CITY OF NEWARK
DELAWARE

COUNCIL MEETING MINUTES

April 22, 2013

Those present at 7:00 pm:

Presiding:	Mayor Vance A. Funk, III District 1, Mark Morehead District 2, Jerry Clifton District 3, Doug Tuttle District 4, Margrit Hadden District 5, Luke Chapman District 6, A. Stuart Markham
Staff Members:	City Manager Carol Houck City Secretary Renee Bensley City Solicitor Bruce Herron Deputy City Manager Andrew Haines Finance Director Lou Vitola Parks & Recreation Director Charlie Emerson 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. Mayor Funk asked everyone to remember the victims from the bombing at the Boston Marathon.

2. **1. ITEMS NOT ON PUBLISHED AGENDA**
29:58 **A.** Public

Bruce Harvey, 5 Phillips Avenue, commented on the proposed resolution to change the City Charter by lengthening the amount of time that candidates had to file their nominating petitions. The current ordinance provided 29 days, and the resolution would change it to 60 days. He thought it was going in the wrong direction about encouraging people to participate in elections.

3. **1-B-1. UNIVERSITY** – There were no comments forthcoming from Mr. Brainard.

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

There were no comments forthcoming from Ms. Graham.

5. **1-C. COUNCIL MEMBERS**
31:52

Mr. Markham

- Mr. Markham reported that the Pomeroy Trail received national recognition by the American Council of Engineering Company.
- Mr. Markham expressed sympathy to Mr. Funk on the loss of his brother.
- Mr. Markham noted there would be a Comprehensive Plan meeting covering traffic and parking on 4/24/13.
- Mr. Markham welcomed Marge Hadden, newly elected District 4 Council member.

6. **Mr. Chapman**

- Mr. Chapman had no additional comments.

7. Ms. Hadden

- Ms. Hadden had no additional comments.

8. Mr. Tuttle

MOTION BY MR. TUTTLE, SECONDED BY MR. MOREHEAD: TO MOVE ITEMS 9-A-1, 9-A-2 AND 9-A-3, SPECIAL DEPARTMENTAL REPORTS, AFTER THE CONSENT AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

9. Mr. Clifton

MOTION BY MR. CLIFTON, SECONDED BY MR. MOREHEAD: TO OPEN ITEMS 3A AND 3B FOR PUBLIC COMMENT.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

10. Mr. Morehead

- Mr. Morehead reported that there was a group trying to revive the neighborhood association in the Nottingham and Oaklands area in a social manner. Nottingham was responsible for maintaining the entrance garden area on Radcliffe. There was one meeting, and a steering committee was being formed, the contact person was Ellen Scarpiti on Radcliffe Drive.
- Mr. Morehead announced that on Saturday, April 27 all unwanted medications could be taken to a collection site at the Newark Senior Center for Drug Take Back Day.
- Mr. Morehead would like to see the complete bill provided to Council rather than amendments to the bills only, for an example he pointed to the continuing work on Chapter 17, Property Maintenance Code. Council received a 17 page amendment to the actual 63 page document being amended. Mr. Funk advised Mr. Morehead to put his request in writing to the City Secretary's office.
- Mr. Morehead sees, 3A is the perfect example, when an item is tabled at the request of the developer, it jumps up on the agenda, he is not sure we should allow that to continue. Mr. Funk said that was part of the Rules of Procedure, so to change that let the City Secretary know.
- Mr. Morehead noted that when a development project came to Council that first went to the Board of Adjustment and that tied their hands by becoming legal there due to all of the variances approved. Project coming tonight for a site plan approval and he proposed that process needed to be cleaned up. His belief was that there should not be two different opportunities for a new development plan to come to Council. He thought it should come through the site plan because then the voters could hold Council responsible directly for decisions the voters don't want and wanted to know how Council could approach that. Mr. Funk said you tighten up the Board of Adjustment because we learned on that Cleveland Avenue situation that the hardship did not seem to be there according to Council. Mr. Morehead was saying from a structure perspective perhaps an existing project would go to BOA but a new development should come through the site approval process. Ms. Houck will put a report together to see how to accomplish that. Mr. Funk said that would require some Code changes but he thought there was a situation where the BOA had to be better instructed on what a hardship was and that the notification area for the BOA meetings may need to be expanded. Mr. Morehead said he would like to see this addressed on a future agenda.

11. Mr. Funk

- Mr. Funk appreciated all the cards and condolences he received on the passing of his brother.

12. 2. APPROVAL OF CONSENT AGENDA

43:18

Mr. Morehead requested that item 2-D, Receipt of March 5, 2013 Planning Commission Minutes, be lifted from the Consent Agenda.

A. Approval of Regular Council Meeting Minutes – March 25, 2013
B. Approval of Organizational Meeting Minutes – April 16, 2013
C. Receipt of Alderman's Report – March 28, 2013
E. Receipt of Real Estate Tax Assessment Quarterly Supplemental Roll
F Receipt of Traffic Committee Report on Endorsement of DelDOT's recommendations for the 2012 Hazard Elimination Plan for SR 2/SR 72
G. Setting of Dates and Place for Display of Assessment Rolls and Appeal Day for 2013-2014 Real Estate Taxes on May 28, 2013
H. Resignation of Steve Dentel from the Conservation Advisory Commission
I. Resignation of Amy Tetlow Smith from the Conservation Advisory Commission
J. Appointment of John Wessells to the Conservation Advisory Commission to complete the 3-Year Term for the Vacant District 2 Seat to Expire March 2014
K. Appointment of Michael Gritz to the Community Development/Revenue Sharing Advisory Committee to complete the 3-Year Term for the Vacant District 1 Seat to Expire March 2016
L. Receipt of Alderman's Report – April 11, 2013
M. ***First Reading* – Bill 13-12** – An Ordinance Amending Chapter 11, Electricity, Code of the City of Newark, Delaware, By Deleting the Section Pertaining to the Payment of Interest on Electric Service Account Deposits – ***Second Reading* – May 13, 2013**

Ms. Bensley read the Consent agenda in its entirety.

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

13. 2-D. RECEIPT OF PLANNING COMMISSION MINUTES – MARCH 5, 2013

45:06

Mr. Morehead requested that page 46 of the March 5, 2013 Minutes be amended to insert Ms. Goodman's name at the beginning of the second paragraph from the bottom. Ms. Houck will pass this request on to the Planning & Development Department.

MOTION BY MR. MOREHEAD, SECONDED BY MR. CLIFTON: THAT THE PLANNING COMMISSION MINUTES – MARCH 5, 2013, BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

14. 9-A-1. CHERRY HILL MANOR ROADS REPORT

46:50

Ms. Houck advised this was in relationship to a resolution for the assumption of the right to assess Cherry Hill Manor property owners charges necessary to maintain

service roads. Ms. Houck provided a memorandum regarding the subject in order to allow for the assessment of 50% of the cost share to be enacted following the provisions of the agreement of 1968 between the City and Cherry Hill Associates. It states that if the Maintenance Association failed to keep and maintain the roadways or parkland, which has occurred, the City may by resolution assess maintenance charges.

Mr. Markham asked if the residents were aware of this situation since there were two prior no responses. Ms. Houck said notification was made to the former Association President in August 2011. Mr. Herron noted the information was sent to all the property owners, and he received several inquiries from residents. Ms. Houck said it was brought up most recently at several of their Association meetings, including one held last week. Another mailing could be done to make sure everybody is aware. Ms. Houck pointed out that the full amount could be charged. She also was aware that the information was showing up when people sell homes at settlement as it needed to be disclosed.

Mr. Chapman noted the due amount could be spread over five years in the tax bill with an accrued interest and asked if payments could be lump sum in the beginning. Ms. Houck said yes they could.

Mr. Morehead referred to the Resolution and asked if we were talking about assuming these rights in perpetuity and are we going to plow them. Ms. Houck said this was a one-time improvement and was strictly for the rehabilitation. She added they now have an Association that is collecting dues and they should be in a position to maintain their own private roadways in the future – that was the intent. The resolution also is strictly for rehabilitation purposes and will not add additional maintenance such as plowing. Mr. Morehead and Mr. Funk questioned the fact that it was not specifically stated that it was a one-time rehabilitation. Mr. Herron said the language was taken from the restriction and the Resolution could be changed to add language indicating the repairs were on a one-time basis in the last paragraph.

MOTION BY MR. MOREHEAD, SECONDED BY MR. TUTTLE: THAT THE LAST PARAGRAPH OF THE RESOLUTION BE AMENDED TO INDICATE THAT COUNCIL APPROVED A ONE-TIME REHABILITATION OF THE SERVICE ROADS.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

MOTION AS AMENDED PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(RESOLUTION NO. 13-K)

15. 9-A-2. RECOMMENDATION REGARDING THE 2013 REVENUE STABILIZATION ADJUSTMENT (RSA)

53:06

Mr. Vitola noted the electric rate structure was changed in June 2011 to include the instruction of a rate stabilization adjustment (RSA). In 2011 for fiscal year 2012 the RSA was calculated using a dollar margin, then in 2012 for this fiscal year the RSA was calculated using a percentage margin. He did not characterize this as an error – the RSA is more flexible than the PPCA which preceded the RSA so it was subject to interpretation. The term operating margin which is the guidance stated in the Code itself was subject to interpretation. He brought this difference to Council's attention and advised there was no problem with the RSA calculation, it can stay as it is; however, for the sake of consistency, he encouraged Council to take the opportunity to calculate the RSA the old way and then consider the movement of those funds into the Electric Fund's rate stabilization reserve. Mr. Vitola said the rate stabilization reserves served

the same purpose as the RSA only long term. It was established in a series of 2009 policies but no action has been taken to address the parts of the policy that call for the establishment of the cash reserves. For that reason, he encouraged Council to approve the recommendation to set aside $1,039,580 in a 2012 surplus electric margin into the Electric Fund's rate stabilization reserve.

