

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**September 9, 2013**

Those present at 7:00 pm:

Presiding: Mayor Vance A. Funk, III  
District 1 Mark Morehead  
District 3, Doug Tuttle  
District 4, Margrit Hadden  
District 5, Luke Chapman  
District 6, A. Stuart Markham

Absent: District 2, Jerry Clifton

Staff Members: City Manager Carol Houck  
Deputy City Manager Andrew Haines  
City Secretary Renee Bensley  
City Solicitor Bruce Herron  
Community Affairs Officer Dana Johnston  
Finance Director Lou Vitola  
Planning & Development Director Maureen Feeney Roser

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

2. MOTION BY MR. MARKHAM, SECONDED BY MR. CHAPMAN: THAT ITEM 9-A-1 BE MOVED TO ITEM #2.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

3. MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT ITEM 9-A-3, DISCUSSION OF THE RELEASE OF THE ATTORNEY-CLIENT PRIVILEGED MEMO DATED SEPTEMBER 6, 2013 REGARDING THE PROPOSED DATA CENTER PROJECT FOR THE STAR CAMPUS, BE ADDED TO THE AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

4. **9-A-1. RESOLUTION 13-\_\_:** **RECOGNIZING THE NEWARK NATIONAL LITTLE LEAGUE FOR THEIR ATHLETIC ACHIEVEMENTS IN PLAYING IN THE 2013 LITTLE LEAGUE WORLD SERIES**

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**00:56**

Mr. Chapman read the resolution which was unanimously endorsed by Council recognizing the Newark National Little League Majors team who won the Delaware State Little League Championship for the third consecutive year, became the Mid-Atlantic Champions and played in the 2013 Little League World Series.

Members of the team Brett Callahan, Justin Courter, Joseph Davis, Brian Green, Jack Hardcastle, Nathan Hardcastle, David Hawtof, Eric Ludman, Jared Owens, Ryan

Miller, Brandon Sengphachanh, and Nicolas Sharpe were presented with a resolution from City Council by Mayor Funk.

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

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

**06:15**

Nick Wasileski, Lehigh Road, said he acquired from DNREC's website the permit for a 309 megawatt combined cycle combustion turbine generating system now built in Dover. The power plant was being built by a large electrical utility. Emissions and quantities were contained in the permit. He learned the emissions from the proposed 248 megawatt plant in Newark would be proportional to Dover's. An analytical chemist was contacted to compute emission quantities. According to Mr. Wasileski the emission calculations were proportional because both generating plants would use state of the art combustion turbines and selected catalytic reduction to reduce nitrogen oxide emissions. He said at the Data Centers meeting there were questions on the power plant's emissions, and the chemist's computations were close to the quantities stated in the presentation. To the question regarding CO2 emission quantity, the answer was 2,000 tons per day which Mr. Wasileski said was a large number and that about 720 tons of fuel would be consumed to emit the CO2. In reference to nitrogen oxide emission quantity the answer at the meeting was 80 tons per year. Mr. Wasileski cited additional power plant emissions that would be released from the power plant stack according to DNREC: carbon monoxide, sulfur dioxide, particle material pollution, volatile organic compounds, sulfuric acid mist, hazardous air pollutants (about 180 different chemicals), formaldehyde and ammonia. He stated about one ton per day of these emissions would be ejected into the air, and these quantities were within government limits. Mr. Wasileski added fossil fuel power plants were not green and that natural gas advertisements led the public to believe there were no emissions. He said a better phrase might be natural gas was cleaner than coal and noted significant pollutants would be added to the air in Newark.

6. John Kowalko, State Representative and Kells Avenue resident, thanked TDC for having the public meeting. He spoke to DNREC Secretary Collin O'Mara after the meeting, and when the permit was filed for the air system on the power plant proposal that Mr. Kowalko would know about it. Mr. Kowalko said he advised Mr. O'Mara that he would like a public meeting to be held at the Newark High School auditorium. Mr. Kowalko felt if there was more open public dialog when the first proposal came forward, there may have been a more permissible attitude and dialog for locating the project on a different side of the campus. Mr. Kowalko appreciated everyone's involvement and urged them to maintain civility.

7. Patricia Fogg, Shetland Court, recognized and congratulated Deputy City Secretary Alice Van Veen who earned her Certified Municipal Clerk designation from the International Institute of Municipal Clerks. Ms. Fogg reported that IIMC had a membership of over 10,000 municipal clerks from around the world and promoted continuing education and certification, professional development programs, networking solutions and opportunities and benefits for its members. Ms. Van Veen became a member in 2007 and began working on her CMC in 2008. The program was designed to enhance the performance of the clerk and included a three-year program offered by the University of Delaware and administered by Mr. Tuttle. In addition to the educational aspect, certification credits were earned through her work as Deputy City Secretary, participating in annual IIMC conferences as well as regional conferences and by taking online courses. Ms. Fogg noted this achievement represented dedication to continue professional development and dedication to the City and thanked the City and Mayor and Council for their support of IIMC and the CMC program.

