report – July 25, 2013
- C. Receipt of Planning Commission Minutes – July 2, 2013
- D. **First Reading – Bill 13-26** – An Ordinance Amending Chapter 25, Sewer, Code of the City of Newark, Delaware, By Adding a Subsection Setting the City Portion of the Sewer Flow Rate Effective September 30, 2013 – **Second Reading – August 26, 2013**
- E. **First Reading – Bill 13-27** – An Ordinance Amending Chapter 27, Subdivisions, Code of the City of Newark, Delaware, By Amending the Requirements for Bicycle Storage Facilities – **Second Reading – September 9, 2013**
- F. **First Reading – Bill 13-28** – An Ordinance Amending the Zoning Map of the City of Newark, Delaware, By Rezoning from BC (General Business) to BB (Central Business District) 0.335 acres at 7 and 15 South Main Street – **Second Reading – September 9, 2013**

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THE CONSENT AGENDA BE APPROVED AS SUBMITTED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Chapman, Clifton, Hadden, Markham, Morehead, Tuttle.

Nay – 0.

Absent – Funk.

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

**26. 4. SPECIAL DEPARTMENTAL REPORTS:**

- A. Special Reports from Manager & Staff
  - 1. Second Quarter Pension Report – Deputy City Manager

**55:32**

Mr. Haines reported that the memo dated August 5 looked back at the second quarter on the defined benefit Pension Plan as well as the OPEB trust in regard to the post retirement health care plan.

June ended a down period for the market with a negligible a quarter percent growth for the Pension Plan. Year to date showed a growth of \$2.5 million in the Pension Fund. He felt the allocations were performing well at this time. The defensive large cap was a great performer as well as the small cap fund and provided some growth balancing off the other indices. Even though there were some lower performers, they were outperforming the benchmarks.

The OPEB trust had a negligible return. There were a lot of challenges overseas. Overall year to date showed a \$200,000 growth in the OPEB trust. Messrs. Haines and Vitola met with the Russell representative, and were considering alternatives regarding the asset allocation and perhaps methodologies from an investment policy. They hoped to find other ways to maximize the City's efforts with increasing the annual required contribution.

Mr. Clifton asked when the next actuarial review would occur. Mr. Haines advised that Council just received the 2013 actuarial review which would be discussed under 4-A-2. This was the quarterly report. The actuarial evaluation happened once a year and was normally received in July. Mr. Haines would come back in three months on the next quarterly report on the Pension Fund itself and the OPEB Trust.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THE SECOND QUARTER PENSION REPORT BE ACCEPTED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Chapman, Clifton, Hadden, Markham, Morehead, Tuttle.

Nay – 0.

Absent – Funk.

**27. 4-A-2. CONTINUED DISCUSSION ON RECOMMENDATION FOR COLA INCREASE FOR RETIREES**

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**59:20**

Mr. Haines reported that the first discussion on the COLA topic occurred at a previous Council meeting. At that time it was stated that a strong performance would have represented a 2% growth. In looking at the market valuation there was actually a 2.8% growth of the defined benefit plan. There was a philosophical discretion of the threshold to be able to authorize a cost of living adjustment for existing retirees. Staff recommended getting to a more funded status of a 90% threshold. If Council wanted to deploy an 80% threshold, that would be a policy decision. The current funded status was 65%. The recommendation stood the same that it would not support a COLA at this time and to revisit this within the tri-annual window. There is also discussion about pursuing changes to the plan for new employees for a defined contribution plan.

Mr. Haines said if Council wanted to provide something to retirees with limited exposure to the plan, there was the idea of a 13<sup>th</sup> check as a one-time contribution on a given year. It was a way to acknowledge that Council wanted to provide something while acknowledging the fund was not in the position to take on the compounded effect of a COLA at this time.

Mr. Markham asked how a 13<sup>th</sup> check would affect the funding percentage. Mr. Haines said from a valuation standpoint the impact would be negligible when they looked at it again in 2014. It would affect the cash value in this given year and would be a one-time withdrawal. Mr. Haines said they could run that number and tell Council the estimate and its impact. Mr. Clifton stood by what he said at the last meeting but felt this might be a good compromise. He reported that City retirees received their last pension increase of 0.5% in 2006 and thought it was incumbent upon Council to look at the post retirement issues and occasionally provide a slight pension increase. Mr. Tuttle agreed it would be good to know the details and other Council members concurred.

**28. 4-A-3. RECOMMENDATION TO INCORPORATE A CENTER STREET EXIT AT LOT 3**

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**01:04:54**

Ms. Houck reviewed her memo to Council wherein it was recommended to authorize staff to implement modifications to the redevelopment of Lot 3 to incorporate a Center Street exit to facilitate improved lot flow and exit options. The traffic engineering review endorsed the additional site exit. As far as the exit development and funding, pricing was obtained for various pieces of equipment and the cost would be less than \$30,000. Funds were available from the Parking Division's Parking Waiver Fund. It was recommended that Council authorize the Center Street exit.

Mr. Markham stated that the current exit had major problems, and most were related to pedestrians not yielding when cars were trying to leave. Center Street has the issue that if a person leaves via that exit and tries to turn left, there is permit parking on both sides creating one lane down to New Street and then from New Street out to Chapel Street. He felt significantly more needed to be done to solve the problem.

Ms. Houck said the engineer made some suggestions, one of which was making the curbing at the existing sidewalk appear more like a regular street-type curb. She added the biggest issue was during peak periods.

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: TO OPEN THE DISCUSSION TO PUBLIC COMMENT.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Chapman, Clifton, Hadden, Markham, Morehead, Tuttle.

Nay – 0.

Absent – Funk.

Dr. Erin Cox, Main Street Dental, believed the major problem with congestion was the amount of people leaving at certain times and the operation of the light and the gate. She did not think the problem was caused by pedestrians and asked if another exit could be added on Main Street instead of Center. She said businesses on Main Street could not be run that way and this was not a problem until the last several years.

Ms. Houck replied that the engineer looked at the other options, but they did not provide as much opportunity as Center Street.

Donna Cox, partial owner of Lot 3, said they were told in a private meeting regarding the parking that the entrance was to open in approximately two to three weeks which coincided with the students coming back to school. She hoped if Council could not come to a conclusion tonight that that entrance would not open because it will cause complete chaos in that parking lot.

Brian Dunnigan, Orchard Road, questioned if exiting onto Main Street was right turn on red. He thought a sign should be posted stating that to help move traffic through more quickly. He also suggested installing a blinking light or "No Walking" sign for pedestrians on both sides when there was a green signal for traffic leaving the exit. He questioned whether the new exit on Center Street would be to the right or to the left. On Delaware Avenue the exit was to the left which was not normal as you enter to the left first. Ms. Houck explained it was because Delaware Avenue was a one-way street.

David Robertson, New Street, said at the new entrance on Center Street, a lot of plantings would be needed so it did not look like a hole in the street. He pointed out that during the school term Center Street turned into a one-way street because of the parking on both sides of the street. Cars had to pull over in a driveway in order for one car to go through. He thought the only way to make sure that pedestrians stopped was to put a police officer there like the University does on Delaware Avenue during the day. He hoped the City was thinking about their future plans for Center Street to revitalize it as a neighborhood street.

Jeff Morton, Cheltenham Road, stated that when a vehicle exits and turns right on red, drivers could barely see to their left to see any cars coming due to obstructions. If there is a red light, a vehicle can't turn right if the driver can't see cars coming.