Mr. Clifton questioned if in the RSA long-term reserve, there was a cap. Mr. Vitola said there was a guide that suggested 3%-10% of then current electric revenue which at our current level would be about $1.65 million up to as much as $5.5 million, so even this action won't get us up to the minimum level and won't be anywhere near the maximum level. Mr. Clifton asked what value it was in the long term to have that reserve. Mr. Vitola said the same thing as the short term reserve – it would protect against electric cost fluctuations. As constructed now, the RSA takes a year by year approach and anything that is over collected in one year was passed on the next year. We already have a robust RSA for 2013 so there was an opportunity to put some aside in case we start moving in the other direction. Right now rates are going down. In the long term, if rates starting going the other way, this would give a buffer and keep rates stable during a transition period if that were to happen.

Mr. Clifton said the reason he questioned this we had a huge reserve from over collection one year that Council voted to refund the City's rate payers, yet DEMEC has on two occasions state that the electric costs should be going down 22-24% in the next four years, so he is looking at holding money that is really the rate payers' money when the projection is that rates will be going down.

Ms. Houck added in 2009 when Council approved the financial policies they also included the requirement to fund the reserves. However, the reserves have not been funded. The intent was to have reserves so when spikes occur; funds were available to stabilize the rates since most customers prefer a stable bill instead of unpredictable spikes based on rate fluctuations. She saw this as a prerequisite to giving it back to the customers because the financial guidelines state that the reserves should be funded, and this would be the first attempt to do so.

Mr. Chapman was uneasy in taking an action and wanted to look at long-term and short-term needs more closely regarding impact to the rate payers, future forecasts and also take a second look at the 2009 financial policies and the funding requirements. If this sat for years without funding, he thought there was a bigger problem than this particular fund and said looking at it more broad based would be prudent before making a decision. Ms. Houck said staff was trying to correct that.

Mr. Vitola commented that DEMEC did a good job projecting over the short-term horizon. One of his responsibilities was to make projections for Council over the long-term horizon. The establishment of the reserve was one thing in the City's control and can be handled proactively to hedge against some unexpected action such as weather, customer base, wholesale power costs, etc. Controlling the amount of reserves put aside would protect against the negative influences caused by those actions.

Ms. Houck suggested there was no better time to do it than now when it was anticipated that the rates may go down for consumers. Mr. Vitola added that he agreed the review of the policies would be ongoing – in his position there were some investment balances that could get some attention and the calculation of the RSA itself could be reviewed at a future Council meeting which Mr. Vitola said was his intention.

Mr. Markham noted that typically this was not funded because the budget was very tight so there was not much surplus to put away. His understanding was that a change to the electric rate was not being proposed. Mr. Vitola explained he proposed that the 2012 calculation for this year stay exactly where it is. Mr. Markham said he was talking about why you could have the same electric rate and have money in addition. He referenced 2005-2006 when electric rates did not change, and the City took a $6 million hit to the budget and were down to $10-$11 million dollars. At that point the City recognized there would be problems if monetary operations were not changed, so he

threw it out as an opportunity to avoid that because he knew we would still buy peak in the summer.

Ms. Hadden said in the financial policies and procedures it stated on page 11 with the reserve, "the balance shall be maintained at a minimum of 3% not to exceed 10% of the purchase power cost in any given year if the reserve balance exceeds the 10% maximum a credit will be applied to power cost adjustment." She asked for an explanation of the 3% and 10% figure. Mr. Vitola said those were the guidelines which were clearly a function of how much power we buy – if we bought $30 or $40 million of kilowatt hour energy purchases in a given year, the guideline for dollars that should be put into that reserve was 3% - 10% of that cost. The $1 million was close to the minimum targeted for that fund reserve. Mr. Vitola further stated – it says once you go over the 10% maximum a credit will be applied to the power cost adjustment – that was the old PCA, we would just have to change that to say RSA which was the mechanism to pass through over collections now.

Mr. Morehead asked if having more in reserve helped with the City's bond ratings. Mr. Vitola said it did. Mr. Morehead asked if it could be used for emergency capital projects having to do with electric. Mr. Vitola was not positive, as there was a separate reserve for capital in there. He knew once this money was in this reserve, Council action was required to use the funds.

Mr. Chapman said it seemed we were using a somewhat non codified mandatory calculation to enact this move but it sound like Mr. Vitola's intention for the next step was to clean this up rather than to leave it nebulous. Mr. Vitola said there was value in that flexibility and he does not know if was written that way on purpose. He can make suggestions based on his review but did not want to say one way or the other without really knowing the history.

Mr. Tuttle said Council was trying to be forward thinking in 2009 but did not have the cash to back it up, so he thought it was good to finally getting around to doing it.

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THE 2013 REVENUE STABILIZATION ADJUSTMENT BE APPROVED AS RECOMMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

16. 9-A-3. AUTHORIZING THE CITY MANAGER TO SIGN THE DELAWARE MUTUAL AID AND ASSISTANCE AGREEMENT FOR INTRASTATE WATER/WASTEWATER AGENCY RESPONSE NETWORK (DE WARN)

01:08:57

Ms. Houck said this was a recommendation for the City to enter into the Delaware Water Agency Response Network agreement so various municipalities could assist each other in times of need. There was a similar agreement with Electric that the City had not needed to put into play. This agreement was good for the community and for the City's operations, and there was no cost involved.

Mr. Markham asked if this was Delaware only or if there were automatic agreements with Maryland, Pennsylvania and New Jersey. Ms. Houck noted it included Maryland and Pennsylvania. Mr. Markham asked if this was strictly personnel and equipment as he knew the City shipped water for Hurricane Sandy victims. Ms. Houck said it covered equipment and personnel to help in times of need.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: TO AUTHORIZE THE CITY MANAGER TO SIGN THE DELAWARE MUTUAL AID AND ASSISTANCE AGREEMENT FOR THE INTRASTATE WATER/WASTEWATER AGENCY RESPONSE NETWORK.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

17. 9-A-4. CURTIS MILL PARK SITE MODIFICATIONS

01:10:50

Mr. Emerson referenced the staff memo dated March 28, 2013 which provided background on the park site and reported on soil contamination. A remediation plan was completed with DNREC and was approved and was being incorporated into the park design. The contaminated soil would be relocated and capped on site which would cause the floodplain to be modified although there would be no net impact to the floodplain. The site would be vastly improved with the addition of a large meadow area, grading improvements, landscaping enhancements and better stormwater quantity and quality control. Currently about 105,000 square feet of the site was hard surface and would be reduced down to about 55,000 square feet when the project was completed.

Relocation of the floodplain necessitated a Conditional Letter of Map Revision and a Community Acknowledgement Form to FEMA. Once approved, the park would be constructed. At that point an as-built survey would be completed and a Letter of Map Amendment would be submitted to FEMA and they would revise the floodplain maps. The Community Acknowledgement Form stated the City was aware of the work to be completed, that it intended to act in a manner consistent with the purposes of the floodplain zoning regulations and that it was reviewed and determined that the nature of the work would not adversely impact the community.

Council was asked to authorize submittal of the appropriate forms to FEMA.

Mr. Markham asked if this would delay the schedule. Mr. Emerson did not anticipate it would take long to hear from FEMA. He hoped the construction contract would be completed this summer and that construction would begin in late fall.

MOTION BY MR. MARKHAM, SECONDED BY MR. CLIFTON: THAT THE CITY MANAGER BE AUTHORIZED TO SUBMIT THE DOCUMENTS TO FEMA RELATED TO THE CURTIS MILL PARK SITE MODIFICATIONS AS DETAILED IN THE STAFF REPORT DATED MARCH 28, 2013.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

18. 3. ITEMS NOT FINISHED AT PREVIOUS MEETING:

01:16:40

A. Bill 13-02 – An Ordinance Amending the Zoning Map of the City of Newark, Delaware, By Rezoning from AC (Adult Community) to RM (Garden Apartments) 7.65 Acres in the Village of Twin Lakes Community Located on the East Side of Elkton Road Between the Newark Interchange Business Park, Otts Chapel Road, and the Northeast Corridor Railroad Right-of-Way ***(See Item 3-B) Tabled February 25, 2013 at Request of Developer***

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: TO LIFT BILL 13-02 FROM THE TABLE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Jeff Lang, 13 Spring Water Way, said the intent was to discuss the proposed rezoning of the balance of the Village of Twin Lakes. Mr. Lang reported the project was

rezoned in 2006, was supposed to be 11 buildings of 8, all age restricted. The first two buildings in the age restricted side and the clubhouse were built then, due to economic conditions, they were unable to achieve enough sales to start any other buildings. In 2010 they came in for the rezoning of this balance of the project (referred to visuals) – it was approved for rezoning of the right side of the project, 60 townhomes which have since been built, sold and occupied. The balance of the project continued to remain age restricted with the two big house units reapproved as two six unit townhomes. They went to the Planning Commission in December 2012 and discussed rezoning this portion of the project from age restricted to non-age restricted and changing the two groups of townhomes from two six group buildings to six two group buildings at the request of the homeowners that reside in the two buildings here. The merits of rezoning were discussed at the Planning Commission meeting, the fact that rezoning allowed a wider market appeal to the balance of the project and will assist the homeowners and the developers in completing development of the project.