8. Pat Wisniewski, Apple Road, attended TDC meeting and disagreed with Michael Bednar's article in the paper stating they will be a good neighbor for Newark. He felt the City should not rush into this without looking at how the power plant would impact the residential neighborhoods. Mr. Wisniewski met 50 IEEE engineers at the Calpine Edge Moor energy plant a few months back and toured the facility and spoke at length about

their emissions and running the facility. He said if you were more than five feet away from the person doing the tour, you could not hear him inside the plant. In the parking lot it was necessary to speak in a loud voice. The closest residence to that plant was 3,000 feet. Mr. Wisniewski said in Newark it was somewhere between a tenth of a mile and maybe 1,200 feet. TDC said it would be at the level of a normal conversation and if that was outside resident's windows 24 hours a day, 365 days a year that was troubling. When asked how TDC could attenuate the sound, they replied they would have to get an acoustic engineer. He asked for the truth about the design which TDC said they was the reason they could not tell the public about and was covered by confidentiality agreements but assured it was not new technology and was proven. Mr. Wisniewski said if that was the case it could not be patentable. He thought the bottom line was their bottom line and they had a design to not have to buy Bloom boxes for back up or generators or deep cycle storage batteries. They will profit millions compared to other data centers because they do not need that back up and do not have the toxic waste disposal of old batteries, etc. That was why they were willing to put up a substation.

9. Rebecca Arenson, Lehigh Road, reported there was a 2010 study by the University of Berkeley that measured the impact on communities near a power plant. They found that homes within a two mile radius of a power plant lose value by 3-7% because people do not want to live near a power plant. Resident concerns were about health and safety, the noise and property values, and the Binns neighbors put together a petition opposing a power generating facility so close to where they live and collected over 200 signatures in District 3 addressed to Mr. Tuttle.

10. Amy Roe, District 4, reported at the 9/3 TDC meeting the City Manager said "you are here to get some information from The Data Centers, some factual information. There has been a lot of information out there right now, not all of it has been factual. Tonight's the night to hear about it." Ms. Roe asked if the City vouched for the factual accuracy of the information provided by The Data Centers LLC at the meeting. Ms. Houck said it was TDC's meeting, and the City assumed the information they provided was factual. Ms. Houck said understood an additional meeting or meetings would be held. Ms. Roe stated at the last Council meeting she asked for clarification from Council that the meeting on 9/3 would be about the power plant. She was disappointed that the presentation provided by TDC did not have a single slide about the power plant, how it would be generated, the configuration of turbines or projected emissions. She wanted to know why this was excluded from their formal presentation. Ms. Houck said it was their presentation and the City had no part in preparing the presentation. Ms. Roe said TDC indicated they met either individually or in small groups with three members of Council. She asked if that was correct or if TDC met with any additional members of Council or the Mayor. Mr. Funk stated he had not. Mr. Markham advised he had a meeting about two hours before the public meeting. Mr. Morehead did meet with them twice – Thursday morning and again Friday morning. Ms. Hadden met once with them on Friday morning. Both Mr. Markham and Ms. Hadden said more information was presented at the public meeting. Ms. Roe directed attention to the Attorney General's 1996 opinion which found that meetings that, when combined, include a sufficient number of Council members to meet a quorum violate the open meetings law of the State. She advised that given the public scrutiny over City staff conducting business with TDC without disclosing that information to the public she hoped Council did not make the same mistake by conducting private meetings. Ms. Roe stated that in their presentation TDC said as part of the air permitting phase they would need to address impacts beyond air quality and that talked to many subjects covered in a NEPA type of assessment, but no formal NEPA assessment was required. Ms. Roe conferred with the Director of the Division of Air Quality and said that was not correct. She asked if TDC was going to go beyond the minimum requirements of the air pollution permit and complete a NEPA-style environmental impact assessment. She wanted Council to make that request since TDC provided that information to the public at the 9/3 meeting. Ms. Roe referred to Mr. Kowalko's comment regarding DNREC and advised when a pollution permit application was received by DNREC the only requirement was to do a public notice and it was the public's responsibility to obtain and examine the permit and write a letter to the Secretary asking for a meritorious public hearing. She asked Council to direct staff to monitor newspapers for TDC permit application, to examine the permit application and then draft a public hearing request on behalf of the citizens.

**11.** Jackie LaGosse, from Binns, said Newark was a tight-knit community and asked why a power plant that would emit fugitive emissions would be put in that location. She noted from the TDC website that they have erected no power plants or data centers. She asked the City to take a closer look, reconsider and take back the community and hoped the University realized what they were allowing to be put only 1,250 feet away. She said the school of environmental sciences, the school of animal sciences, farms, cows and students would all be impacted by the power plant.