Mr. Markham was not sure how the entrance impacted the exit because there were still the same number of spots no matter what but said something was needed to advertise the lot was full to keep people from circling. A short term idea was to open the section with parking meters, a part of the lot that could be used like any place on Main Street, to satisfy the fact that the entrance was not open. He suggested not putting an exit there right now to think about the issues while making the parking spots available.

Mr. Morehead said that was going to happen anyway. In the plan if you put in the exit, the booth would be way back behind those vacant spots so they were going to be metered. Mr. Markham said because right now they were open for parking with the lot. Ms. Houck said as part of this plan with the exit we would put meters in the spots right as you are coming in what is the new entrance now because we have to bring the booth in to allow for stacking of cars so they would not be in Center Street and would be metered with this plan. Mr. Markham said you also have the issue where there are cars parked on one side at times and the Post Office uses the other side temporarily while they go in and out of their lot, so you are down to one lane on that area also.

In Mr. Clifton's opinion there is nothing more egregious pedestrian wise on Main Street than people walking in front of that exit onto Main Street. He thinks it is a matter of time before something happens there. The proposal for the exit onto Center Street is not the silver bullet that is going to fix everything but it is going to lessen the impact for what we do have. It lessens the crossings at Catherine Rooney's because that line of sight is horrible at that point. He felt it was much safer to exit that lot at Center Street. If it means waiting a couple minutes at an intersection that has clearly delineated crosswalks and waiting for pedestrians to cross there, he thought that made more sense and was another option for people heading in a different direction versus going out on Main Street. As far as traffic was concerned, this would potentially pull a few cars from the traffic on Main Street. He supported the entrance/exit onto Center Street.

Ms. Hadden asked the situation with parking on Center Street and if Council can restrict the parking to only one side of the street. Ms. Houck thought the people that lived there would be impacted as there is not enough parking there.

Mr. Tuttle said there were some negatives, too, if you make it easier for people to get out and end up at that terrible intersection across from the shopping center. Some people go that way because it is their normal destination but he did not think Council wanted to make it welcoming to go that way. Ms. Hadden said she thought most people knew how horrible it would be to get out that way and would not do it unless they had to. Mr. Tuttle agreed this was not a silver bullet but still felt it was an improvement.

Mr. Markham asked if Council is going to do this that it be restricted to a right turn on Center out to Main Street and avoid the residential section of Center and New.

Mr. Chapman felt the exit needed to be added and having it be an entrance/exit onto Center made sense. He believed the largest problem was not the single exit, but the payment method used. This was highlighted by Dr. Cox's comment that during peak times when a maximum of three to four cars can have paid, be in line for the light and get out of the lot before the light turns red. That's why cars are waiting for 40 minutes, and even with a second exit would be a 20 minute wait and unacceptable. He suggested working immediately on changing the payment method to have a walk up booth to pay your ticket then take it to a gate that reads the ticket and leave, which it would move things a lot faster. Further, while the exit is being added, the opening of the new entrance should be held so the issue would not be larger. Adding a "lot full" light like the lot behind the Galleria would help prevent that. Ms. Houck agreed the payment method should be looked at but said the equipment costs a lot of money for us to put it in without having explored all of our options in that lot, as this is an area the City looks to for a future parking garage. Other property owners would like the City to explore that option. He felt we were not currently business friendly.

Ms. Feeney Roser believed Mr. Chapman referred to pay on foot equipment which worked very well. Staff would have to see how that could work in this lot. This was included in the Capital budget in this lot for 2015 but may have to be pushed further out because of the Lot 1 conversations. There was always talk of a second exit when the City was able to insert that kind of equipment. At this point the exit could be done with a manned booth and look at equipment changes at a future time. She thought Mr. Chapman was right and said the City has looked at it and will continue to look at it, particularly with a garage in the future. It was something to look to for the future but this was something we thought we could do now in order to address the concerns presented. Mr. Chapman questioned the time line.

Mr. Markham said Mr. Chapman was right, citing an example where he saw seven people in line to exit the lot and there was never more than one car at the light due to payment delays.

Mr. Chapman said also in the immediate short term he thought we should have the "A" team in the Parking Department working the booths, which can operate at the fastest speed possible. It is very slow moving and relying on human capital.

Ms. Houck asked if there was a possibility to have staff members observe during the peak times at lunch and put the "lot full" sign out in the interim. Ms. Feeney Roser said they had someone in there now but did not have the "lot full" sign. Mr. Morehead said his experience with the "lot full" signs was it was never true.

Ms. Hadden liked Mr. Markham's idea of making it right turn only on exit on Center Street.

AMENDMENT BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THE PROPOSED EXIT OUT OF LOT 3 BE A RIGHT-TURN EXIT ONLY.

Question on the Amendment was called.

AMENDMENT PASSED. VOTE: 5 to 1.

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

AMENDMENT BY MR. CHAPMAN, SECONDED BY MR. MOREHEAD: TO DELAY THE OPENING OF THE NEW ENTRANCE UNTIL IT ALSO INCLUDED AN EXIT.

Question on the Amendment was called.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: THAT THE ENTRANCE/EXIT BE BUILT WITH THE AMENDMENTS PREVIOUSLY STATED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

**29. 5. FINANCIAL STATEMENT: None**

**30. 6. RECOMMENDATIONS ON CONTRACTS & BIDS:**

**A. Recommendation to Award Contract No. 13-11 – Purchase of Sig Sauer Handguns**

**01:41:26**

Ms. Houck referenced to the staff memo dated 7/25/13 and explained the contract was for the purchase of Sig Sauer handguns. The contract provided for pricing for two years for the replacement of the service weapons for the Police Department. They were originally purchased in 2003. Two sealed bids were received, and funds were available from the capital program in the amount of \$26,000 for 2013 and additional funds would be identified in the 2014 budget for the second year. It was recommended to award the contract to the Lawmen Supply Co. of New Jersey, Inc. for the purchase of 37 Sig Sauer handguns this year and 33 in 2014.

Mr. Morehead asked if Lawmen Supply was willing to provide the 37 with only Council approval in the short term. Ms. Houck said they would. Mr. Morehead was uncomfortable committing the City to spending the second portion at this time. Ms. Houck said we were not committed to that. Mr. Clifton noted he did some research on this and the cheapest price he found was about \$850 each.

MOTION BY MR TUTTLE, SECONDED BY MR. MARKHAM: THAT CONTRACT NO. 13-11 BE AWARDED TO LAWMEN SUPPLY COMPANY OF NEW JERSEY, INC. FOR THE PURCHASE OF SIG SAUER HANDGUNS AT THE UNIT COST OF \$685 EACH. 37 SIG SAUER HANDGUNS WILL BE PURCHASED IN 2013. 33 SIG SAUER HANDGUNS WILL BE PURCHASED IN 2014 PENDING COUNCIL APPROVAL OF THEIR INCLUSION IN THE 2014 CAPITAL IMPROVEMENT PROGRAM.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Chapman, Clifton, Hadden, Markham, Morehead, Tuttle.

Nay – 0.

Absent – Funk.

**31. 6-B. RECOMMENDATION TO PURCHASE A REPLACEMENT BACKHOE FROM STATE OF DELAWARE CONTRACT NO. GSS 12663 HEAVY EQUIPMENT**

**01:43:41**

Ms. Houck provided details of the staff memo dated 8/1/13 which was a contract recommendation for the replacement of a backhoe from a State of Delaware contract. The backhoe would be in the Streets Department and was a 2001 Case. The State entered into a Master Agreement with the National Joint Powers Alliance (from whom the City purchased directly in the past). Pricing for the purchase of the Case Backhoe Loader totaled \$80,637 after trade in of the existing backhoe. Funds to cover the cost of the purchase were available in the Capital Program.