Presently 16 units were built and 12 not built. Mr. Lang said in the condominium association there were 28 units and they own 20 of those units and of the eight other homeowners, four agreed to rezoning and four did not agree to rezoning. He reported they reached an agreement with the other four homeowners to support the rezoning tonight. So all 28 members of the condo association supported the rezoning. There was a lengthy discussion after the December meeting with the four objecting homeowners as to the merits of rezoning. They got appraisals done on their units and agreed to repurchase agreements which they will present to Council and agree to attach to the subdivision agreement assuming approval for rezoning tonight. If guaranteed them a repurchase in some period of time, does not force them to sell but gives them an opportunity to sell to the developer. They can also market their unit and sell to an individual other than the developer if they want to. They feel this will allow them to build the balance of the project out and with the planned Charter high school they think there will be a tremendous market appeal for the balance of the units with the success rate Cornell had with the 60 units there.

For the benefit of the community, Mr. Lang hoped Council would support the rezoning.

Ms. Hadden asked if the new units being put in would look like the townhomes. Mr. Lang explained they were a cross between the two and had a design similar to the townhome but reflected a lot of architectural design of the big houses. Mr. Funk said the twins were probably the hottest real estate product on the market right now.

Chris Locke, Esq. for Iron Hill Properties and Richard Frantas, Esq. acting as Counsel for the four homeowners who initially opposed the rezoning, reported they had a signed agreement to submit.

Mr. Lang felt this maintained value, provided access to a greater market and by having total consent and agreement with them gave them an opportunity to either stay and/or leave and were committed to repurchase their agreements at some point in time based on one in very short period of time and the other three over a year period of time if they feel they like what they see with the balance of the project they may stay or look for another place. He hoped the completed project and would be a benefit to the community and a showcase for Newark.

Ms. Hadden requested clarification on the sales agreement. Mr. Lang said they had an agreement with them to buy in a year and if they sell it and or they would terminate the agreement but the developer had a committed agreement to do that.

Mr. Clifton asked for the opinion of Mr. Herron on whether Council should attach the contract between the developer and the homeowners to the rezoning and resubdivision. Mr. Herron asked to look at the agreement.

Mr. Markham requested that the attorney of the residents who objected speak on the record on behalf of his clients. Mr. Franta represented the four homeowners who objected to the abandonment of the age restriction for the development. There were

agreements of sale for each of the four individual units and this was basically the agreement should they decide they want to leave which he believed they do. There were performance guarantees along with the agreement as well. It was funded, it was secured and it was the product of hard, good faith negotiation. The individuals having been bought out were now legal owners but Iron Hill Properties was now the equitable owner of those units. Mr. Funk asked if they wanted this to be made part of the agreement. Mr. Herron said it would not be a condition of the rezoning.

The Chair opened the discussion to the public.

John Wessells, a resident of Fountainview, another 55+ community, said if changes were made to this property, what would the guidelines be for the completion of Fountainvew. Mr. Funk did not think this set a precedent and had no real bearing on Fountainview.

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

Mr. Clifton said he would not have supported this is 100% of the residents were not in agreement.

Mr. Morehead said since all of the owners on record were in support, and it was their land, he would support the rezoning. He also thanked the developers for coming to an agreement with the owners.

Mr. Clifton agreed if 100% of the people who invested in the project agree it is acceptable to do the rezoning, then he would support it. However, Mr. Clifton had several caveats: he is disappointed in what did not happen down there, walking trails and other things were to be put in that by contract were not done, and he did not think the marketing was the best. However, with the 100% buy in he would support it.

Mr. Tuttle supported the project.

Mr. Funk would support it but thinks the change in circumstances, including the Charter School right next door, makes it more ideal for a project with no age restrictions on it. He thought in the long haul the people that own the units now will get a much better price by the way the project would be developed.

Ms. Hadden said because all the owners were in support and in keeping with promoting the general welfare and prosperity of the community, she would support it.

Mr. Chapman thought it was commendable that all parties reached an agreement and felt the outcome was positive for all concerned, so he planned to support the rezoning.

Mr. Markham would support the rezoning and thanked everybody for working this out. Since there was already a precedent for this zoning, it was not detrimental to the area.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 13-02.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(ORDINANCE NO. 13-07)

19. 3-B. MAJOR RESUBDIVISION OF A 7.65 ACRE PORTION OF VILLAGE OF TWIN LAKES IN ORDER TO CHANGE THE SITE DESIGN FOR THE PROJECT BY CHANGING THE TWELVE PROPOSED UNITS ALONG NORTH TWIN LAKES BOULEVARD FROM TOWNHOMES TO TWIN HOMES

(RESOLUTION & AGREEMENT SUBMITTED) (SEE ITEM 3-A) TABLED FEBRUARY 25, 2013 AT REQUEST OF DEVELOPER

01:39:30

MOTION BY MR. TUTTLE, SECONDED BY MR. CHAPMAN: THAT ITEM 3-B, MAJOR RESUBDIVISION OF 7.65 ACRE PORTION OF VILLAGE OF TWIN LAKES, BE LIFTED FROM THE TABLE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

MOTION BY MS. HADDEN, SECONDED BY MR. TUTTLE: THAT THE RESOLUTION AND AGREEMENT BE ACCEPTED AS PRESENTED.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(RESOLUTION NO. 13-L)

20. 4. FINANCIAL STATEMENT: *(Ending February 28, 2013)*

01:40:13

Mr. Vitola presented the City's consolidated unaudited Financial Report for the period ending February 28, 2013. Results trailed the budgeted surplus by about $45,000 which was driven primarily by a larger than expected deficit in the Governmental Funds but partially offset by a stronger surplus versus budget in the Enterprise Funds.

The lower tracking on the Governmental side was due to franchise receipts that were usually received in February which still had not been received. Otherwise costs were being controlled well despite early encumbrances in the Governmental Funds. The offsetting positive variance in the Enterprise Funds was being driven by electric receipts which were stronger on both higher volumes and another decrease in wholesale power costs. The cash balance at the end of February was about $33 million which includes $6 million in capital lease finance proceeds which were being held specifically for the Smart Meter Project, and they will roll down as the project completes. The March 2013 Financial Report will be presented at the May 13 Council meeting and the April 2013 Financial Report will be presented at the May 28 Council meeting.

Mr. Morehead asked how we get higher than expected Sewer costs. Mr. Vitola understood we budget our Sewer costs based on biological oxygen demand and suspended solids on the profiles of our customers when in fact those two processes should be decoupled and that process is underway for 2013 and there would be a revised budget in Sewer or at least explanations in the financials as we continue through 2013. Mr. Morehead clarified that the actual cost per volume has gone up because of the content. Ms. Houck confirmed that was correct.

Mr. Funk pointed out that last year the same thing happened and Council was told the City had taken steps to correct the problem. Mr. Vitola understood this was the second year that the budget was not accurate with respect to our purchases from the County. There was no increase for July 2013 in Sewer rates from the County – there was an increase at this time last year but in addition to that increase, the composition of

the flow was not accurately budgeted. He said there was work to be done and it was on his radar.

Mr. Markham said as people conserve they would be using less water, so wouldn't that trend up as we would have more solids as people conserve more in their water. Mr. Vitola said that was what he heard happens as conservation efforts were underway. Mr. Markham concluded that we should look at our water usage and if it is trending down then we should put that in as a calculation in our sewer calculation knowing that solids are going to go up since we know what the water usage is.

Mr. Markham stated that we return funds from the RSA and he wants to see what that number is left because we include it in our cash balance but we committed to return that. This year the number is much smaller but in previous years was in the millions. He always wanted to be able to subtract that out of our cash balance because it is not available to us. Mr. Vitola said we move money from the electric revenue into a liability account to represent the fact that the money is no longer accessible to us as cash. Mr. Markham wants to see that number.

Mr. Chapman asked if Mr. Vitola was in the process of not only understanding the City's historical practices and processes but also identifying areas that needed to be cleaned up or corrected. Mr. Vitola said yes but there was nothing major that jumps out at him as problems. Things look pretty established and running smoothly in the Finance Department. Mr. Chapman recommended rather than piecemealing items like this throughout the rest of the year, if you create some sort of report that goes to City management and could be shared with Council as an overview of what he has seen and some of the minor tweaks he mentioned and would like to recommend to give Council an idea of what he has seen and where the City is headed.

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THE FEBRUARY 28, 2013 FINANCIAL STATEMENT BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

21. <u>5. RECOMMENDATIONS ON CONTRACTS & BIDS</u>:

A. Recommendation on the Award of Contract – Contract 13-04 – The Purchase of One 16 Foot Cut Bat Wing Mower

01:48:31

Ms. Houck reported the recommendation was for a replacement mower in the Parks & Recreation Department. Two sealed bids were received and, after talking to the Chief Mechanic, it was decided not to take the successful bidder up on the trade but to keep the old equipment for spare parts. Funding was available in the Capital Budget and it was therefore recommended to award the contract to Lawn & Golf Supply for a total cost of $79,575.

Mr. Chapman asked about the life expectancy of this type of equipment. Ms. Houck said the equipment was heavily used and had an expected life of ten years. Mr. Chapman asked the difference between the Jacobsen and the Toro. Ms Houck said we have had both of them in the past and tend to have more Jacobsen equipment in the mowing fleet and the Parks Department looked at both of them. She also stated that the equipment is used for mowing parks and traffic right-of-ways.

Ms. Houck confirmed that the parts from the old unit were compatible with the new mower.

MOTION BY MR. CLIFTON, SECONDED BY MR. MOREHEAD: THAT CONTRACT NO. 13-04, THE PURCHASE OF ONE 16 FOOT CUT BAT WING MOWER, BE AWARDED TO LAWN & GOLF SUPPLY CO., INC. FOR A TOTAL COST OF $79,575.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

A. 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

01:52:00

Ms. Bensley read Bill 13-08 by title only.

Ms. Houck reported this came about as a result of experience with a disabled person who was a victim and was unable to pay the required permit fee. Captain Potts made the recommendation to make this change which was being funded by State Victims' Compensation Fund. The fee was charged annually through the City.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 13-08.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(ORDINANCE NO. 13-08)

23. 6-B. 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

01:54:59

(NOTE: The following is the public hearing for Bills 13-09 (6-B), 13-10 (6-C) and the major subdivision (7-A).)