**12.** Jen Wallace, Sue Lane, was a member of the executive committee of the Delaware Chapter of the Sierra Club and said the chapter opposed TDC's 240 megawatt natural gas power plant. They opposed the plant for issues of health and safety. According to Ms. Wallace, Delaware received a failing grade for its air quality from the American Lung Association in their 2013 clean air report. She said children, the elderly and anyone with asthma or other breathing problems were disproportionately impacted by increased levels of ozone and there was also the danger of situating gas pipe lines and a power plant adjacent to rail cars carrying oil through Newark. Ms. Wallace felt the potential for a large scale disaster would increase by magnitudes with the construction of the plant. The chapter was against the plant due to its potential environmental impact. She said natural gas was not a renewable energy source and was a major threat to the climate. Total greenhouse gas emissions from natural gas were nearly identical to coal once methane leakage was taken into account. Fracked natural gas had the potential to poison the water supply from fracking undertaken in Pennsylvania. The Delaware chapter was also concerned with the lack of transparency and citizen oversight about the project. The Sierra Club believed people had the right to know the information necessary for making informed environmental decisions which she thought was lacking even with the 9/3 public information session. The chapter was disturbed at attempts made by TDC to make it appear as if the Sierra Club endorsed its power plant project in their 9/3 presentation. While two members of the chapter met with TDC earlier this summer, at no time did the Sierra Club endorse the project.

**13.** Linda Raffaele, Beverly Road (corner of Beverly and Ritter), understood there was a petition to make all of Ritter Lane no parking. She did not want parking restricted and noted she and her family had three vehicles and their driveway accommodated only two. She saw no reason to restrict parking on Ritter and felt this would push people to park on Beverly and further down on Apple. Her understanding was this may have been a reaction to parties in student rental homes, and she did not believe parking restrictions would resolve that situation since most students walked to parties.

**14.** Donna Means, Fremont Road, was disturbed about Mayor Funk's resignation. She said he was an asset to the City and everyone should be very proud of him. She attended the WAWA public meeting and was embarrassed by some of the attitudes and actions that night and understood why he was resigning. Regarding TDC, she was unable to get into the 9/3 meeting and said there should be another meeting so more people can attend. Ms. Means said in her neighborhood there was a small electric substation. During the time she resided in Fairfield Crest she knew of nine or ten people who had cancer which she felt was caused by the substation. She asked what impact TDC would have on the people, the children living in Binns and the nearby school.

**15.** Gretchen and Ron Walker, Kells Avenue, said the new owner of 49 Kells Avenue lived in Pennsylvania and owned student rental properties at 728 and 736 Wollaston, and a home on Ritter. Mr. Walker met with the new owner and pointed out that he was hoping it would not be a student rental. The rental permit was restricted to two students and an adult over 18. Mr. Walker stated five students were living in the house and they have five vehicles in the driveway. Ms. Houck and Ms. Hadden were working to address this issue. Mr. Walker urged the City to consider passing legislation to ban landlords from obtaining rental permits who violate the permitted number of students in their units.

**16.** Ed Wirth, Arbour Drive, had concerns regarding TDC. He stated the magnitude of the electrical power being generated was 248 megawatts which he felt was an excessive amount for a facility of this type and for the City to classify it as incidental and subordinate in order to avoid public review by Council. Mr. Wirth believed this to be questionable and not proper procedure for City government to follow. He also noted

most of the data centers for large companies secured their power from the electric grid with battery and generator back up and asked why it was necessary to have an excessive amount of power generation that more than satisfies TDC requirements. The size of TDC – 900,000 square feet – was also of concern to Mr. Wirth. He researched the background of TDC and said they were not listed on NASDAQ or Dun and Bradstreet raising the question of whether this was a company of very limited experience in data centers as well as power generation.

**17. 1-B. UNIVERSITY**

**50:38**

**(1) Administration** – Rick Deadwyler, Jr., University of Delaware Director of Government Relations reported there would be a University of Delaware – Delaware State football game this weekend which was a wonderful Delaware athletic event. On 9/16 the University would celebrate one of its former professors, James Soles, with U.S. Senator Chris Coons who would serve as the keynote speaker regarding the Constitution, democracy and justice. Also, U.S. Supreme Court Justice Sonia Sotomayor would be sharing details of her biography with the freshman class on 9/19. Mr. Deadwyler hoped to have a student representative at Council meetings in the near future. Mr. Markham thought it was a good idea for students to hear community concerns and interact with residents.

Mr. Deadwyler planned to meet with Mr. Dunigan to discuss the locked gate at the Frazer Field soccer area. The area would be locked moving forward, but Mr. Deadwyler said there were opportunities for the public to reserve space. Mr. Markham noted the band used the practice field a lot and had seen band members going over the fence, so the University might want to consider having it unlocked.

**18. 1-B (2) STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

**19. 1-C. COUNCIL MEMBERS**

**56:07**

**Mr. Markham**

- Mr. Markham congratulated Ms. Van Veen on receiving her Certified Municipal Clerk designation.
- Mr. Markham reported that DEMEC secured grant money from the Department of Energy to bring in the Solar Electric Power Association to discuss municipal solar – they will present ideas to Council of what they think will work to do community solar either how to pay for it or how people can buy into the system.

**20. Mr. Chapman**

- Mr. Chapman said it was nice to have Mayor Funk at the meeting tonight.