Mr. Morehead said he was not aware we had a Streets Department and assumed it was Public Works. Ms. Houck said it was the Streets Division of Public Works. Mr. Morehead asked when Water, Sewer and Public Works were joined one of the things being looked for was efficiencies of the combined departments. He asked how many backhoes we had now. Ms. Houck could not answer that question but said efficiency was a constant effort of Mr. Simonson. Mr. Morehead stated that he would like the information before moving forward with the contract.

Mr. Markham asked if this would be in use 100% of the time by the Streets Division, as a concern he had was we had equipment and we should have more sharing going on. Ms. Houck said it would be but right now our funding mechanism and our budgeting had not caught up with the fact that we merged departments.

MOTION BY MR. MOREHEAD, SECONDED BY MR. TUTTLE: THAT ITEM 6-B, RECOMMENDATION TO PURCHASE A REPLACEMENT BACKHOE FROM STATE OF DELAWARE CONTRACT NO. GSS12663-HEAVY EQUIPMENT, BE POSTPONED TO THE AUGUST 26, 2013 COUNCIL MEETING FOR A

PRESENTATION BY THE DIRECTOR OR ASSISTANT DIRECTOR OF PUBLIC WORKS AND WATER RESOURCES.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Chapman, Clifton, Hadden, Markham, Morehead, Tuttle.

Nay – 0.

Absent – Funk.

**32. 6-C. RECOMMENDATION TO AWARD RFP NO. 13-03 – CONSULTING SERVICES AND MANAGEMENT OF INFORMATION TECHNOLOGIES (IT) DIVISION'S NETWORK OPERATIONS**

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**01:48:12**

Mr. Markham stated since this proposal involved the company he works with that he would recuse himself from the conversation and the vote. *(Secretary's note: Mr. Markham left the table at this time and returned following Council's vote.)*

Mr. Haines referenced the staff memo dated 8/2/13 which contained a recommendation for an RFP to provide third-party support for IT network operations to increase efficiencies, operations and effectiveness. Six firms submitted proposals. A review panel included incoming IT Manager Joshua Brechbuehl who was relocating to the area and did not know the firms prior. Thus, he had an objective view on the submissions made. Mr. Haines reported that Diamond Technologies of Wilmington, DE had the most well articulated and well presented RFP, and they were recommended to provide the services to the City. Mr. Haines pointed out this service was part of the Operating Budget. A 15-month contract was proposed to get it aligned with the City's calendar year and the agreement contained a 90-day clause to provided the City with the ability to sever services at their discretion.

Mr. Morehead asked if there was a clause to preclude any conflict of interest with a City employee being employed through Diamond. Mr. Haines said there was and that the firm was above board in the past and there was a clear separation/delineation of relationships.

MOTION BY MR. MOREHEAD, SECONDED BY MR. CHAPMAN: THAT RFP NO. 13-03, CONSULTING SERVICES AND MANAGEMENT OF INFORMATION TECHNOLOGIES DIVISION'S NETWORK OPERATION, BE AWARDED TO DIAMOND TECHNOLOGIES OF WILMINGTON, DE FOR THE PROVISION OF PROFESSIONAL CONSULTING AND MANAGEMENT SERVICES RELATED TO THE CITY'S IT OPERATIONS, FOR A 15-MONTH PERIOD WITH THE OPTION TO RENEW ANNUALLY BY MUTUAL CONSENT FOR A PERIOD OF UP TO FOUR YEARS AT A MONTHLY COST OF \$9,900.

MOTION PASSED UNANIMOUSLY. VOTE: 5 to 0.

Aye – Chapman, Clifton, Hadden, Morehead, Tuttle.

Nay – 0.

Recuse – Markham.

**33. 7. ORDINANCES FOR SECOND READING AND PUBLIC HEARING:**

**A. Bill 13-18:** An Ordinance Amending The Comprehensive Development Plan By Changing The Designation Of Property Located At 63 W. Cleveland Avenue And 60 New London Road

**01:51:44**

*(The public hearing for Items 7-B & 8-A were also held at this time.)*

Ms. Bensley read Bill 13-18 by title only.

MOTION BY MR. MOREHEAD, SECONDED BY MR. CHAPMAN: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 13-18.

Lisa Goodman, Esq., represented Cleveland Holdings, LLC and was joined by the applicant, Kevin Heitzenroder, Mark Ziegler, Project Engineer and Nicole Kline, Traffic Engineer.

Ms. Goodman reported the request was for a rezoning, Comprehensive Plan amendment and a Major Subdivision approval to permit two vacant parcels to be rezoned from BN and RM to BLR to permit the construction of six townhouse apartments. Ms. Goodman referred to a PowerPoint with visuals of the project.

The property was located on W. Cleveland Avenue next to the current Elks Lodge and the two parcels together totaled 0.457 acres. The BN zoned parcel was on Cleveland Avenue and was vacant while the RM zoned parcel was on New London Road and was also vacant. The proposed plan would provide one-way access in to the property from New London.

Ms. Goodman noted that the Elks building was about a foot or two over the property line, and her clients proposed giving a license to the Elks Lodge so the building could remain there without any issue and they designed around it.

The project received three variances from the Board of Adjustment. One was for minimum lot area. The proposed zoning to BLR required one half acre; this property was .457 acres. The variance was for .043 deviation from the minimum lot area. The Board of Adjustment also granted a 3% variance for lot coverage – BLR permitted 25%, and they were given a variance for 28%. The project was in full compliance for lot coverage and had 23% open space. They received a variance for building coverage and that was the 3%. The project also received a height variance from 35 feet to 40 feet. However, a subsequent Code amendment was passed by Council in May to redefine how height was measured. If that had been in place, this project would be buildable without that height variance.

A favorable recommendation was received from the Planning Department. The project then went to the Planning Commission which did not vote to support that recommendation.

Ms. Goodman referenced other projects completed by Mr. Heitzenroder which included Campus Edge on Delaware Avenue, Amstel Square and the two buildings behind it, Baptist Student Ministry, 19 Elkton Road and 111 Elkton Road.

This proposed project of six townhouse apartment would have 25 parking spaces, 18 were required, and that included two garage spaces per unit. There would be two-way access (ins and outs) off of Cleveland Avenue and that was the fire lane (24 feet wide). Ms. Goodman felt there was some misunderstanding about this by the public at the Planning Commission meeting. The New London Avenue access was an “in” only through the currently RM zoned parcel. It was not designed to be fire access. It was designed solely for residents coming in and was an attempt to relieve congestion up at the intersection. There was some question about whether it could be used as a cut through, but it will be private. It was not like a subdivision street that might be used as a cut through. It will be signed private, could be speed bumped if deemed necessary by Council but will look like a driveway.

The proposed density of the project was 13.13 dwelling units per acre and the average for the area was about 12.5. There would be 26 bedrooms, which was well below a number of recently approved projects, and the developer agreed to a restriction of 30 occupants.

There was discussion with the City Secretary about some provisions in the development agreement and had since then had more time to look at those and talk to some other departments, and they were comfortable with all the provisions in the development agreement. Mr. Clifton asked Ms. Goodman if she referred to items 10, 12 and 14 and she replied that was correct.