Ms. Bensley read Bill 13-09 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 13-09.

(ORDINANCE NO. 13-09)

Lisa Goodman, Esq. represented AUDG Holdings, LLC. Handouts of the Power Point presentation were distributed to Council. The project was advertised as 168 units and was 168 units at the Planning Commission. The revised plans worked on after the Planning Commission recommendation should show 169 units.

The project required site plan approval for a rezoning with a Comprehensive Plan amendment and subdivision approval for a project on either side of Suburban Plaza, the north site and the south site. The property was being developed pursuant to a long-term lease from the land owner. Ms. Goodman referred to visuals. The north site was 10.99 acres currently zoned MOR (industrial) and adjoined DuPont land also zoned industrial, Christina Mill Apartments zoned RM (the zoning being sought) and Millstone Plaza also zoned RM. Suburban Plaza itself was zoned BC.

The North site would offer two main housing types – a lodge building (walk-up flats) and cottages (duplexes) grouped in pods of four total units, all with front porches and no back yard. At Planning Commission this site had 107 total units with a bed count of 326. This plan had 108 with a bed count of 323. The Planning Commission suggested less four bedroom units and more one and two bedroom units. An adjustment was made by removing two four-bedroom units and replaced those with

three units, a one bedroom and two two-bedroom units. The dwelling unit per acre on the North site was 9.83. It was Code compliant as to parking and had 3.45 acres of open space.

The South site was not changed from the Planning Commission submission. It had a total of 61 units, was over 13 acres (included 4.7 acres of the private portion of Suburban Drive), was also zoned MOR and they proposed rezoning it to RM except for the portion of Suburban Drive which was proposed to conform to the rest of Suburban Plaza to zone that BC. Dwelling units per acre in this section of the City were 7.01 and was actually 4.45 overall. Ms. Goodman referred to visuals of a section being leased by the applicant in the County which would be preserved. One lodge unit was being proposed containing 33 walk-up flats and 28 duplexes, so the total on the southern site was 274 beds making the total of both sites 597 beds. Ms Goodman added that the applicant agreed with the Planning Commission recommendation to enter into a deed restriction to restrict this to the equivalent of one person per bedroom. The southern site had 183 parking spaces which was above the required 171 spaces.

Ms. Goodman reviewed the proposed amenities which included a clubhouse which will include a coffee area, meeting rooms, a catering kitchen, ping pong and pool tables, conversation and TV areas, study rooms, a pool, outdoor cooking areas, seating areas, and small pocket parks. Abundant landscaping would be provided.

Ms. Goodman referenced Mr. Morehead's conversation at the beginning of the meeting about the difference between going to the Board of Adjustment and coming to Council for site plan approval. She advised that the Board of Adjustment had a job set up by the State Code and advised that adjustments would have to be made to the State Code if the City really wanted to make big changes to the Board. The criteria were set by the State in case law about how to obtain variances. The City's process in its Code is intended to bring projects that are unique. In order to encourage that sort of uniqueness the Code says if you come to us with a project that has distinctiveness and excellent site arrangement and design including some combination of (5 things later) and you can vary some of the Code requirements you might otherwise go to the Board of Adjustment for. This gives Council the chance to look at something more holistically and is clearly designed for large projects. They thought this was a perfect fit to bring to Council. The five elements for Council consideration: **common open space** – 10.66 acres plus both indoor and outdoor common areas, **unique treatment of parking facilities** – hidden parking spaces behind the buildings are provided; **outstanding architectural design** –lodge and cottage buildings are unique and not something seen in Newark; **association with the natural environment including landscaping** – project would be surrounded by an additional undeveloped 7 acre area, 5 acres of which are in the County, which was a mature, protected area that would serve as a buffer; **relationship to the neighborhood and the community** – this project creates a walkable community with the ability to shop where you live.

Ms. Goodman said the thought was this project would attract people who work at the tech park as well as the average percentage of students. A shuttle service was proposed to run two shuttles on a regular route from the property around South campus and the tech park and Amtrak and into town and back.

Ms. Goodman explained the only modification needed in the development agreement was to strike the second paragraph of number 17 which says "acknowledges the recommendation that the Planning Commission made" as they have done a fair amount of that regarding changing up some of the units.

As to the rezoning they think this is consistent with nearby properties, was not detrimental to nearby properties – it was very consistent with the other apartment complexes nearby, and was certainly beneficial to the shopping center and the residents nearby; does not conflict with the development pattern in the nearby area; was consistent with the development of Elkton Road; they were seeking Comp Plan amendment because it currently says manufacturing which is consistent with its zoning.

Mr. Clifton referred to the plan which showed an egress for the North and South sides and asked if there was a second egress that was going to be accessible by first responders. Mr. Charma, Landmark JCM, reported there were two access ways for emergency response, one running on the truck service drive behind the Acme up to the North section and also one that came in by the WSFS property to the South section. Mr. Clifton asked if those accesses would be restricted to first responders. Mr. Charma stated the North section access way would be restricted, but the South section access was a public access way.

Mr. Clifton asked if the trees shown in the center median were going to happen with this plan. Mr. Charma said there were some trees there on the median currently.

Ms. Hadden asked the regulation for building height because it said the lodge buildings would be taller than 35 feet in height. Ms. Goodman advised the regulation was 35 feet and three stories and these will not seek to exceed the story amount. Mr. Sigmund from Niles, Bowman & Associates indicated that the lodge buildings at the highest point would be 44-48 feet to the top of the roof.

Ms. Hadden noted RM zoning required a minimum side to side distance between buildings of 25 feet and several of the cottages in both the northern and southern sections measure only 20 feet apart. Ms. Goodman said these were some adjustments that going through the site plan approval process allowed the developer to propose to Council.

Ms. Hadden asked who owned the road as of today. Mr. Charma reported the road was privately owned and would remain that way until such time as a public need is demonstrated and it was brought to the City's attention which will then be brought to DelDOT's attention. Ms. Hadden questioned whether the traffic controls suggested be installed – did that change now that it is a private road? Mr. Charma said the traffic controls as suggested would go in at the time when they are warranted which currently were not met yet. The improvements would be paid by the developer by agreement of the various parties who have ownership interest and leases in the land – it will not be the City.

Mr. Morehead believed the way the intersection was configured right now with the left turn into WSFS and into the South side access road having automatic priority over the other traffic – with hundreds of people added to that traffic he thought that would be a bad situation. Mr. Clifton preferred to have a four-way stop there.

Ms. Hadden observed there appeared to be no parking on the North side for guests – it appeared there was just enough parking for the residents. Ms. Goodman said not every resident will have a car and there will be built-in parking. There was extra parking on the other side and they were confident they would not have overflow parking issues.

Ms. Hadden stated landscaping should utilize native plants. Mr. Charma said they recommended all native species because they would survive.

Mr. Morehead noted the mention of walk-up flats, he understood we were trying to market to some seniors, families, etc. and wanted to know if elevators were planned. Ms. Goodman indicate that no elevators were planned in the lodge units, but the other units were back to back duplexes which would offer plenty of choices without stairs to get to the units.

Mr. Morehead, in reference to the requirements for RM, his expectation when we go for a variance, something like the 12 units per building, we would do something reasonable like 14 or 16, maybe 17 units per building – we're looking at 33, 27, 27, 24 and 19. Ms. Goodman said when seeking a variance, it was typically expected that applicants would seek as small a variance as possible. She said this was a different process. The site plan approval was put in place to say the City wanted the best in site design, distinctiveness, and excellence. These larger buildings were more distinctive than other plans brought to Council and included an amenity rich environment.

Mr. Morehead stated that the Planning Commission sent this plan forward with four recommendations: increase the number of one and two bedroom units, reduce the number of units in the lodges, which he interpreted as a reduction in head count was addressed by half a percent; deed restrict the number of occupants to one person per bedroom, which was addressed; and complete the promised amenities prior to the issuance of the final certificate of occupancy, which was addressed in the agreement.

Mr. Markham asked if there is any guarantee that the woodland area that is in the County will stay wooded. Ms. Goodman stated it is in the wetlands and is a protected habitat. Mr. Markham asked how high Washington House is since it is the tallest on Main Street to compare what is being proposed here. Ms. Feeney Roser stated that Washington House is 64 feet high. Mr. Markham stated that in comparison, we do have other heights that are similar to the applicants. Mr. Markham made an additional request: should Council approve this plan, can they ask for after built traffic counts so we know what really happens when we approve the plan. It is a simple thing but gives Council hard numbers. Mr. Funk said it was in our prerogative to ask for those. Mr. Funk asked if the shuttle was a university bus. Ms. Goodman stated that the developers would have their own shuttle and be providing private transportation.

Mr. Chapman asked if the height of the lodge buildings was brought down to the Code compliant 35 feet, what would that do to total bed adjustment. Mr. Charma said architecturally with this type of building you would end up with a roof with the wrong pitch, a squatty looking building that would be out of proportion. The height had nothing to do with the number of rooms in the building. They are looking at design and are not getting an extra floor by changing the design. Ms. Goodman added that with all of the extra electrical and HVAC infrastructure, that adds to the needed height space.

The Chair opened the discussion to the public.

John Wessels, a resident of Fountainview, referred to visuals – the green area within the County that was part of the wetlands, was there a need to put some sort of easement on the property to guarantee that it would remain green area. Mr. Funk said it was not in the City so we could not do that.

Brett Zingarelli, 1005 Barksdale Road, questioned the shuttle service and if there was enough capacity to serve the expected population. He did not believe two shuttles would be enough.