**21. Ms. Hadden**

- Ms. Hadden welcomed back Mayor Funk.
- Ms. Hadden congratulated Ms. Van Veen for earning her professional certification.
- Ms. Hadden thanked the City for providing documents about the Kells Avenue sanitary sewage project. She asked if there was a time frame for completion. Ms. Houck advised the letters would go out starting today and there would be a public meeting and following that everything would be set up (9/17). Mr. Markham said since that was a smoke test, he suggested that Aetna be advised this was going on.
- Regarding TDC, Ms. Hadden appreciated the public coming to Council to voice their opinion. She encouraged the public to exercise their right and voice their opinions to the University of Delaware, the UD Board of Directors and all elected representatives to make them aware.
- Ms. Hadden had her ride along with the police on Friday night. It was very interesting and she was impressed with our police and thanked them for a good job.
- Ms. Hadden bought a decibel meter in relation to TDC project and used the decibel meter in the backyard where they found the crickets were chirping at a rate of 49 decibels.

**22. Mr. Tuttle**

- Mr. Tuttle said it was good to see Mr. Funk back even if it was for a brief time.
- Mr. Tuttle recognized Ms. Van Veen's accomplishment and the commitment of the City. He was involved with the Municipal Clerks training program for 15 years and felt it was one of the best non-credit programs the University offers and was not available everywhere. For example, no one in the State of Maryland offered the training and about one third of the class was enrolled from the Eastern Shore of Maryland. The program required a significant commitment and Ms. Van Veen deserved the recognition she received tonight.

**23. Mr. Morehead**

- Mr. Morehead welcomed Mr. Funk.
- Mr. Morehead congratulated Ms. Van Veen on her CMC.
- Mr. Morehead received thanks for the paving work done in District 1 and the residents said it was a great job including the sidewalk through the back of Downes School through the City park.
- Mr. Morehead announced a ribbon cutting ceremony on 9/12 at 3:30 pm for the Handloff Park Skate Spot. An anonymous donor provided a significant donation to facilitate the construction along with grant money and City funds. Mr. Morehead recognized Parks and Recreation Superintendent Joe Spadafino and the Skate Spot Committee – Tyler Jacobson, Jennifer Egan, Lauren Clift, and Jamie Magee. The next skate spot would be in Phillips Park. He was very impressed with the users of the new skate park and their courtesy to surrounding neighbors and each other.
- Regarding The Data Center meeting, Mr. Morehead commended everyone Citywide who attended. He was impressed given the emotion in the room with the way people behaved and felt it was great for the public to be interacting with the government. He urged people to continue to do so as Ms. Hadden suggested.

**24. Mr. Funk**

- Mr. Funk thanked everyone for all the letters, calls, e-mails and said it had been good. The night he wrote the letter of resignation he thought he was on the verge of a stroke. The positive feedback from everybody meant a lot to him. He will miss everyone and will still pick up the trash and take care of the graffiti and hopefully at the end of the day would become the Mayor of Main Street.

**25. 2. APPROVAL OF CONSENT AGENDA**

**01:09:03**

Ms. Bensley read the Consent Agenda in its entirety.

- A.** Approval of Regular Council Meeting Minutes – August 26, 2013
- B.** Receipt of Alderman's Report – August 28, 2013
- C.** Reappointment of Bob Cronin and Edgar Johnson to the Planning Commission for Three Year At-Large and District 3 Terms to Expire September 15, 2016
- D.** Appointment of Alan Silverman to the Planning Commission to Complete the Vacant District 5 Term to Expire September 15, 2014
- E.** Resignation of Jane Creswell from the Board of Elections
- F.** Appointment of Gordon Hendry to the Board of Elections to Complete the Vacant District 6 Term to Expire January 15, 2016
- G.** Approval of Unicity Bus Service for State Fiscal Year 2013-2014
- H.** ***First Reading – Bill 13-29*** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Establishing an Organizational Structure within Council for Presiding Over Council Meetings – ***Second Reading – September 23, 2013***
- I.** ***First Reading – Bill 13-30*** – An Ordinance Amending Chapter 20, Motor Vehicles, Code of the City of Newark, Delaware, By Designating Portions of Ritter Lane as "No Parking Anytime" – ***Second Reading – September 23, 2013***

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

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

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

27. 4. **SPECIAL DEPARTMENTAL REPORTS:**

A. Special Reports from Manager & Staff

1. Recommendation on COLA Increase for Retirees – Deputy City Manager

**01:10:59**

Mr. Haines reviewed his memo of 9/3/13 which provided further information regarding a 13th pension check. At the first meeting staff identified if they proceeded with a half percent per year for retirees there would be a \$77,797 increase to the City's liability for pensioners. The other methodology would be to provide pensioners with a 13th check which calculates to a little over \$265,000. The current funded status was a little over 65% and staff's recommendation was to raise the funded status – though the 90% target may not be Council's goal, funding at 80%, which was discussed as a potential Council target, was still short. Staff recommends not increasing the COLA at this time but to revisit it in three years and pursue other options to increase the funded status. Mr. Haines added that Council was owed the memo on modeling for the October financial workshop meeting.

Mr. Funk said the prevailing view on pensions was not to increase benefits until you get 80% and since the City was over 15% short of that he did not understand why it was being discussed.