In terms of the rezoning, Ms. Goodman explained the larger property off of Cleveland was currently zoned BN which permitted commercial and institutional uses only. The RM parcel was a zoning that currently required a one acre minimum and was currently a non-conforming lot and permitted residential. The applicant was seeking BLR zoning which was the closest to conforming but with the variance, they officially met it. According to Ms. Goodman, BLR was used for a number of other townhouse developments, and after the plan was filed, BLR was amended.

Ms. Goodman reported that her clients owned the property for five years and could not carry it any longer. They were in the position of having two choices: to go forward with the by-right plan or to attempt to develop it in what they think was more consistent with the neighborhood. Ms. Goodman presented a sketch of the by-right plan which was a simple one-story retail box that could be a convenience store, liquor store, or any of the permitted uses in BN. The most interested parties to date were a convenience market and a liquor store. The Code permitted approximately 3,854 square feet. The sketch showed 15 parking spaces, was fully Code compliant and was consistent with the current Comprehensive Plan designation of light commercial. The applicant did not believe this was consistent with the residential nature of the area and the desire for less traffic impact. Ms. Goodman said one big thing heard at Planning Commission was concerns about traffic. A traffic analysis was done of the difference between the by-right use and the townhouse proposal.

Nicole Kline, Traffic Engineer with McMahon Associates, presented visuals which showed total trip generation for the by-right use with a convenience market during peak hours. Weekday morning peak hour showed 258 total ins and outs. Weekday afternoon peak hours trips would total 202. The average week day 24 hour period was 2,884 trips total ins and outs. The next set of data was for the proposed townhouse apartments. Weekday morning AM peak hour showed 1 trip total ins and outs. Weekday afternoon peak hours trips showed 5 trips. The average week day 24 hour period was 56 trips total ins and outs. Ms. Kline noted a drastic difference between the by-right use versus the proposed townhouses. Regarding concerns at the Planning Commission about cut-through trips between New London Road and West Cleveland, turning movement counts were done at the intersection in 2010. The northbound New London Road approach showed heaviest traffic volume in the afternoon with about 700 vehicles on that approach in the 4:00-6:00 PM time period. Only 40 of those vehicles were right turns who might be interested in a cut through.

Ms. Goodman showed a visual of existing uses surrounding the site to address the standards for a rezoning. This included rental properties, UD, institutional (churches, Elks Lodge) and probable owner-occupied units. There was no commercial use in the area. She added that the Cleveland-New London area was beginning to be revitalized. She said the project was consistent with the larger area which was being redeveloped into more modern, safer houses that fully conformed with modern building codes including being sprinklered, providing stormwater management and open space. For this reason she said the Comprehensive Plan amendment for multi-family residential of 11-36 dwelling units per acre was appropriate.

Another concern expressed by the public at the Planning Commission was increased density. Ms. Goodman said the property was going to get developed and put to a productive use and was more consistent with the neighborhood as residential than as it was currently zoned. Commercial would be a much more intense use. It was also made clear that there would be much more traffic and more turns generated with commercial. Fire safety was another issue and Ms. Goodman addressed that the fire access comes off of Cleveland, is 24 feet wide, the building will be fully sprinklered and the plan is fully fire compliant. Height came up, and as previously discussed, the height currently permitted at BN was the same as the height currently permitted at BLR. There was testimony from an existing landlord regarding competition who might have older housing stock. Updating housing stock eventually drives everyone to update and that is a good thing for the City, so economic competition concerns should not be a primary land use driver. Ms. Goodman noted that a letter of support was received from Brad Bugher, owner of two adjoining properties on New London Road.

Mr. Clifton referenced items 10, 12 and 14 in the agreement and asked Ms. Goodman to address what the issues were and the resolutions for Council and the public's benefit. Ms. Goodman said these were technical issues in the development agreement. Paragraph 10 – there was some concern about whether water and sewer could be brought in off of New London, but they got comfortable about bringing them in from Cleveland and that is what the agreement says. Paragraph 12 deals with providing a letter of no objection and providing sight triangles and they agreed with the City to take out one requirement relating to an easement that was on DeIDOT property. Item 14 was complying with ICC Code and they were comfortable since that is part of the Codes they normally have to comply with anyway.

Ms. Hadden referred to Planning Commission minutes, that said there was one fire hydrant about two blocks in at Church Street for the whole street, and asked if there should be more than one fire hydrant if the project goes in. Mr. Heitzenroder stated that the plan shows a fire hydrant on Cleveland Avenue at the intersection with Rose Street.

Ms. Hadden said one of the recommendations in the report from the department was not only to deed restrict about the number of occupants but also deed restrict the property to prohibit other BLR permitted uses. That is in the subdivision agreement and is agreeable to the developer.

Mr. Morehead asked if the developer was being required to put another hydrant in for the project. Ms. Feeney Roser said there was a requirement for a new fire hydrant to be installed at the entrance from Cleveland into the development.

Kirk Clemens, New London Road, was a 20-year resident. He objected to the rezoning request and did not think the project fit in with the neighborhood. He felt there would be major problems with regard to traffic, parking and the atmosphere of the neighborhood. There was no permit parking on New London Road and residents who did not have off-street parking had to fight for spots with the students when they returned to the University. There were also issues with parking from the University maintenance facility and from Deer Park employees. His driveway was frequently blocked by cars parked on the road. He said traffic was an issue and it takes him three revolutions to get off that street when school is in session and during peak hours of 4:00-7:00 pm. At times cars are backed up to the railroad tracks and on the tracks or over the tracks. He asked what was to keep students from coming the wrong way out the New London Road entrance. The neighborhood was saturated with students and it was a constant battle and they did not need additional students. Also he felt the size of the building was ridiculous in relation to their homes.

Theresa Mancari, New London Road, lived in her home for 22 years. She said the project would adversely affect her family and her neighbors – how they live and the quality of their lives. They are disturbed at all hours by noise from college students, seasonal decorations are stolen, seven mirrors broken off of her cars, urinating and vomiting college students, beer cans, red cups and liquor bottles and pizza boxes discarded regularly in their front yard. They stay because all the issues do not outweigh living in a welcoming neighborhood, including being able to walk to Main Street and enjoy restaurants and shopping, and participating in Newark events. She saw many problems with the project – initial building that will disrupt traffic, construction noise, having a huge group of college students with no oversight and no supervision, and traffic and parking concerns when they are already overburdened. She asked Council to consider what was best for the people who live in the neighborhood 365 days a year and vote no to the project.

Julia Clemens, New London Road, loves living here and is aware of ongoing challenges during the school year which were the main reason she opposed the project. Lawns littered with party cups, beer cans and bottles and porches furnished with couches and beer pong tables, driveways with up to 10 parked cars meant for four renters. The City needs to better manage what was already in place rather than allowing a dorm to be placed in the middle of a community. She asked Council whether more rental properties were needed in this area. She said the 25 parking spaces for 30 residents were already five spaces short, and in addition they will have visitors and

parties with overnight guests. She asked how New London Road can manage that additional traffic. She did not feel Cleveland Station was a gift for the neighborhood. The veiled threats for a convenience store were not only insulting but underlined the problem with the project. For the developer it was about making the most money possible regardless of the consequences. She believed this would have been a different story if the developer came to the table with a housing request more in keeping with the neighborhood. She did not object to progress or improvements to the City but did object to the mentality that this project was in the best interest of the residents. She asked Council to consider the unique makeup of the neighborhood with its families, elderly residents and church communities and asked them not to destroy the fabric of the community by saturating it with an influx of transients who have no vested interest in the outcome of the community.