Paul Baumbach, 38 Country Hills Drive, applauded Ms. Hadden for raising the question of 20 foot versus 25 foot difference. He would want to have listed what the other things that are changes from the normal rules they are asking for and exactly what those exceptions are.

Jessica Graham, UD Graduate Student Senate, found the design very attractive. On the subject of connectivity, she has noticed regarding the psychology of walking that people get out of the bus and then walk on the road instead of walking on the Pomeroy Trail, which means people are not used to having rights of way for walking and biking. In a development like this if it is going to be truly walkable, she can't tell from the plans where that walking is happening. She cannot tell where the walking within the community connects to Home Depot and Applebees. She stated that there have to be connections, and they have to be visible, otherwise people will not walk where they are supposed to and they will be dissuaded from walking.

Chris Locke, 604 Cambridge Drive, stated he was somewhat confused. The Zoning Code was just amended to advocate two bedroom apartments and this project with about 169 units, 136 units were four or five bedroom. If this was approved did he sense that we are now changing the agenda we talked about six or seven months ago that we want to advocate more two bedroom and smaller apartments. Mr. Clifton stated that this request is for RM zoning, and the two-bedroom units being talked about downtown were BB, which are different zoning.

In regard to questions about footage between the buildings Mr. Charma explained with this kind of development, a dense packed cluster development, was designed to minimize land use. The whole community was designed to be a more compact neo traditional design to bring density back into the community and minimize the amount of land use. Regarding walkability, that was one of the comments DelDOT brought out early on when the City forwarded the plan to them for review. The North section sidewalk comes down and connects to the northerly part of the main shopping center body. Similarly with the South parcel crossing Christina Parkway Extended, pedestrians come into the southerly end of the shopping center and it ties into the sidewalk giving easy access into the shopping center. There is also a pedestrian path on Christina Parkway extended which will take people out to Elkton Road, so the Developer did focus on connectivity and felt with the addition of the residential element, it truly was a neighborhood design.

Mr. Markham would support the rezoning because with the amendment to the Comprehensive Plan it would conform to the requirements, did not have a negative impact on the adjacent properties and made the zoning more consistent in that area.

Mr. Chapman had numerous concerns and said there was a lot of ambiguity about what the effects will be after the project is completed and the possible effects will be remediated such as additional traffic directions, walkways and lighting the walkways and where will those go other than just the sidewalk. The likelihood of these every being anything other than student housing was low regardless of the bed count, the project was too big in terms of density. He foresaw a lot of issues and many were spoken to including the connectivity, the shuttle service. It looked nice and was a nice idea. He would look for a split where one campus was directed toward student housing and one was directed more toward residential condo type housing for singles or young professionals or would be taking a shuttle to the MARC train service. While this was close, it was not there enough to him to warrant a rezoning.

Ms. Hadden will support the rezoning because she felt the project fits with the Comp Plan regarding lessening congestion in the streets by providing an urban land development and utilization design with pedestrian access to nearby shopping and bus lines and also shuttle use thereby being somewhat green by design.

Mr. Funk thought it was a perfectly designed project and he was not convinced it would be all students. The project was ideal to attract the people who are going to work at Bloom and attract young adults. There are very few students in the two projects down the road. Newark had nothing like this with the amenities and he thought it was sharp. He was glad they brought this to us.

Mr. Tuttle supported the rezoning and the amendment to the Comprehensive Plan. The current MOR zoning was an artifact that dates back to before the Home Depot project was approved because it was originally zoned MOR. When it was brought forward the only thing that got changed was the actual footprint of the Home Depot and its parking lot and nobody thought about how the rest of it may or may not fit over time. He thinks this juxtaposition of housing with what is really a full service shopping center was attractive and thought it might attract more mature students.

Mr. Clifton liked the project. He visited several similar projects new urbanist communities in Florida and they were great since you could walk to your core amenities. In looking at the overall plan it was great new urbanist plan and was downzoned. He thought we did the same thing for Home Depot and was consistent with what we've done in the area which worked very well. He said MOR was not a zoning that was going to work down there and he was not sure we would want it to and he did agree if there is a project that has a strong chance of being something other than all undergraduates, by looking at the projects around it - this is probably it. If it were all students, the fact that the back yards were limited he thought that limited the problems that come with the students. It had great open space by design and requirement and when you look at the height, you have a six-story hotel down the street. Regarding traffic, he heard the same concerns on Home Depot. When he goes to the shopping

center, he does not know that Home Depot impacts traffic much at all if any. He thought this was a great project and well worth supporting.

Mr. Morehead had no issue with rezoning from MOR because he thought we were not saving the land for that MOR any longer since the STAR campus has somewhat taken over that hope and dream. He has several problems with the project. He would not want to live in the north part because trying to walk to the south part where the amenities are and cross Christina Parkway would be difficult. The walk through the stores if fine but crossing Christina Parkway as currently configured would be horrible. He had no problem with the RM zoning being requested other than if you are requesting a zoning, come reasonably close to what the requirements are – don't go three times over and say it's almost there. He felt at that point we may as well not have zoning requirements. He would support the rezoning away from MOR but would not be supporting 7A to this plan. He thinks the concept is solid other than he questioned putting student housing that far out and he thinks the architecture is out of place.

Question on the Motion for 6-B was called.

MOTION PASSED. VOTE: 6 to 1.

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

24. 6-C. 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 *(SEE ITEMS 6-B AND 7-A)*

02:54:47

(NOTE: *The public hearing for Bill 13-10 was held under item #23.)*

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 13-10.

MOTION PASSED. VOTE: 6 to 1.

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

(ORDINANCE NO. 13-10)

25. 7-A. Request of AUDG Holdings, LLC for the Major Subdivision of 24.39 Acres of the Remaining Lands of the Pauline A. Mayer, Inc. Properties at Suburban Plaza In Order to Construct 168 Lodge and Cottage Cluster Style Apartment Units on 19.69 Acres to be Known as The Cottages at the Plaza *(Resolution & Agreement Submitted) (See Items 6-B and 6-C)*

02:55:00

AMENDMENT BY MR. TUTTLE, SECONDED BY MR. CLIFTON: TO DELETE THE SECOND PARAGRAPHS OF CONDITION L IN THE RESOLUTION AND SECTION 17 IN THE AGREEMENT AND TO AMEND THE NUMBER OF LODGE AND COTTAGE CLUSTER STYLE APARTMENT UNITS IN THE AGREEMENT TO 169.

AMENDMENT PASSED. VOTE: 5 to 2.

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

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

MOTION AS AMENDED PASSED. VOTE: 5 to 2.

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

(RESOLUTION NO. 13-M)

26. 6-D. 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 *(SEE ITEM 7-B, 7-C AND 7-D)*

02:58:25

(NOTE: *The following is the public hearing for Bill 13-11 (6-D), the major subdivision (7-B) and the special use permits (7-C & 7-D).)*

Ms. Bensley read Bill 13-11 by title only.

Lisa Goodman, Esq., represented Atlantic Realty Company. She introduced David A. Ross, President, who presented their intentions for the project.

Mr. Ross gave a brief introduction of Atlantic Realty Company who planned to pursue the redevelopment of Newark Shopping Center. He said the center which dated back to 1955 was in need of substantial renovation. The budget to invest in the center exceeded $10 million. Signage was outdated, there was no landscaping and there were no pedestrian connections. One of the most difficult and problematic components of the center was that there was head-in parking to the retail store fronts. They would reinvest in the parking lot and create better drive outs. Based on the deterioration there was a need to figure out an investment plan that will save the center, reinvigorate it and make it good for another 60 years, and that was their goal.

Mr. Ross referenced visuals. The Pomeroy Trail was a big asset to the center. They could provide a pedestrian friendly connection to the trail leading back to the store fronts. The area along Main Street would be converted to a free-standing bank facility which would provide architecture along Main Street and also provide a barrier for the students currently parking in the lot to not park there unless doing business at the center. Between the retail and the five acres they were looking to incorporate a 220-unit apartment project that would accommodate a capped occupancy of 720 unrelated residents and then a four-story parking structure that would be adjacent to the railroad.

Ms. Goodman addressed the legal standards. The zoning was proposed to become BB from commercial (BC was the current zoning). The applicant was seeking two Special Use Permits, one to permit residential units above the first-floor parking and parking to the rear and the parking was located as a physical and sound barrier from the railroad. There was no adverse health or safety impact on the neighborhood, was not detrimental or injurious and was not in conflict with the Comp Plan. The other Special Use Permit was for the drive-through portion of the bank, which was a good fit for the property where it was located and was constructed in such way as not to block or cause conflicting movements in the entrance or exit off of Main Street. The zoning would be much more consistent with neighboring properties. The plan is also consistent with the Comprehensive Plan.

Mr. Clifton asked how this conformed with BB zoning. Ms. Goodman responded that BB is mixed use and we are used to seeing BB on Main Street as commercial or office on the first floor and residential above. In some instances we have BB that is parking on the first floor and residential above. Here we have commercial in a portion of the property and another section of the property that is proposed to be parking on the first floor and residential above. Overall a mixed use was proposed for the BB site.

Mr. Clifton asked if this would be two different sites. Ms. Goodman replied it would be two different parcels. It was being approved as one project. However, a proposed property line was being struck between the residential and the commercial and it was anticipated that a separate builder would build the residential and probably own it as well. Mr. Clifton was confused regarding the fact that if there were two parcels, how could the shopping center portion stand alone as a BB project. Ms. Goodman said as it is approved here, it is one project. It could be sold and owned by separate owners but, because it is being approved all as one project, it is not going to stand alone. While the rear parcel may be sold, it is still approved as one plan and that plan runs with both parcels.