Mr. Markham noted that Mr. Clifton was the biggest proponent of this issue. Ms. Hadden suggested postponing the discussion to the next Council meeting when Mr. Clifton would be present.

Ms. Houck clarified that staff recommended against increasing the benefit. Mr. Tuttle pointed out that the first option would be just under a \$78,000 cost which would be a one-time cost that would not raise the base. Mr. Haines said neither scenario would raise the base but was an additional benefit in a given year should the Council decide to provide it.

Mr. Chapman requested Mr. Haines to prepare for the next meeting the percentage differences that the funding will have changed by either option 1 or 2 with the one-time check.

28. **5. FINANCIAL STATEMENT:** None

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

A. Recommendation for Award of Contract No. 13-09, Paper Mill Road Concrete Tank Roof

**01:19:35**

Ms. Houck reviewed Contract No. 13-09 for the Paper Mill Road water tank roof repair. The tank was built in 1980 and had a cast in place concrete dome. The roof progressively deteriorated which required it to be replaced along with other minor repairs. It was 3 to 4 inches thick and spanned the diameter of the tank. The work was highly specialized. An earlier review of this anticipated replacement of the roof with a cost estimate between \$1 and \$2 million for fiberglass and steel. Neither of these options had the same potential life expectancy as the concrete tank. A pre-bid meeting was held, and three firms attended this meeting. One bid was received from DN Tanks in the amount of \$349,500 while the estimate provided by Pennoni Associates was \$400,000 prior to bid. DN Tanks specializes in the repair of concrete tanks. Funding was available in the amount of \$384,849 in the CIP and it was recommended to award this contract to DN Tanks in the amount of \$349,500.

Mr. Markham said recognizing the tank was built in 1980, if the work was defective, was there any recourse. Ms. Houck and Mr. Funk advised there was none. Mr. Morehead asked if there was any warranty from DN Tank. Ms. Houck said there would be additional warranties to the new contract.

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT CONTRACT NO. 13-09, PAPER MILL ROAD WATER TANK ROOF REPAIR, BE AWARDED TO DN TANKS, IN THE TOTAL AMOUNT OF \$349,500.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

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

**A. Bill 13-27** – An Ordinance Amending Chapter 27, Subdivisions, Code of the City of Newark, Delaware, By Amending the Requirements for Bicycle Storage Facilities

**01:22:56**

Ms. Bensley read Bill 13-27 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 13-27.

Ms. Feeney Roser said the City was asked to increase bike facility parking in Newark. In response, bike racks were added to downtown and amendments were being suggested to the subdivision regulations to increase the number of bike parking spaces developers were required to install as part of their development approvals. Specifically, the existing regulations would be amended in several ways. First, staff recommended deleting the 50 space current threshold which kicked in the requirement for a developer to supply bike parking spaces so the requirement would apply to all major subdivisions. They further recommended changing the formula by increasing the number of bike storage spaces required (they were slots, not bike racks themselves) from one bike parking space for every 10 parking spaces required to one for every five. The last recommendation was to delete the maximum number of bike rack parking spaces that can be required for a specific development while at the same time adding a discretionary clause for the Director of Public Works and Water Resources to reduce the requirement where they were deemed excessive or alternate facilities or approaches could meet the bike storage needs. By making these changes it was felt there would a major impact on the number of bike storage spaces available in the community without placing an undue burden on developers.

Mr. Morehead asked what the thinking was behind having the Director of Public Works make the decision. Ms. Feeney Roser said there had always been some discretion he could provide for bike storage and it was that office that was responsible to check for bike racks on the plan. The best example was Home Depot – if there were 300 parking spaces required divided by five that would mean a lot of bike storage spaces, and not many people go there by bicycle.

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. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

**(ORDINANCE NO. 13-28)**

**31. 7-B. BILL 13-28 – AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE, BY REZONING FROM BC (GENERAL BUSINESS) TO BB (CENTRAL BUSINESS DISTRICT) 0.335 ACRES AT 7 AND 15 SOUTH MAIN STREET**

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**01:27:06**

(Secretary's Note: The public hearings for the Major Subdivision and the Special Use Permit were held during the rezoning discussion, Item #7-B.)

Ms. Bensley read Bill 13-28 by title only.

MOTION BY MR. MOREHEAD, SECONDED BY MR TUTTLE: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 13-28.

Jeff Lang, Lang Development Group, introduced the other members of his team: Chris Locke, Lang Development Group; Tim Anderson, Karins and Associates; and Richard Rinehart, Clark Designs. Mr. Lang gave a brief history of the site, which included review of the previous ownership, an overview of the surrounding properties, and a review of the previous uses of the property. Mr. Lang also reviewed his conversations with the University of Delaware regarding the property's parking requirements, the availability of space in the Trabant Garage to fulfill the parking needs for the project presented, and the preference of the university in regards to building layout in relationship to the adjacent university properties.