Rick Milewski, University Drive, travels Cleveland Avenue daily and said it was a nightmare and that putting a convenience store there would make traffic much worse as well as create loitering problems and concerns for pedestrian safety. He thought it was a dangerous intersection and that the housing project was a much better use which would keep traffic flow down, especially during peak hours. He thought the building was aesthetically pleasing.

Jim Darden, Nethy Drive – Abbotsford, said the project was a great plan and the alternative would be worse. He supported the project.

Jim Hearn, W. 14<sup>th</sup> Street, Wilmington, owned a house/rental property at 64 New London Road for 22 years and knew a lot of the neighbors. He worked with the City and completely renovated his property and was very proud of the house. He became involved because of the senior citizens and how stressed they are about the project. There were still a lot of homeowners in this area and they were not opposed to progress. They wanted the progress to be the right fit for the zoning and for the neighborhood. At Comp Plan meetings it was brought up that a lot of the neighbors would like a more walkable neighborhood. He was fine with the convenience store which would serve the community. He pointed out that the store plan was still utilizing a residential parcel on New London Road, so that would still require rezoning. He stated that the Comprehensive Plan shall have the force of law and no development shall be permitted except as consistent with this plan. It did not make sense to him to have one parcel zoned BLR when parcel after parcel on New London Road were RM. He submitted a petition to Council from the neighborhood.

Nancy Willing, Barksdale Estates, thought it was objectionable that Ms. Goodman showed a visual of an open field directly across from the site when it was quite a bit further down. She pointed out that they did not show trip counts for a liquor store and did not believe there was a buyer for a convenience store at this location. She said any student who lived there was going to jump in a car. She appreciated hearing from the community speakers who discussed what it was like to live among the students. Ms. Willing lived on New London Road for many years and had emotional ties to the community. She thought it was Council's responsibility to vote against the project.

Clara Harris, W. Cleveland Avenue, lived in Newark since she was five years old when Newark was green and lovely. She had nothing against college students. She asked the developer why he was not building single-family dwellings and asked if he wanted this project in his neighborhood. She stated that students go by her house cursing, calling rude names and using her yard as a bathroom. At the end of the year, students in the corner house put up a big sheet with writing on it that called her home a ghetto. She preferred to have a convenience store.

James Roy, referred to the visual where it said "site" and pointed out two white spots right behind the proposed project that Ms. Goodman said were "probably owner occupied". He thought she should know that the property was occupied by his mother since 1946 and asked if anyone would want this project in their mother's backyard.

Amy Roe, District 4, hoped this was an example of why Council should not have limited the comment period to three minutes. So many people whose homes would be

impacted by a project could not get their thoughts out and she wanted Council to reconsider changing it back to five minutes. The reason her family moved to Newark was so she could ride her bike around. She has ridden her bike around this neighborhood for decades and she thought this was one of the most dangerous places. She had not heard any assessment of how this would impact non-vehicular traffic and before a decision is made we need to acknowledge that that the City takes pride in being a bicycle friendly neighborhood and it was an important issue. If Council approved this they would be combining two lots so that a property that could have a home on it could be a driveway and she thought that was a precedent-setting type of activity. She said Corbit and other streets in this neighborhood were used as cut-through streets and it was a dangerous idea where there was a lot of pedestrian and bicycle traffic.

Mark DeStefano, a UD student and tenant of Mr. Heitzenroder in the Amstel townhouses talked about the nature of them. They were beautiful inside and out and provided a safe community for the students. He said it was competitive to get safe off-campus housing. This project would be well lit and well maintained, while other off-campus student housing was borderline dilapidated and ugly on the outside. He recognized the concern about traffic and said the students were coming back regardless of where the houses are. There would be students living on Cleveland and kids going up and down New London as long as they go to school.

Morris Patrick, President of the Pride of Delaware Elks Lodge on Cleveland Avenue, said they have been there 90 years. He was concerned about problems with their liquor license since there would be student housing within 300 feet from the Lodge.

Keith Moon lived in Newark most of his life, was concerned with the impact the project would have on traffic. He was concerned that if the traffic is backed up on New London, an emergency vehicle could not get to his neighbor's house on Church Street. He asked Council to deny the request across the board.

Lydia Timmons, W. Chestnut Hill Road, has lived in Newark for about 20 years and taught at UD. She said there were going to be students here as the University was part of what made Newark appealing and emphasized the importance of having safe student housing that was up to code. She understood the concerns of the community which was established and has a rich history. She thought there was a project at the University working to bring together that community with the students. Some of the concerns she heard tonight were about out of control student issues which were separate from the building of this project. She thought a convenience or liquor store at the corner was not a good idea. She encouraged the City to work harder so those kinds of issues did not happen and the residents were welcoming to these young people who brought a fresh breath of air to the community. She felt creating livable safe student housing was a better step because when the students lived in a nice place they would be respectful and be better neighbors to the community.

Deborah Worthing, W. Main Street, moved to Delaware, moved away and moved back to Newark because they wanted to live in a city with the University and the City that worked so well together to make it a beautiful place. The difference they saw in five years was unbelievable. She stated that everything is changing and that there are four main entryways to the City. New London Road, going onto Cleveland is a nice flow architecturally. She walks the neighborhood and said the face of Cleveland is changing and will continue that way. She would much rather have the townhomes than a liquor or convenience store. She questioned the lighting that was planned

Martin Nicholson, greater Newark, said one concern was the talk about changing the zoning. If the zoning was changed for this one project, it would set a precedent for more changes in other areas and could be a step forward to invade more neighborhoods. He was for progress but said there was a right way to do it. Families would be forced out of their homes and property values would decrease.

Edward Franco, Pagoda Lane, West Newark, said he and his wife traveled Cleveland Avenue on a daily basis in both directions during peak hours and everybody knew what a nightmare it was getting through there in the morning. He said the City

made improvements along Main and S. Main Streets. The Cleveland Avenue stretch was an eyesore, would be rebuilt sooner or later, and it would be a mistake to have a store there. He thought the townhouses would be a natural progression.

Ethel Davis was born and raised in Newark and was a member of the Pride of Delaware Lodge. She referred to an area on the visual plan that she said went all the way back to Church Street and was owned by one of the Lodge brothers. She asked where the little triangle came from.

Joseph Worth, Church Street, was not against development but thought it should be scaled down. He said a house recently built on Church Street where had to install a portable sprinkler system because the water system would not support it. His question is would the water supply system support safety of a building with 30 occupants and what type of sprinkler system are you talking about putting in there. Referencing a previous speaker on the safety of the neighborhood, he felt it was very safe.

Steve Timmons, W. Chestnut Hill Road, grew up in Newark. He attended the University and lived in student housing. He did not see 30 students out of 20,000 changing the nature of the community. He thought the townhouses were the best proposed use for the property.

Jim Lisa, South Pond Road, Hockessin, grew up in Newark and lived there over 30 years and today continues to own and operate a business. He favored the project for the following reasons: The intersection of New London and Cleveland Avenue was one of the most important gateway intersections and sets the tone for the entire City. Today the area is tired and in need of replacement. The proposed project would be a major improvement to the area, was attractive, well designed architecturally and consistent with other projects built and scheduled to be built along Cleveland Avenue and New London Road. The building will not only look good but will comply with modern building and safety codes and light systems in all new buildings. He pointed out that the owners were well respected developers in the City, they build what they say they will build.