Mr. Ross added they intended that the facades stay the same, that they were maintained appropriately, they would be maintaining all the access ways and wanted the uses on the first floor in the front of the residential building to have community-related uses. They did not believe other competing retail should be placed there. Ms. Goodman added that the shopping center stood alone so if they were coming in just to rezone the commercial portion, it could be BB. BB can be just commercial and does not require residential. They were seeking a Special Use Permit to allow the residential to BB. Even looked at as two separate projects, they both stand alone because the rear portion has parking on the first floor and residential above and the separate portion which is just commercial, both conform to BB.

Ms. Hadden said the DNP Design Committee recommended the approval with a caveat, specifically, the parking lot existing between the street and commercial buildings does not meet the design guidelines. She asked what guidelines are these.

Ms. Feeney Roser said the Design Committee as part of the DNP developed voluntary guidelines for development downtown but they were voluntary and while it is true there was a lot of parking between the buildings they did note that the bank was brought up to the sidewalk which does block some of that and they also commented to the connection to the trail being a good thing so they recommended approval of it noting that it is not typically what they see.

Ms. Hadden asked regarding the traffic signal at the Chapel Street entrance, if it is anticipated there will be decreased traffic as a result of this project, why does the developer feel the need for a street light there.

Mr. Ross said one of the difficulties with the center is that it is a very restricted access, very narrow frontage, which is not customary for community centers of this type. As a result of that, he thought it was very important to have good ingress and egress into the center. It was for safety reasons as well as accessibility. They will not push for a traffic signal unless warranted. If it is warranted and it is not funded by DelDOT, Atlantic Realty will pay the cost associated with it.

Ms. Hadden noted Washington House was the most dense development in the BB zone and offered owner occupancy as part of the comprehensive plan and was deed restricted to no more than 2 unrelated tenants per unit. They have 12 units less per acre than this development. To her the Newark Shopping Center project might be promoting undue concentration of population with over 700 possible tenants. She was concerned about the density. Ms. Goodman said there were two separate issues here. One was the dwelling units per acre and the other was the number of people. When Council encouraged the provision of the building of two-bedroom units, there comes a higher dwelling unit per acre number for the same amount of bedrooms that there would have been if they were four-bedroom units instead. Mr. Ross said technically they could create a two unit condominium on the property where they had the footprint of the residential building as one condominium. He said at the Planning Commission there was a discussion that the property should be limited to 180 units. There was also discussion about restricted occupancy. They believe that at 180 units and 2 bedrooms, not applying any further restricted occupancy except two unrelated individuals in a bedroom they would come up 720 tenants based on 180 units. They thought there was a good opportunity to continue to encourage young professionals as well as retirees.

Ms. Hadden said caution seemed to be reflected in the verbiage of the Comp Plan regarding careful security of additional apartments downtown and the concern is echoed by the Newark Police Department, citing increased population and the residential component's location between an active railroad line and the rear of commercial properties. She asked what security measures would be in place for the safety of tenants both in the parking garage and in the units. Mr. Ross replied the parking garage would be controlled access for residents. Guest parking was provided outside at the shopping center level where it connects with the residential property. There will be no outside access to the courtyard, with the exception of emergency access, and fencing and screening will be provided to protect the property from the railroad line.

Mr. Chapman asked what attempts were made to find addition ingress and egress to the property. Mr. Ross said attempts were made over several years through the acquisition of additional land at a point where it would jeopardize the investment in the project. They have $10 million to invest in the project. They believe if this center does not get pedestrian connections, landscaping and redone so that it meets ADA requirements, it will continue to be a problem, so that is where they decided to focus their funding. Attempted locations and issues with availability and pricing that were found during that search process were discussed.

Mr. Chapman asked how much of the $10 million was tied to the 700 beds – Mr. Ross replied zero. Mr. Ross said that was not part of the investment in the center.

Mr. Chapman thought the redesign of the shopping center, parking spaces, landscaping, and the bank at the front made sense. What he disagreed with was the statement that traffic volume was going to increase by the shopping center now being more attractive to full-time additional tenants. He asked where the numbers came from for no additional traffic volume, where the cars would flow, and what else can be added for logical traffic flow. Mr. Ross said it was investigated for years, not just by them. They were trying to keep important viable pieces of the community asset, one being the theater use. The theater told Mid Atlantic that with the commitment to a long-term lease and with an investment they will make in terms of providing allowance they are prepared to upgrade their equipment to digital equipment.

Mr. Chapman asked if the financing for the upgrading and updating of the shopping center is contingent upon the proposed replacement of the bowling alley with 700 beds. Mr. Ross said the financing ran today through 2016, and Mid-Atlantic and their financial partner were prepared to move forward immediately with the construction and reconstruction of the shopping center done in multiple phases so all businesses can continuously operate. That will happen in advance of occupancy of the residential property.

Ms. Goodman said her firm was involved with Mid-Atlantic's predecessor who tried very hard to get better access to the center. The problem was one whole side was not available due to the railroad and a second side was somewhat hemmed in at the Pomeroy Trail side, so the concentration was on Main Street. The answer was that there was nothing to buy since nobody would sell. They spent the better part of two years trying to crack the access issue and were unsuccessful.

Mr. Funk reported he had been talking to DelDOT about moving the new traffic signals on Main Street from where the buses come out near Bing's Bakery to one of the shopping center entrances, which would allow people to come out of the center and go down Farmer's Lane. DelDOT has not yet responded.

Mr. Clifton addressed the density issue. The usable space for the residential component was five acres, not the entire shopping center. University Courtyard was just over 20 acres with 288 units and 880 beds. This was over 700 beds on five acres and was very dense. While the developer said the target market was not students, part of this reason he did not agree with this statement was because it was not restricted to two unrelated tenants. Regarding no increased traffic, he said if students were not the

market, not everybody would be able to walk to work. Mr. Ross responded that the cap was 720 unrelated occupants. They looked hard at the issue and economically required a substantial investment. The $10 million did not get offset by the rents they charge in the center, but rather from two sources: leasing out the center at market rates and attracting a developer who will abide by their restrictions and conditions to build a high-quality project. Structured parking was not cheap to build. They were trying to make the project very walkable and very usable.

Mr. Morehead was pleased to hear the rental component of the housing was related to the financing of the project because he thought he heard Mr. Chapman ask that exact question and twice you said no. Mr. Ross explained he thought he heard Mr. Chapman say are you prepared to invest the $10 million necessary ahead of the construction of the apartment project. Mr. Chapman said he wanted clarification as to breaking down the $10 million financing for the project. Was the revitalization and redesign and upgrade of the shopping center portion of this proposal – the $10 million figure was not solely absorbed by the cost of upgrading and updating this shopping center parcel but a significant portion of that $10 million will go toward the rebuilding of the housing portion behind the shopping center. Mr. Ross replied that the $10 million was being invested in the shopping center. Mr. Markham thought the key was the apartments were what was used as part of the payback of the loan. Part two of Mr. Chapman's initial question was, would we get an updated Newark Shopping Center without 700 beds replacing the bowling alley. Mr. Ross said it would require both uses and the updated shopping center will occur prior to the completion of the apartments. Mr. Funk added they need the cash flow from the rents to pay back the $10 million loan.

Mr. Morehead said the Planning Director told Council the Developer would sell the property, and there was a transfer value to the City that was included in the first year. The plan was to sell the property, not rent the property. Mr. Ross said correct, they would sell the residential component with covenants, conditions and restrictions.

Mr. Markham asked about the developer's success in other areas. Mr. Ross referenced a retail center in Reston, VA, that lost its anchor. When they renovated the center, it was fully occupied upon its completion. Mr. Markham said the Newark Shopping Center had under a 50% occupancy rate right now and that he hoped the center would very vibrant with 100% occupancy and stated that the applicant had that kind of success.

Mr. Morehead asked if the development could be done if Lot 1A stayed BC zoning and if that was financially impacting it. Ms. Goodman said because they were dealing with a center that was developed under an older Code and were making changes to it, it was conceivable they would have to go back and get some relief and changes that by rezoning the whole property to BB with the current BB requirements that we would not have to do. Ms. Goodman answered the question as a qualified yes, but the applicant would have to go back and look hard at what special relief that might require. Mr. Markham asked if BB zoning was needed for the size of the food store being considered. Ms. Goodman said possibly and that BB zoning gave the biggest flexibility in terms of potential new tenants, the residential component, and the additional construction. Mr. Morehead said if Council gave BB for Lot 1A they would have 11 acres they could knock down and build anything. Ms. Goodman said you could not build any residential on BB without a special use permit.

Mr. Morehead stated there were several references about head-in parking in front of the stores. He was surprised to see the head-in parking between buildings B and C between the parking lot and the residential, which is the one access road to the residential. Mr. Ross referred to the visual. They angled the parking and considered that comment, but they think it is important to create as many fronts to this property as possible to make it pedestrian and customer attractive. Ms. Goodman stated that the angled parking was much less dangerous than the head in. Mr. Morehead pointed out that the plan showed 90 degree head-in parking. Ryan David with Urban Engineering and Associates said the fire code required a certain amount of distance between the building and the parking spaces, so when they got shifted back in order to meet the number of parking spaces, a few were rotated to head-in parking. The plan was

reconfigured to meet the fire prevention comments. Mr. David said that was not the only road that accesses to the residential, there were three: around the back of the two buildings or through the middle.

Mr. David also clarified that the traffic numbers were generated as if the plaza was fully occupied so the comparison from the pre-developed condition to the post-developed condition would consider the existing condition to be fully occupied. DelDOT acknowledged the traffic count and that there is a slight reduction based on the uses. DelDOT supported a letter of no objection to the entrances, so DelDOT was not requesting a change to the entrances.

Mr. Chapman questioned the number of handicapped spaces for the parking garage. Mr. David explained the total number of handicapped spaces was based on the total number of parking spaces proposed. Additional handicapped spaces were also in the front of the building on the surface level.