Mr. Lang stated that with the work on the revitalization of Elkton Road and South Main Street, Lang Development Group saw a unique opportunity to create a signature building and focal point at the beginning of South Main Street. The building proposed is designed to look like a university or office building. The long term potential use could be university related, so the design, thought, and review process was related to that.

Another potential thought was to have a five-story building. However, after conversations with the Planning and Development Department, it was recommended to reduce the size of the building to four stories with the first two floors as commercial and the top two floors as residential. Also, when going through the review process prior to the Planning Commission, it was agreed to discuss the height of the building. Mr. Lang requested that Council consider adding two feet to the height of the building through the project approval process this evening if Council deems it to be appropriate. This would allow a higher floor-to-floor ratio on the upper two floors to allow more convertibility to change to some other residential configuration or another potential use at some point in the future. Since the use of a building must be considered over its entire lifespan, Mr. Lang stated that this flexibility is important in the initial construction phases.

Mr. Funk asked if the increased height being requested was within the limits of the Code. Mr. Lang replied that the Code allowed 15 feet per floor, which would allow eight more feet than the current design. However, Lang Development Group was only requesting the additional two feet that they felt they needed instead of the entire eight feet allowed to provide the flexibility they would like with the upper two floors.

Mr. Lang stated that the thought process was that instead of designing a building with parking underneath, no commercial space, and some residential units, why don't we build a building that really is going to enhance the community. Lang Development Group is also going to add some additional commercial space on the second floor, which is a continuing trend that needs to be considered to assist the continued commercial development of the City's downtown district.

Mr. Funk asked where the additional two feet being requested would go in the subdivision agreement and resolution. Ms. Feeney Roser responded that at this point, the plan states that the building height is 52 feet and would need to be revised if Council approved the increased height to reflect the 54 foot height.

Mr. Markham asked if the requested two foot increase was across the entire building or just for certain elements. Mr. Lang stated that one foot would be added to the third floor and one would be added to the fourth floor across the entire building.

Mr. Markham asked if the electrical wires would run over the building. Mr. Lang stated that is not the case and that the discussions with the Electric Department included changing some of the electrical poles, but not changing the orientation of the building. The electrical wires would not be moving from their current location, the pole would simply be replaced.

Ms. Hadden asked if there would be any type of handicapped parking on the site. Mr. Lang stated that all parking would be in the Trabant Garage, but that the needed handicapped accessibility into the building would be provided. Ms. Hadden asked if there would be any accessibility issues with the location of the loading area. Mr. Lang indicated that the loading area was not going to be used daily and that in order to provide adequate fire lane access, the lane needed to be down the side of the building. Mr. Lang also mentioned tenant move-in and move-out may be another use for the loading area.

Mr. Morehead asked if use of the loading area would be scheduled for tenant move-in and move-out in order to alleviate congestion. Mr. Lang stated that they would have to restrict usage, but that it is a problem that is common in more urban environments. DeIDOT has recommended that a cut out be added so vehicles can pull off in front of the building, which has been incorporated into the site plan. Mr. Funk commented that areas where students reside outside of the dorms have all different times when people arrive and leave. Mr. Morehead thought that many would be trying to move into the building at the same time and that it is located on one of the busiest pieces of roadway in Newark. Mr. Lang stated that what typically happens is a more gradual move-in process over time once the renter takes possession of the unit. Mr. Morehead stated that this is one of the most difficult intersections in Newark and reiterated his concerns. Mr. Lang stated that they have a good working relationship with the University and there is an opportunity to work with the University to allow for use of an adjacent piece of property owned by the University with access to Delaware Avenue for issues such as these. DeIDOT have raised some of the same concerns related to the number of vehicles backing in and out of the property. From a logistical standpoint, Mr. Lang's preference would be not to have an access point on the side of the building and not have a service entrance there, but that is not possible with the fire access requirements. This then leads to the issue of restricting access to that area. Bollards could be placed similar to what the university does in access/service areas and have it controlled by management, instead of an open, accessible area. However, that creates issues with the location of the dumpsters and the ability of the trash to be picked up. Mr. Morehead asked about the possibility of the lane being closed that approaches the back of the property. Mr. Lang said that had been considered, but that the fire department did not like that proposal and that the codes related to fire were much more restrictive.

Ms. Hadden asked if the parking spaces were transferred by the University to another location as provided in the agreement between the University and the Lang Development Group would the project still be in compliance with the 500 linear feet requirement for parking. Ms. Feeney Roser stated that the project would not be in compliance at that point, which is when the parking waiver fees would be charged.

Mr. Funk asked if trash compactors were requested as part of the agreement. Ms. Feeney Roser stated that since the trash would not be located on a municipal parking lot, it was not being required. Mr. Lang commented on the trash needs of the various types of businesses and that if offices were in the proposed building, they would not warrant compactors. However, if a restaurant were in the building, further discussions regarding access from the adjacent University property may be needed.

Mr. Morehead asked if a restaurant was a tenant in the building, how would that change the parking requirements. Mr. Lang stated that a retail use was calculated as an average parking use for the building since that was higher than office use, but lower than restaurant use. The original calculation figures out what the model for the building would be and is adjusted during the review process. The individual tenant would be responsible for obtaining additional waivers if required as part of their proposed use.

