

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

September 23, 2013

Those present at 7:00 pm:

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

Absent: Mayor Vance A. Funk, III

Staff Members: City Manager Carol Houck
City Secretary Renee Bensley
City Solicitor Bruce Herron
Finance Director Lou Vitola
Chief Paul Tiernan

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. TUTTLE: THAT ITEMS 6-B, RECOMMENDATION FOR THE 2013 WATER MAIN CLEANING AND LINING PROJECT, AND 9-B-1, EXECUTIVE SESSION, BE REMOVED FROM THE AGENDA AND THAT ITEM 1-B-1 BE MOVED TO ITEM #3.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Funk.

3. 1. **ITEMS NOT ON PUBLISHED AGENDA**
B. UNIVERSITY

(1) Administration

01:47

University of Delaware Police Chief Patrick Ogden, NPD Chief Paul Tiernan, Director of UD Public Safety Skip Homiak and Rick Deadwyler, UD Government Relations representative, discussed the events of September 9.

Chief Tiernan outlined the police response and the investigation. On 9/9 around 11:13 p.m., a call was received about a loud party on South College Avenue with a large group estimated to be between 2,000-3,000 people. A tour bus from a company called I'm Shmacked that travels around the country and films college parties was travelling through Delaware on their way to New Jersey and Rhode Island. In a short amount of time, a text went out about the party, and thousands of people responded and showed up. When Newark police officers arrived they saw the crowd, reached out to UDPD, the County and State Police and about 75 police officers arrived and dispersed the group. While it looked very chaotic on video, there was no serious damage, no store windows were broken, nobody was assaulted and there was no violence, although there was some damage to cars. The police officers acted very professionally and with restraint and did a great job. That night the two people responsible for hosting the house party were arrested and charged with disorderly conduct, underage possession of alcohol and a few other charges. The camera man from I'm Shmacked was also arrested as were the two individuals who damaged cars.

Approximately 11 other people were involved. After a review of the case by the office of the Attorney General to see if criminal charges could be brought against I'm Shmacked, the City Solicitor will conduct a review to see whether any civil action could be taken.

Chief Ogden said an important question following this incident was what would be done to try to prevent a similar incident from happening in the future. UDPD keeps close track of possible problems through social media. In this case the group had a student who was their campus coordinator, and he set up a Twitter page with the tag line of I'm Shmacked which was unfamiliar to the department. UDPD has engaged in a joint agency alcohol initiative with the Newark Police Department, Delaware Alcohol and Tobacco Enforcement and bars/restaurants in town. Chief Ogden reported that many quality of life issues were connected to alcohol, so preventive efforts were focused in this area. For the last two years every student contacted by a UDPD officer for an alcohol violation was debriefed to find out where and how they got alcohol and where they were drinking. It was found that a lot of students were "pre-gaming" in the dorms but later go to off campus residences where they consumed more alcohol. Under the joint initiative, when the Newark police investigate a house party and find the majority attending are UD students, they call UD police to assist with the investigation. Those arrested for disorderly premise are referred to the Office of Student Conduct where they are also held accountable. There is an education component as well with counseling classes. According to Chief Ogden, the court system case load is so busy that cases often get pled out or offered PBJ. Most students do not want to see University police because they get referred to the Office of Student Conduct where the sanctions are more severe and parents are notified if the student is financially dependent.

Mr. Homiak provided an overview of University leadership's actions following the event. The day after this incident UDPD met with senior leadership to discuss what had happened and plans going forward. As a result, a firm message was sent to students saying they would be held accountable for any such events. Student government was very supportive and endorsed the administration. Parents, faculty and staff were also informed of UD's position. In addition, the legal office was reviewing whether anything could be done from a civil perspective. This incident was taken very seriously by the University, and all the individuals referred to the Office of Student Conduct were dealt with firmly, quickly and fairly. The Rugby House was the location where the party was held, and the rugby team was suspended for five years as a result of this incident.

Mr. Clifton commented that arresting officers from the University had the authority to send students to the Alderman's Court.

Mr. Markham (whose children are University students) believed the students and the public should be made aware of the punishment given out to convey the message that the University was treating this case very seriously.