Marilyn Minster from Minster's Jewelers in the Newark Shopping Center said she had been in the center for 58 years and has seen the best and the worst of the center over the years. She said the congestion was worst when people were going home from work and used the shopping center as a cut through. She said Mid-Atlantic Realty has been the only firm to act with integrity since the original owners. She felt it would be good for the City to develop the east end of town. She noted that the community has been very loyal to Minster's.

Donna Papanicolas and her husband Akillas own the Mediterranean Grill in the Newark Shopping Center have been tenants at the center for about three years and said about 13 businesses have left since they have been there. They said they know what the center has been in the past and want it back. They said they need the development to happen which will not without the apartments.

John Horner, a Washington House resident, supported the project with one exception. He thought Council should following the Planning Commission's recommendation to deed restrict the apartments to two unrelated people per unit and thought this would help encourage a broader adult demographic to live downtown and help to keep it from becoming a student dormitory.

Bing Streets, a Newark resident, offered some ideas for redevelopment of the shopping center which involved moving McDonald's and the bowling alley, elevating a section and making a parking lot underneath and putting all the merchants on the second floor.

Karen Taylor, Newark Natural Foods, said the housing development would bring success to this and she believed the South Main Street businesses would see that success because of the residential component to support them. She thought this fit in the shopping center and would increase foot traffic.

Chris Locke, 604 Cambridge Drive, stated he was speaking as a developer, business owner and resident. He commented that the bank building there would not enhance what could be at that site. One of the great successes of Main Street from Chapel Street up towards Main Campus was the consolidation of commercial space with residential apartments on the second and third floor. He said putting a bank there meant losing the most valuable piece of real estate which was the frontage of Main Street. The shopping center was 170,000 square foot shopping center and with $10 million in renovations, that came out to $60 per square foot which he did not see as a tremendous renovation. He said if they came forward as a developer with a project having this density of 44 units, they would be laughed at and he thought that needed to be considered. The Special Use Permit as Mr. Clifton stated was on a five acre parcel, you could not really add it. Regarding Chapel Street, he lived here since 1976 and Chapel Street was horrible. For an engineer to say we are not going to increase traffic by having the shopping center go from 50% to 100% and having it go to a 720 bed apartment, he thought was unrealistic. His understanding of DelDOT's comments on Chapel Street was that they cannot do anything because of the access with the CSX bridge. He stated that Atlantic Realty never contacted Lang Development, owners of

Pomeroy Station, to discuss access. The last negotiations they had, they were willing to give them access. Mr. Locke added this was an outside developer who would flip the five-acre property and we had no idea who the operator would be of the largest apartment complex in the City. He said make them do the renovation first before giving them the building permit for the apartment complex.

Mr. Chapman asked Mr. Locke to specify the area that would be available as a possible ingress and egress. Mr. Funk said they would have to buy Cardio Kinetics to make that work.

Jessica Graham, Graduate Student Senate liaison, got student feedback about this development. The two requests she heard were to remember that students were hoping with these redevelopments that there would still be recreational opportunities for them off campus. There was fair bit of sadness about the bowling alley and was something that under 21 year olds can do.

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

Mr. Clifton asked if there was an issue with the water infrastructure here. As he understood it, if they do the slightest bit of water main flushing in that area, it sets off the alarm for low pressure for the sprinkler systems. Ms. Feeney Roser said there were conversations with the developer regarding water testing who acknowledged the responsibility to make sure the water supply was adequate.

Mr. David said they had flow tests done on the hydrants internal to the project and there was a dead end water line that runs up to the project, so they intended to upgrade the system to get the appropriate pressure.

Mr. Chapman proposed a deed restriction of no more than two unrelated tenants per unit so with 220 units there would be a maximum occupancy of 440. Mr. Clifton said this was the only safety valve for getting the demographics desired for the development and protect the City. Their job was to determine if it was financially viable.

Mr. Markham asked if the applicant would build at that restriction. There was no response to the question.

AMENDMENT BY MR. CLIFTON, SECONDED BY MR. CHAPMAN: AMEND SECTION A, OF THE RESOLUTION BY CHANGING THE WORDING FROM TWO UNRELATED INDIVIDUALS PER *BEDROOM* TO A MAXIMUM OF TWO UNRELATED INDIVIDUALS PER *UNIT* AND ELIMINATING THE REFERENCE TO AN OVERALL CAP.

MOTION PASSED. VOTE: 6 to 1.

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

Mr. Morehead had no problem with the bank component, but thought it was a waste of space. He thought the amendment restricting the tenants to two unrelated per unit was the right thing to do. The shopping center needs all the help possible and he was pleased the developer was willing to pay for the digital conversion for the theater. With the head count limitation he would support the project.

Mr. Clifton reported he received phone calls and emails both pro and con. He liked the idea and supported the maximum unrelated but equally important was this was a huge precedent to be setting with that size property in the back of a shopping center. He was not aware of other shopping centers done by Atlantic where they had to have a residential component to make it work. Mr. Clifton questioned what does the City get out of this – higher taxes and more utility income, but also a decrease in floor space in businesses meaning lower employment, and losing a bowling alley thereby eliminating one bit of family-oriented activity. The density was still a big issue for him and he was

concerned that the BB still requires a Special Use Permit but he thought we had a clear track record where he did not know that Council ever turned one down. It was almost going to be a by-right project in the future when they want to change something. He did not want to be held hostage by saying there has to be a residential component or we cannot afford to do it – he thought the interest was not in the shopping center, but in the residential component and he could not support this project.

Mr. Tuttle thought this was a refreshing proposal and the adjustment to the residence numbers of unrelated persons was appropriate to make, otherwise the demographics would not change. He thought it was difficult to have just approved adding a residential component to an area of town with a shopping center and not approve this component which would add residential to an existing shopping center. With the adjustment in unrelated residents, assuming that was financially viable, he had no other problem with the proposal.

Mr. Funk said the shopping center needed to be fixed and what they proposed does that and the residential portion of the project was necessary to be able to do it financially but also because if the shopping center is built up, the foot traffic and the apartment building made sense and he was voting for the project.

Ms. Hadden had serious concerns regarding excessive concentration of population. However, with the head count limitation, she supported all Special Use Permits for the project because she felt it fit with the Comprehensive Plan regarding providing a mix of commercial and residential uses on the same property in spite of the property line strike as well as contributing overall to the quality of the downtown economic and aesthetic environment.

Mr. Chapman started with the amendment to deed restrict the occupants per unit. This would provide less of a student population yet more of a young professional commuter population with increased traffic in and out of the shopping center at peak times, further deepening traffic issues. As far as the rezoning, he did not think it had to be BB for it to be a viable shopping center and did not believe a residential component needed to be part of the revitalization of the center. He felt it was for investment purposes only so the project can be repackaged as an investment vehicle and profit center. If there was an additional entrance/exit to the shopping center specifically for the residential component, he would lean toward approving. He did not feel the City was being dealt with honestly by the developers and did not think the project was good enough. Although the updating of the shopping center was something he wanted for the City, he could not support the project's Special Use Permit to allow residential uses and make the traffic situation worse.

Mr. Markham said the shopping center was in his district and it needed help. It was on Main Street and was in the heart of the City and was different than any other place in the City. Planners tell you to put the people downtown and that has been done on Main Street by putting people in the apartments above the retail and the City was alive at night. We don't have a study about how many apartments we need in the City – we don't know the number and the Planning Director is going to put out an RFP to figure out what that number is. He wondered if the project could have been done differently, removing that parcel line so we had more investment in the City that showed they were not going to flip the project but we did not have that conversation. He did feel they have a track record and hope they can do this project and make it work with the number of people per apartment. He did not know how to fix the traffic on Chapel Street. Mr. Funk said the solution to Chapel Street was getting DelDOT to go under the other trestle which they refused to do because they put that high definition line right underneath the sidewalk. He planned to support the rezoning and helped a retail food store could be brought in as an anchor which he thought would help everybody downtown.

Mr. Morehead said he wanted to change his reasoning. Mr. Chapman pointed out the two-edged sword that he had not previously considered. Mr. Morehead felt he was exactly right – the City would get exactly what they want and that would make the traffic much more difficult. Getting professionals instead of students would create more

peak hour traffic. He thought that was a serious enough consideration given the limitation on the access to the property, and he would not support it.

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 13-11.

MOTION PASSED. VOTE: 4 to 3.

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

(ORDINANCE NO. 13-11)

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

A. Request of AUDG Holdings, LLC for the Major Subdivision of 24.39 Acres of the Remaining Lands of the Pauline A. Mayer, Inc. Properties at Suburban Plaza In Order to Construct 168 Lodge and Cottage Cluster Style Apartment Units on 19.69 Acres to be Known as The Cottages at the Plaza ***(Resolution & Agreement Submitted) (See Items 6-B and 6-C)***

(SEE ITEM #25*.)*

28. 7-B. REQUEST OF ATLANTIC REALTY COMPANIES, INC. FOR THE MAJOR SUBDIVISION OF 16.4479 ACRES LOCATED AT 230 E. MAIN STREET (NEWARK SHOPPING CENTER) IN ORDER TO RENOVATE AND RESTORE THE EXISTING SHOPPING CENTER THROUGH SELECTIVE DEMOLITION OF PORTIONS OF THE EXISTING COMMERCIAL BUILDINGS, AND BUILD A BANK WITH DRIVE-THROUGH WINDOW SERVICE AND 220 TWO-BEDROOM APARTMENTS AND ASSOCIATED 455 SPACE PARKING GARAGE *(RESOLUTION & AGREEMENT SUBMITTED) (SEE ITEMS 6-D, 7-C AND 7-D)*

05:00:01

(NOTE: *The public hearing for the major subdivision was held under item #26.)*

AMENDMENT BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THE SECOND SENTENCE IN SECTION 6 OF THE AGREEMENT BE AMENDED BY CHANGING THE REFERENCE OF TWO UNRELATED INDIVIDUALS PER *BEDROOM* TO TWO UNRELATED INDIVIDUALS PER *UNIT* AND THAT THE FIRST PARAGRAPH OF THE RESOLUTION BE AMENDED BY CHANGING *455* SPACE PARKING GARAGE TO *440* SPACE PARKING GARAGE AND *15* SURFACE SPACES.