Mr. Funk pointed out that item 8 on the subdivision agreement states an effort will be made to use compactors and getting trash trucks in and out will be problematic. Mr. Lang stated that the building should need an eight yard dumpster once a week based on size and use, and that an effort will be made to provide compactors if needed.

Mr. Markham asked what the green roof space cited in the project means. Mr. Lang responded saying that the best practices of stormwater management require a certain amount of infiltration and/or filtering of the water before it gets to the stormwater system. This can be done through filters in the parking lots, which may or may not work, and/or have a green roof, which has plantings that absorb the water on the roof which cleans some of the water before it goes into the stormwater system. Mr. Lang cited 132 Delaware Avenue as a project using this technology. Mr. Markham suggested using porous pavement to help eliminate runoff and requested it be incorporated into the plans. Mr. Lang stated that the previous Water Resources Department director would not allow use of porous pavement on past projects, but that he would be happy to discuss it with the new director of Public Works and Water Resources.

Mr. Markham referred to the City Secretary's memo to Council enumerating differences in the subdivision agreement between the City's departments and Lang Development Group. Mr. Markham asked if Lang Development Group was satisfied with the subdivision agreement and resolution that was before Council. Mr. Lang stated that after reviewing the City Secretary's comments responding to Lang Development Group's original comments on the agreement that they were satisfied with the agreement and resolution in their current forms.

Mr. Morehead asked if Ms. Feeney Roser was comfortable with how the parking waiver requirements were memorialized in the agreement and resolution. Ms. Feeney Roser responded that with the attached agreement tracking each space, she was comfortable with the agreement.

Ms. Hadden asked about the referenced plantings with the adjacent property. Mr. Lang stated that they would be working with the University to come up with a landscaping plan that they would implement at their expense.

The Chair opened the discussion to the public.

Brett Zingarelli, Barksdale Road, commented on the fire access requirement and water supply issues for the fire department. He also asked what would happen if the parking spots in the garage were lost. Ms. Feeney Roser responded that the parking waiver would be due if the spaces were no longer supplied. Ms. Hadden asked what would happen if the developer went out of business. Mr. Chapman stated that the requirements would go with the property. Mr. Funk stated the bank or whatever entity took over the property would then be responsible.

Catherine Ciferri, District 6, asked for more information on parking regarding the agreement with the University and ADA parking accessibility. Mr. Lang stated that discussions of accessibility within 500 feet are ongoing with the University and that he anticipates that the handicapped space requirement would be met. Mr. Tuttle stated that there is a sidewalk that connects the garage to the proposed location that is currently exit only, and that Lang Development Group may want to include making that an entrance and exit as part of their discussions. Mr. Lang stated that would be a discussion point and that Lang Development Group would be adding additional security features at their cost, such as cameras, to secure that area. Ms. Hadden added that the University should be sensitive to the fact that handicapped spots should be as close to One South Main as possible. Mr. Lang stated they are still in negotiations, but that the University has been willing to work with them to meet requirements.

Carol McKelvey, Winslow Road, asked if the trash trucks would be backing out of the property on to the street. Mr. Lang stated that it would be dependent on a number of variables, including the orientation of the dumpsters, the ability of the driver, and the time of day. Mr. Funk asked about access to the driveway in the back of the church. Mr. Lang stated that talks with the University about access were ongoing, but on the One

South Main site, there is a limited access point. However, in removing the current parking, the number of trips overall is reduced. Ms. Hadden asked if it would be possible to ask tenants to offload into smaller vehicles. Mr. Lang said it would depend on the tenants in the building, however, if it does end up being a university use, that would minimize loading traffic.

Don DelCullo, Kells Avenue, asked if there would be enough room for delivery trucks to be pulled off the road in the designated drop off in front of the building. Mr. Lang stated that DelDOT chose that design to enable vehicles to pull off to make deliveries instead of having a constant in and out off the access way.

Catherine Ciferni, Newark resident, questioned whether there would be access for paratransit drop off and pick up from the site. Mr. Lang stated that the pull off area in front of the building would be able to accommodate paratransit. Councilman Tuttle raised the issue that the pull off area would not have access to the sidewalk on the correct side of the vehicle to provide drop off capabilities and that allowances would be needed to use the service area. Mr. Lang agreed that the service area could be utilized if needed and other potential alternatives could be looked into.

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

Mr. Morehead asked who controls the parking in the pull off in front of the building. Mr. Lang said that the property owner would have to manage that. Mr. Morehead asked who would be responsible for signage. Mr. Lang said he anticipates it being part of the CIP process. Mr. Morehead asked if during the CIP process could the uses of the floors be changed. Mr. Lang stated that was part of the plan being approved by Council and could not be changed without Council approval.

Mr. Funk stated that since this was a rezoning, members of Council needed to state their views of the project on the record before the vote.

Mr. Markham found it interesting that this property has no neighbors except the University and a few other small properties. He will support the rezoning from BC to BB since it is compatible with the improvements downtown, will not have a negative impact on adjoining properties, and conforms with the guidelines of the comprehensive plan.