Freeman Williams, Farmhouse Road, Christianstead, is a lifetime resident of Newark and spoke in favor of the area residents. He said the builder's efforts were positive. He emphasized the community and thought it was important to the lifetime residents of the area. Maybe their houses were not on standard with others but to them it was an important place. He said to be careful about making statements about the community and its direction. When making a decision keep in mind the importance of maintaining the perspective of all the residents. Newark is a diverse area and that area represents probably the best segment of our area because it is a microcosm of what is best about Newark. Lots of people still live there who have played a significant role in the growth of Newark and they deserve the right to have that neighborhood intact.

Chris Locke, Cambridge Drive, is a 35 year Newark resident. Looking at the map there are roughly 76 lots of which 62 have rental permits. The neighborhood has changed and is a rental community. His father grew up in the tenements in Williamsburg in Brooklyn, New York, a tough neighborhood. Now those houses are selling for a million dollars. This particular developer has shown through his various projects that he is a good developer and makes sure his students behave as much as any developer or landlord can. Mr. Locke said it was evident when you put students in nicer homes they do behave better. When you put them in homes that are not well maintained, they tend to behave poorly. He attended UD in 1980-1984 and most of those houses back then were rental houses, so this is not something that just happened in the last five years; it happened over a generation. He requested that Council approve this project.

Joanne Johnson, Hillside Drive, has lived in Newark all her life. Her main concern was that from 4-7 pm there was no way a police car, fire engine or other emergency vehicle could get through there. She said DeIDOT needed to re-plan traffic on Cleveland Avenue before more houses or stores were allowed.

Brett Zingerelli, Barksdale Road, said the communities in this area were going away and we needed to know why. He felt rental properties were there because of

moratoriums on rental properties in other parts of town. He asked Council to take people's feelings into consideration, and these residents have been here a long time.

Ms. Goodman addressed the question about the Elks Lodge somehow putting their permit in question. Ms. Goodman said they were a pre-existing use, so the project would not impact them.

Kevin Heitzenroder, a District 4 resident, said one issue that came up was parking. He confirmed that their leases stipulated how many cars tenants can have and how many parking stalls they will get. There was actually surplus parking. Lighting was questioned and he said this project was very similar to the Amstel Avenue complex with three or four floodlights on the property that have covers on them so they light exactly their property and nothing more and there will be parking lot lights that will light it up significantly, be safe, and not affect the neighbors.

Mr. Heitzenroder has lived in Newark for 23 years, has a business and a family here lived downtown and biked to Newark. He coached for Parks & Recreation and was not an out of town developer. Mr. Heitzenroder built and operated a very similar building with seven units behind the Baptist Student Ministry and had no issues with trash, complaints about noise or parking. In response to the question, would he build this project in his neighborhood, he answered yes, because he has done it twice – Amstel Avenue townhomes and Campus Crossing. He asked for Council's support based on his track record and involvement in the City.

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

Mr. Markham asked Ms. Feeney Roser about the driveway off of New London which was currently going through a property zoned RM, and the convenience store plan showed it using the same property for a driveway. He asked if that was that a permitted use for residential to feed a commercial property. Ms. Feeney Roser responded they have done it in the past with a special use permit and Mr. Clifton advised in the March 22, 2013 Planning & Development report which stated RM zoning also permits with Council granted special use permit the following: (D) If approved by the council, property in a residential zone adjacent to an area zoned "business" or "industrial" may be used for parking space as an accessory use to a business use, whether said business use be a nonconforming use in the residential zone or a business use in said adjacent area zoned "business" or "industrial."

Mr. Morehead understood the traffic issues. He said Ms. Harris said if Council did not agree with her, they did not care for her. He did not believe that was true. His conclusion was that it was better for the neighborhood to have a small number of more of the same rather than a liquor store. His experience with the Comprehensive Plan was this area was predominantly residential. The Comprehensive Plan and the zoning do not always agree but in this case the Comprehensive Plan cites a residential use. He found the project to be a better use of the space, better for the neighborhood, better for the traffic. He understood there were some student problems in town and felt it was a small subset of the students passing through. He thought the project was better than the store and would support all three bills.

Mr. Tuttle lived in Newark for 45 years and arrived as an out of state student. The changes in the zoning was an interesting exercise because Council was approving zoning under some standards that don't apply any longer because the applicant has to be considered under BLR zoning and what it meant back when the original project was proposed. Today that zoning could not be used without some other use, such as business on the ground floor, but at that point in time it could be used for purely residential which was the norm in the vicinity. The majority were rentals so the use was consistent in that regard. Even the access piece was currently zoned for garden apartments, so the contention that only single family residences could be built without changing the zoning was not true with the parcel that fronts on New London. He did not think a commercial purpose was appropriate. Based on his experience of managing the parking program at the UD he said the traffic estimates of very few trips were accurate, did not believe there would be a negative impact on traffic, and supported all three bills.

Ms. Hadden said because of the voluntary deed restrictions to only 30 occupants there was not as much of a density issue as she expected to see. The public comments about traffic seemed contrary to her to the desire to have a convenience store in the area because she did not see that this was realistically going to generate as much traffic as a convenience store. Because of the voluntary deed restrictions and because this met the Comprehensive Development Plan that says light commercial residential multi family, conformed to the development pattern and zoning parcels in the area, she would support the project.

Mr. Chapman believed the current zoning was a remnant of a City and an economy that was 90+ years old. Any business would generate an amount of traffic that was not going to be appropriate for that area specifically close to the lights. When it came to rezoning and amending the Comprehensive Plan to unify that site and those parcels with the surrounding areas bringing it to a residential use, he thought Council was unifying the plan and the site and the surrounding area. He supported the amendments to the Comprehensive Plan and the rezoning.

Mr. Markham said Mr. Heitzenroder was an excellent developer and advised he just joined the Newark Housing Authority as a Director. Mr. Markham had problems with the BLR in the middle of the RM and thought there could probably be a redevelopment similar to what was further up on New London where a whole section of properties was redeveloped but now there would be a section of RM, a BLR and an RM section and would change BN to BLR (business to business) so he would be the dissenting vote and disagreed with the rezoning which he felt was not consistent and there would be some adverse affects.

Mr. Clifton said this boiled down to the best and most appropriate use that was of the least impact to this community. He did not want a liquor or convenience store in his backyard. He referred to the area on Main Street which has upscale condominiums and one of the complaints he gets consistently from there – everyone knows the bars let out at 1:00 am but there also is a restaurant that stays open until 3:00 am several doors down. The City can't stop people from talking and joking as they walk along the streets and that has been a problem. It is a by rights project meaning that under that zoning the owner has a right to do certain things without interference from Council. He said a store probably was not a good fit. Looking at traffic generation – University Courtyards 788 beds, 244 units and he remembered the outcry from the community that there would be so much traffic. He can go by there any time of the day and by and large those cars don't go anywhere. He was convinced that was what would be seen for this site. He was comfortable with the zoning change. The project was not changing the dynamics of the existing traffic and was not changing the dynamics of student behavior. He planned to support the project on all three bills.

Question on the Motion (7A) was called.

MOTION PASSED. VOTE: 5 to 1.

Aye – Chapman, Clifton, Hadden, Morehead, Tuttle.

Nay – Markham.

Absent – Funk.

**(ORDINANCE NO. 13-20)**

- 34. 7-B. BILL 13-19: AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE, BY REZONING FROM BN (BUSINESS NEIGHBORHOOD) TO BLR (BUSINESS LIMITED RESIDENTIAL) 0.354 ACRES AT 63 W. CLEVELAND AVENUE AND BY REZONING FROM RM (GARDEN APARTMENT) TO BLR (BUSINESS LIMITED RESIDENTIAL) 0.103 ACRES AT 60 NEW LONDON ROAD**

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Ms. Bensley read Bill 13-19 by title only.