MOTION PASSED. VOTE: 6 to 1.

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

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

MOTION AS AMENDED PASSED: VOTE: 4 to 3.

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

29. 7-C. REQUEST OF NEWARK SHOPPING CENTER (ATLANTIC REALTY COMPANIES, INC.) FOR A SPECIAL USE PERMIT TO CONSTRUCT A BANK WITH DRIVE-THROUGH WINDOW SERVICE ON THEIR PROPERTY LOCATED AT 230 E. MAIN STREET. *(SEE ITEMS 6-D, 7-B AND 7-D)*

05:02:29

(NOTE: ***The public hearing for the Special Use Permit was held under item #26.)***

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THE SPECIAL USE PERMIT BE GRANTED TO CONSTRUCT A BANK WITH DRIVE-THROUGH WINDOW SERVICE.

MOTION PASSED: VOTE: 4 to 3.

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

30. 7-D. REQUEST OF NEWARK SHOPPING CENTER (ATLANTIC REALTY COMPANIES, INC.) FOR A SPECIAL USE PERMIT TO CONSTRUCT 220 TWO-BEDROOM APARTMENT UNITS ON THEIR PROPERTY LOCATED AT 230 E. MAIN STREET *(SEE ITEMS 6-D, 7-B AND 7-C)*

05:02:56

(NOTE: ***The public hearing for the Special Use Permit was held under item #26.)***

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THE SPECIAL USE PERMIT BE GRANTED TO CONSTRUCT 220 TWO-BEDROOM APARTMENT UNITS.

MOTION PASSED: VOTE: 4 to 3.

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

31. 7-E. REQUEST OF BRYAN AND ANA JONES (ZUZA, LLC) FOR A SPECIAL USE PERMIT FOR A CUSTOMARY HOME OCCUPATION AT THE RESIDENCE LOCATED AT 810 SOUTH TWIN LAKES BOULEVARD

05:03:35

Bryan Jones requested the Special Use Permit for approval to operate a hair styling business at the home located at 810 South Twin Lakes Boulevard.

Mr. Chapman raised a concern about on-street parking which was mentioned by the Newark Police Department. Mr. Jones said the driveway would accommodate two cars. Mrs. Jones, operator of the business, generally has only one client at a time who would park in the driveway. Mr. Chapman pointed out that there was a stipulation in the recommendation that the Special Use Permit could be revoked if parking became a problem.

Mr. Clifton referenced the operating hours of 9:00 a.m. to 5:00 p.m. Ms. Feeney Roser said the City did not impose time restrictions on the business, and Mr. Jones confirmed they normally planned to operate during that time but wanted to have some flexibility. Mr. Morehead asked if a commercial water meter would be installed. Ms. Feeney Roser explained the flow would be monitored for excess usage which would be charged at a higher commercial rate.

From a traffic standpoint, the maximum number of clients would be three to four a day. Mr. Jones said they did not want to have more customers since his wife was caring for their young son and this would impact the quality of their home life.

Mr. Clifton said if the City did not set hours or days of operation, what would happen if clients came at 7-8 pm and neighbors complained. Mr. Clifton questioned if that would that rise to the level of revoking the Special Use Permit. Mr. Jones did not see that as a concern. Ms. Feeney Roser advised if the use was to become a problem it could be brought back to Council for amendment or revocation. Mr. Herron advised the Special Use Permit would apply to subsequent property owners with similar uses. .

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

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

32. 7-F. REQUEST OF CHRISTOPHER ISAAC FOR A SPECIAL USE PERMIT FOR A CUSTOMARY HOME OCCUPATION AT THE RESIDENCE LOCATED AT 300 EDJIL DRIVE

05:15:15

Ms. Feeney Roser said the Special Use Permit was requested by Mr. Isaac to buy and sell vehicles out of his home at 300 Edjil Drive. All transactions would take place over the phone and there was no signage to identify the business, no displays or marketing materials, no vehicles would be stored at the home and no customers would visit the location. Staff reviewed the application and with the restrictions noted, the Special Use Permit would not be detrimental to the neighborhood. They recommended approval of the Special Use Permit. Mr. Isaac asked for permission to continue to operate his business, which he operated in Claymont prior to moving to Newark. Mr. Chapman clarified this was a virtual business. Mr. Isaac explained he selected the vehicles online, they could be viewed and bid on online, and he then arranged transport of the vehicles. His office was required for filing titles and sending and receiving faxes and e-mails.

Mr. Clifton believed this was a technicality because of the State licensing procedure. Mr. Isaac confirmed that was correct.

The Chair opened the discussion to the public.

Susan Plitt, 210 Edjil Drive, mentioned that 300 Edjil Drive was a rental property, and Mr. Isaac confirmed he was a renter. Ms. Plitt asked if the Special Use Permit could be granted to a renter. Mr. Chapman explained the permit would be specific to the property for the same type of business, a home office. Ms. Bensley reported that the property owner was notified of the Special Use Permit application and the rental office called to discuss the process. There was no apparent objection to the application from the owner.

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

33. <u>8. ITEMS SUBMTITED FOR PUBLISHED AGENDA</u>:

A. Council Members:

1. Resolution 13-__: A Resolution to Request an Amendment to the Newark City Charter, Being Chapter 152 of Volume 48, Laws of Delaware, By Changing the Required Date for Submission and Approval of the Five-Year Capital Program

05:23:15

Ms. Houck explained that last year Council approved the Capital and the Operating budget at the same time. This provided opportunities for efficiency in the budgeting process such as only having one set of budget hearings and one set of build up for Department Directors as well as providing a more accurate forecast since it was

done later in the year. The Charter specified a date of July 15 for the CIP to be to Council and that needed to be changed. Upon approval by Council, the information will be provided to the legislators.

MOTION BY MR. CLIFTON, SECONDED BY MR. CHAPMAN: THAT THE RESOLUTION BE APPROVED AS PRESENTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(RESOLUTION NO. 13-O)

34. 8-A-2. RESOLUTION 13-__: A RESOLUTION TO REQUEST AN AMENDMENT TO THE NEWARK CITY CHARTER, BEING CHAPTER 152 OF VOLUME 48, LAWS OF DELAWARE, BY ELIMINATING THE ACTUAL DESCRIPTION OF THE CITY BOUNDARIES AND INCORPORATING IN PLACE OF THE ACTUAL DESCRIPTION A GENERAL REFERENCE TO THE LIMITS AND BOUNDARIES AS PREVIOUSLY FIXED AND ESTABLISHED OR HEREINAFTER ALTERED ACCORDING TO LAW

05:25:54

Mr. Herron noted the proposed Charter amendment addressed the City's boundaries since the description was outdated because it did not include annexations. This would amend the Charter to refer to the City's boundaries as established and referred to maps and plots in the office of the Recorder of Deeds.

MOTION BY MR. MARKHAM, SECONDED BY MR. CHAPMAN: THAT THE RESOLUTION BE APPROVED AS PRESENTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(RESOLUTION 13-P)

35. 8-A-3. RESOLUTION 13-__: A RESOLUTION TO REQUEST AN AMENDMENT TO THE NEWARK CITY CHARTER, BEING CHAPTER 152 OF VOLUME 48, LAWS OF DELAWARE, BY REQUIRING THAT NOMINATING PETITIONS FOR MAYOR AND COUNCIL MEMBERS BE FILED AT THE OFFICE OF THE CITY SECRETARY NOT LATER THAN THE MONDAY WHICH IS 60 DAYS BEFORE THE ELECTION

05:27:08

Mr. Herron noted the proposed Charter amendment would move the filing deadline for Council candidates from 29 days before the election to 60 days before the election. This would provide more time to the City Secretary's office to take the steps required to prepare for an election. Ms. Houck added this would include voter registration items and arranging for voting locations and voting machines which had become an issue.

Mr. Chapman said having recently submitting a petition and campaigning for a Council position, this change provided a more adequate time period for constituents to learn about the candidates and allowed candidates to have a more formalized process. He thought it would be good for the citizens to have more options.

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THE RESOLUTION BE APPROVED AS PRESENTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(RESOLUTION 13-Q)

36. 8-B. OTHERS: *None*

37. 9. SPECIAL DEPARTMENTAL REPORTS:

A. Special Reports from Manager & Staff:

1. Cherry Hill Manor Roads Report – City Manager

Resolution No. 13-__: Assumption of Right to Assess Cherry Hill Manor Property Owners Charges Necessary to Maintain Service Roads

(SEE ITEM #14)

38. 9-A-2. RECOMMENDATION REGARDING THE 2013 REVENUE STABILIZATION ADJUSTMENT (RSA) – FINANCE DIRECTOR

(SEE ITEM #15)

39. 9-A-3. AUTHORIZING THE CITY MANAGER TO SIGN THE DELAWARE MUTUAL AID AND ASSISTANCE AGREEMENT FOR INTRASTATE WATER/WASTEWATER AGENCY RESPONSE NETWORK (DE WARN) – PUBLIC WORKS AND WATER RESOURCES DEPARTMENT DIRECTOR

(SEE ITEM #16)

40. 9-A-4. CURTIS MILL PARK SITE MODIFICATIONS – PARKS AND RECREATION DEPARTMENT DIRECTOR

(SEE ITEM #17)

41. Meeting adjourned at 11:59 p.m.
05:29:30

Renee K. Bensley
City Secretary