Mr. Chapman also supports the rezoning from BC to BB. He feels this is exactly what Council has been asking for in regards to mixed use and design. He also agrees with Mr. Markham's previous statements.

Ms. Hadden supports the rezoning as she believes it is a good use of the property and she agrees with the statements of the previous Council members.

Mr. Funk supports the rezoning and stated it was exactly what the City wanted done with South Main Street and he is very happy to see this project at the beginning of South Main Street.

Mr. Tuttle supports the rezoning as BB is consistent with the other surrounding properties. Since the alternative is for the University to purchase the property which would then be zoned UN and the City would have little say over what could be done, this is consistent with the comprehensive plan and should be embraced.

Mr. Morehead is concerned about the traffic, but it does fit the comprehensive plan and he will be supporting it.

Question on the Motion was called.

MOTION PASSED. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

**(ORDINANCE NO. 13-29)**

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

- A.** Request of Lang Development Group for the Major Subdivision of 0.335 Acres Located at 7 and 15 South Main Street in Order to Create One Tax Parcel Out of the Two Parcels and to Construct a Four-Story Mixed Use Building with 11,000 Square Feet of Office/Retail Space on the First Two Floors and Four Three-Bedroom and Eight Two-Bedroom Apartments for a Total of 12 Apartment Units on the Two Floors Above to Be Known as One South Main

**(SEE ITEM #31)**

MOTION BY MR. CHAPMAN, SECONDED BY MR. MARKHAM: THAT THIS BE THE PUBLIC HEARING FOR THIS RESOLUTION.

AMENDMENT BY MR. TUTTLE, SECONDED BY MS. HADDEN: TO REFERENCE THE ATTACHMENT OF EXHIBIT A ON PAGE TWO OF THE SUBDIVISION AGREEMENT AND RESOLUTION PRIOR TO THE COST PER SPACE BREAKDOWN AND WHERE EVER APPROPRIATE TO ADD TWO FEET TO THE HEIGHT OF THE PROPOSED BUILDING.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

Question on the Motion as Amended was called.

MOTION BY MR. CHAPMAN, SECONDED BY MR. MARKHAM: THAT THE RESOLUTION BE ACCEPTED AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

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

**33. 8-B. REQUEST OF LANG DEVELOPMENT GROUP FOR A SPECIAL USE PERMIT TO ALLOW CONSTRUCTION OF 12 APARTMENT UNITS IN A DOWNTOWN DISTRICT AT 7 AND 15 SOUTH MAIN STREET AS PART OF THE PROPOSED ONE SOUTH MAIN PROJECT**

**(SEE ITEM #31)**

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THE SPECIAL USE PERMIT BE ACCEPTED AS PRESENTED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

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

- A. Council Members:**

1. **Resolution 13-\_\_**: Recognizing the Newark National Little League for Their Athletic Achievements in Playing in the 2013 Little League World Series

(SEE ITEM #4)

**35. 9-A-2. RESOLUTION 13-\_\_ : RECOGNIZING JANE CRESWELL FOR HER WORK ON THE BOARD OF ELECTIONS AND CONTRIBUTIONS TO THE CITY OF NEWARK**

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**02:27:35**

Mr. Markham recognized the work of Jane Creswell on the Board of Elections and her contributions to the City of Newark. Ms. Creswell has moved out of the City, so she has resigned her seat on the Board, but Mr. Markham wanted to ensure that she was acknowledged and thanked for her service.

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

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

(RESOLUTION NO. 13-EE)

**36. 9-A-3. DISCUSSION OF THE RELEASE OF THE ATTORNEY-CLIENT PRIVILEGED MEMO DATED SEPTEMBER 6, 2013 REGARDING THE PROPOSED DATA CENTER PROJECT FOR THE STAR CAMPUS**

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**02:28:37**

Mr. Herron stated that the memorandum from Max Walton has been received and Council needs to decide whether to waive the attorney-client privilege in order to release the memorandum. Mr. Markham asked if there was any legal reason that the privilege should not be waived. Mr. Herron indicated there was none. Ms. Hadden stated she was inclined to release the memorandum to the public. Mr. Funk said that he saw no reason not to release the memorandum to the public.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT THE ATTORNEY-CLIENT PRIVILEGED MEMO FROM OUTSIDE COUNSEL REGARDING THE PROPOSED DATA CENTER PROJECT FOR THE STAR CAMPUS BE RELEASED TO THE PUBLIC.

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

Nay – 0.

Absent – Clifton.

**37. 9-B. OTHERS:**

**02:30:30**

1. **EXECUTIVE SESSION PURSUANT TO 29 DEL. C. §100004 (B)(2) FOR THE PURPOSE OF DISCUSSIONS ON SITE ACQUISITIONS FOR PUBLICLY FUNDED CAPITAL IMPROVEMENTS**

Council entered into Executive Session at 9:26 pm and returned to the table at 9:53 pm. Mr. Funk advised that no action was necessary by Council at this time.

**38. Meeting adjourned at 9:54 pm.**

Renee K. Bensley  
City Secretary