*(The public hearing for this item was held under Item 7-A.)*

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 13-19.

AMENDMENT BY MR. TUTTLE, SECONDED BY MR. MOREHEAD: THAT REFERENCES IN BILL 13-19 TO BC GENERAL BUSINESS NEED TO BE CHANGED TO BN BUSINESS NEIGHBORHOOD.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Question on the Motion as Amended was called.

MOTION PASSED. VOTE: 5 to 1.

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

**(ORDINANCE NO. 13-21)**

**35. 7-C. BILL 13-21 – AN ORDINANCE AMENDING CHAPTER 30, WATER, CODE OF THE CITY OF NEWARK, DELAWARE, CLARIFYING THE RIGHT TO ACCESS WATER METERS AND SPECIFYING PENALTIES FOR NON-COMPLIANCE**

**04:02:06**

Ms. Bensley read Bill 13-21 by title only.

MOTION BY MR. MOREHEAD, SECONDED BY MR. TUTTLE: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 13-21.

Mr. Vitola reported as part of the Smart Meter installation process, PMI has to gain access to water and electric meters. Since water meters are inside to gain access to, it has been difficult. Staff believed the City already had implied ability to disconnect water meters if the customer has failed to provide right to access. This ordinance was being recommended to clear up the language so the non-compliance penalty is not just implied but was expressly articulated. The goal was to get the attention of the customer so they can change out the meters, a 15-30 minute process. 2,729 water meters were successfully installed and 349 more were currently scheduled. 450 have not responded to the third notice requesting scheduling. Mr. Vitola said the notices would be sent out tomorrow morning and they would do some research to try to whittle that number down.

Ms. Houck said they were working weekends and nights to try to accommodate people. By the time it has to be turned off they will have avoided every way attempts were made to reach out to them. Mr. Markham was concerned the notices were not being delivered consistently in his neighborhood. On the water meters he said the notices did not go out but phone calls were received about scheduling. Mr. Vitola explained this notice would be sent and would be the fourth notice. Ms. Houck said even after the fourth there would be additional effort and contact by the Water Department to reach out. Mr. Chapman said the process was being handled well by PMI. Ms. Hadden said she had not received a card but a constituent called to schedule and he told them no he wanted to talk to his Council member first to find out why it had to be done. She did not know what was on the card but she provided him with the webpage about the project and it answered all his questions. She asked if that information was on the card. Mr. Vitola would check to make sure it was on the fourth card and confirmed that notices had not yet been sent out to all customers.

Mr. Morehead asked to be told whose water would be shut off in his district before it happened. Other Council members concurred.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Chapman, Clifton, Hadden, Markham, Morehead, Tuttle.

Nay – 0.

Absent – Funk.

**(ORDINANCE NO. 13-22)**

**36. 7-D. BILL 13-22 – AN ORDINANCE AMENDING CHAPTER 30, WATER, CODE OF THE CITY OF NEWARK, DELAWARE, PROVIDING THE CITY THE POWER TO MAKE ADJUSTMENTS FOR WATER BILLING ERRORS AND OMISSIONS**

**04:14:35**

Ms. Bensley read Bill 13-22 by title only.  
(*Bill 13-25 was also discussed at this time.*)

MOTION BY MR. TUTTLE, SECONDED BY MR. MOREHEAD: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 13-22.

Mr. Vitola reported that the Water Code contained language that allowed the City to make estimates and bill for unregistered water usage due to a non-functioning meter or where tampering was evident. He believed that extended to the sewer utility because sewer usage was billed from the water usage. He wanted the language expanded and clarified in the form of the errors and omissions bill. The billing system was sophisticated and now with Smart Meters was even more comprehensive and robust. Behind that technology he thought we had some of the best and most experienced utility billing pros but despite efforts the bottom line was that errors would happen from time to time. This ordinance will set the ground rules and regulations for addressing the errors that do get through the screening efforts, there is a look back period established of three years, there was a payment installation period that was defined and errors were more clearly defined. This was intended to be a risk management tool to protect the City against lost revenue in the event of a serious billing error or a minor error that persists to the point of being material. Artesian Water, Tidewater Utilities, Middletown, Seaford and New Castle all have similar language in their tariffs and ordinances. It is not intended to be a precursor to some kind of audit as a way to capture new revenue.

Mr. Clifton asked if all the other utilities went back three years. Mr. Vitola said Artesian and Tidewater do not specify a time. Middletown and New Castle specify three years. Seaford specifies one year. Mr. Clifton said if we don't have people in place who can identify something like that in less than three years, that scared him. The reason Mr. Vitola selected three years as a starting point was that Middletown had a three-year look back and he appreciated the flexibility there. The other reason was that there was a State statute that specified no debt for which there was no record starting three years back can be pursued anyway. If the statute of limitations was three years for some type of error or billing action then why not cap it at three years for Newark in an underbilling or overbilling situation. Mr. Clifton asked if that State law applied governmentally and private sector as well. Mr. Herron replied it did, it talked about mutual running of accounts but specifically applied to something like this and would be three years.

Mr. Morehead said 36 billing cycles seemed long and asked how long a time would we limit giving back somebody some money as part of our policy of service excellence. He said if we can't find something in 36 billing cycles, he thought that was excessive. Also people's lives and financial circumstances change in three years, and he thought it was too long.

Ms. Hadden agreed three years was excessive and could cause hardship for people in some area of the City.

Ms. Houck said keep in mind that if we were underbilling we would work out payment plans and would not be asking for payment all at once.

Mr. Morehead challenged the Finance Directors was to put systems in place and teach the computer to monitor the bills and catch discrepancies earlier.

Mr. Chapman said on the other half of that opinion was three years seemed excessive to ask for revenues not received to the City but if you are the individual who has been paying in excess, you are going to want more than 36 billing cycles. We have to place caps somewhere. He felt three years made sense, was appropriate and was not a number pulled out of thin air.

Mr. Clifton said one of the differences was if it was an overbilling we have a responsibility to the community to have constant vigilance to make sure things were operating properly and had a system of checks and balances in place. He said a year on our part was one thing, three years for the refund if Council agreed to cap it on money going back. Mr. Morehead agreed with that and made one further point that Council was sold these meters on the fact that they were accurate enough that you could tell if there was a single leaking faucet in the house and to not have the financial systems backing to support that statement was disingenuous.

Mr. Vitola said if we could go back a year or 18 months that was great and was better than no flexibility at all. Thresholds could work too. The common errors seen in a water utility were in large meters where a fraction of the flow was measured so that the meter was not constantly going over 999,999 digits; we would measure a tenth or a hundredth or a thousandth of the flow and then the billing system aggregates it up and multiplies it by 10, 100 or a thousand. If you have that set up improperly for a new account you have no history on, you can under-bill by a factor of 10 or 100 or 1000 for some period of time and not know it. Those were the most dangerous errors and that is what this is intended to correct. It was a revenue protection for the City and a threshold could clean that up. Mr. Morehead asked how those mistakes would be found in three years. Mr. Vitola responded the same way they would be found in one or five years. If it was a multiplier you would know that it was supposed to be a factor of 100 and was a factor of 10, it was under-billed by a factor of 10, the meter said they consumed 10,000 gallons, but consumed 100,000. It is actual meter data. Ms. Hadden agreed with Mr. Morehead that flags do need to be put in place because just today she received a call from a constituent who got his electric Smart Meter, thought it would be more accurate and he received a \$3,800 electric bill because somebody did something wrong when they set it up and a flag did not go off to say this guy should not have gotten that bill. It made him suspicious of the process. Flags would be nice. Mr. Vitola said that should have been caught. Mr. Markham said we are talking about three years here. We have not really started the Smart Meters so we've got 12 billing cycles that we are going back for three years of all the quarterlies which were all done manually so they may not be all that accurate. Utilities were different – Artesian and Tidewater had no time specified, both have a 2% threshold specified. Mr. Morehead said let's approach it from that way because the time seems to be bogging us down. Mr. Vitola said if it was within plus or minus 5%, no back bill, no refund. Mr. Morehead said we have to do something that protects the City and is civil to the residents but you have to put systems in place to protect the City from the big numbers.

Mr. Clifton asked if this change was substantial and should not be amended at the table. Mr. Herron said it was the same concept and did not require us to go back.

AMENDMENT BY MR. MOREHEAD, SECONDED BY MR. MARKHAM:  
INSERT AFTER THE WORD "UNDERCHARGE" IN THE THIRD LINE OF THE  
SECOND PARAGRAPH, "PROVIDED THAT SUCH CREDIT OR REFUND IS  
GREATER THAN A MINIMUM THRESHOLD OF 2% DIFFERENCE BETWEEN  
THE BILL RECEIVED AND THE CORRECTED BILL."

AMENDMENT PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Chapman, Clifton, Hadden, Markham, Morehead, Tuttle.

Nay – 0.

Absent – Funk.

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

Question on the Motion as Amended was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Funk.

**(ORDINANCE NO. 13-23)**

**37. 7-E. BILL 13-23 – AN ORDINANCE AMENDING CHAPTER 30, WATER, CODE OF THE CITY OF NEWARK, DELAWARE, BY INCREASING THE WATER RATES EFFECTIVE SEPTEMBER 1, 2013 TO THE RATE APPROVED IN THE 2013 BUDGET**

**04:45:33**

Ms. Bensley read Bill 13-23 by title only.

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 13-23.

Mr. Vitola said Council approved the water rate increase as part of the 2013 budget package. The increase was recommended based on the Black & Veatch rate study which advised a 7.2% increase in January 2013. The budgeted increase was limited to 5% and delayed until midway through this year. Now that the State's budget process was complete, he recommended moving forward to implement the rate increase. On a percentage basis this rate increase was the smallest in at least 22 years. For a typical family that consumed 200 gallons of water per day the increase would result in a water bill that is \$1.82 higher in a month or less than \$5.50 in a quarter. If that family reduced water consumption by 8.5 gallons a day, their bill would stay the same. The blended rate for 1,000 gallons would be \$5.74 which compared favorably to most municipal water utilities but was far below Artesian Water and Tidewater. The increase would go into effect for usage after September 1 so the new rate would not show up until late September/early October billings for the residents. This will contribute to the ongoing negative budget variance.

Mr. Markham confirmed that customers would be notified of the rate change. Mr. Vitola said it would also be added to Channel 22 and to the City's website. Mr. Markham said he had hoped the PILOT funds would come through so the City did not have to do the increase but maybe next year the City would be successful.

Mr. Morehead asked how much money was lost by not implementing the increase in July. Mr. Vitola said it was in the ballpark of \$100,000 and that the unfavorable budget variances were the result of prorating the increase for the entire year instead of July 1 and the wet June. Mr. Morehead was concerned that water was basically free at this point and that there were very distinct costs in the infrastructure and as increases were delayed, the funding was not adequate. He would support the increase but thought it should be higher and wanted to see more consistent increases to cover costs including maintenance.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Funk.

**(ORDINANCE NO. 13-25)**

**38. 7-F. BILL 13-24 – AN ORDINANCE AMENDING CHAPTER 25, SEWER, CODE OF THE CITY OF NEWARK, DELAWARE, INCREASING THE METERING AND BILLING FREQUENCY FROM QUARTERLY TO MONTHLY AND INCORPORATING OTHER CHANGES PRECIPITATED BY THE SMART METER PROJECT**

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**04:52:14**

Ms. Bensley read Bill 13-24 by title only.

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 13-24.

Mr. Vitola reported that at the June 10 meeting Council approved monthly billing of water in gallons in addition to the existing procedure of quarterly billing in cubic feet. Changes were made to pave the way for the Smart Meter installations. The Sewer Code already permitted billing in gallons but a similar change in the Code was necessary to permit billing on a monthly basis. According to Mr. Vitola, Mr. Chapman mentioned at the June 10 meeting that he wanted a notice period built in to advise customers when they would be moved from quarterly to monthly billing. Mr. Vitola said he included notification in the Code that customers will be notified of any change in billing frequency.

The Chair opened the discussion to the public.

Brett Zingerelli, Barksdale Road, asked if the only way to bill for sewer was to bill by how much water was used. He had large gardens in his yard and used about 90 gallons a day. Mr. Vitola said Mr. Zingerelli would have to buy a meter for his irrigation and would only be billed for water and sewer on the house meter. Mr. Chapman said it might make sense for that to be a cost share between the City and the customer.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Chapman, Clifton, Hadden, Markham, Morehead, Tuttle.

Nay – 0.

Absent – Funk.

**(ORDINANCE NO. 13-26)**

**39. 7-G. BILL 13-25 – AN ORDINANCE AMENDING CHAPTER 25, SEWER, CODE OF THE CITY OF NEWARK, DELAWARE, PROVIDING THE CITY THE POWER TO MAKE ADJUSTMENTS FOR SEWER BILLING ERRORS AND OMISSIONS**

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**04:44:30**

Ms. Bensley read Bill 13-25 by title only.

Bill 13-25 was discussed under Item # 33.

MOTION BY MR. TUTTLE, SECONDED BY MR. CHAPMAN: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 13-25.

AMENDMENT BY MR. MOREHEAD, SECONDED BY MR. TUTTLE: INSERT AFTER THE WORD "UNDERCHARGE" IN THE THIRD LINE OF THE SECOND PARAGRAPH, "PROVIDED THAT SUCH CREDIT OR REFUND IS GREATER THAN A MINIMUM THRESHOLD OF 2% DIFFERENCE BETWEEN THE BILL RECEIVED AND THE CORRECTED BILL."  
AMENDMENT PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

**(ORDINANCE NO. 13-24)**

**40. 8. RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:**

**A.** Request of Cleveland Holdings, LLC for the Major Subdivision of 0.457 Acres Located at 63 W. Cleveland Avenue (0.354 acres) and 60 New London Road (0.103 acres) In Order to Create One Tax Parcel Out of the Two Parcels and to Construct Six (6) Townhouse Style Apartments with Associated Parking and Access Ways to be Known as Cleveland Station (Formerly Campus Village) *(Resolution & Agreement Submitted)*

*(The public hearing for this item was held under Item 7-A.)*

MOTION BY MR. TUTTLE, SECONDED BY MR. MOREHEAD: THAT THE RESOLUTION BE ACCEPTED AS PRESENTED.

MOTION PASSED. VOTE: 5 to 1.

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

**(RESOLUTION NO. 13-Z)**

**41. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:**

**A. Council Members:** *None*  
**B. Others:** *None*

**42. Meeting adjourned at 11:54 pm.**

Renee K. Bensley  
City Secretary