Mr. Chapman wanted the University to come back to speak to the issue of pre-gaming and the culture of binge drinking inside the dorms. He thought there was room for improvement in working with the incoming freshman to help combat the culture and training opportunities with the RAs for better regulation. Mr. Deadwyler said the campus police took great pride in their alcohol prevention task force. Chief Ogden noted the University trained new students in mandatory hall meetings, trained the RAs, and each complex had an RA on duty every night as well as office hours within that dormitory complex. The community resource officer routinely made contact with the RAs. According to Chief Ogden, the number of referrals from the RAs to the Office of Student Conduct for alcohol complaints more than doubled this year as compared to last year. Mr. Homiak added that did not mean they had twice the problem but indicated the RAs were more attentive and better trained. An October meeting was scheduled to discuss these issues after which Chief Ogden would return to Council with more information.

Mr. Chapman observed parties starting early in the day and felt the City should do a better job of enforcement at all hours and be more proactive to prevent similar issues from occurring in the future.

Mr. Morehead referenced the City's previous success in closing down Chapelfest where the landlord worked with Newark Police and suggested a similar approach. He suggested if the University believed in zero tolerance they should put together a plan involving not only the police but other departments with expertise in addressing these problems. Ms. Houck mentioned the Wellspring program was one of the organizations that worked toward affecting behavioral changes on campus.

Ms. Hadden agreed with her fellow Council members that the public and the students should be informed about disciplinary actions, the City should be more proactive in educating the students and being more involved and the UD office of Marketing & Communications should get involved after this crisis period to put together a plan to get the students engaged. She appreciated the aggressive response the day after the event and believed there were many people involved from out of town.

Mr. Chapman commended the leadership of both police departments on their handling of the incident as well as the open communication and saw this as a positive opportunity for the City and the University to partner and learn from one another.

The Chair opened the discussion to the public.

Amy Roe, District 4, asked if there were any recordings of the decibels she would have experienced during the incident. Ms. Hadden agreed it was loud but when she arrived home there was such a roar that she drove to see what was happening without grabbing her decibel meter.

Mr. Tuttle felt it was important to recognize that the way the problem was handled in a timely manner reflected the ongoing communication, cooperation and relationship between the two agencies which he said does not exist in every college town.

4. 1-B-2. STUDENT BODY REPRESENTATIVE

37:43

Rick Deadwyler introduced Jessica Borghy, President of the Student Government Association. She stated that the SGA supported President Harker and Provost Grasso's statement about this incident. The SGA does not support the actions by the students and do not believe they reflect the student body overall.

5. 1. ITEMS NOT ON PUBLISHED AGENDA

A. Public

39:28

Nancy Willing, Barksdale Estates, is a member of the group No Newark Power Plant and said there has been a lot of activity trying to figure out homeowners' rights. She told Council that when she read through Mr. Walton's opinion, he clearly stated it was Council's intent upon approval of the STC zoning that this power plant would be allowed. She wanted that to sink in and said they own this.

6. Robert Gifford, a District 3 resident, requested clarification on two items in the non-disclosure agreement. The 7/23/12 agreement between the City and The Data Centers stated "Whereas TDC has one or more business opportunities relating to the development and financing of one or more solar generation facilities..." He was confused because it did not reference a Data Center, and in his opinion solar generation facility was extremely generic. In looking at the back page he did not have the date the document was signed by the City to determine what was confidential under the agreement. Ms. Houck said it was on or about 7/24/12 although she did not have the document on hand. Mr. Gifford's other question was what the agreement covered. Ms. Houck said it covered anything until TDC's name was out (March or April 2013). Quite a bit of information had come out after they signed a lease with the University in June. Mr. Gifford asked if there were any transactions or confidential information they shared in writing. Ms. Houck replied there was not, and their funding was not finalized at that point and she did not know if it was currently finalized.

7. Pat Wisniewski, Apple Road, said he had been going door-to-door talking to people about TDC and ran into only two people who were not willing to sign a petition

opposing this proposed seventh largest polluter in New Castle County in their neighborhood. The first woman recused herself because her employer worked with TDC for the environmental studies. The other person had worked at a power plant and wanted more information since he felt not all power plants were bad. When asked about having one within a half a mile from his home, he said well maybe not that close. He urged Council members to start listening to the people and take a look at the secrecy that went on, what was moral, what was ethical and what could be done.

8. Amy Roe, District 4, addressed a statement made by TDC at the 9/3 meeting and again in their written answers to questions on their website – that this project did not have Public Service Commission oversight because it was not a power plant. She wanted Council to be aware that utility activities within City limits do not have Public Service Commission oversight because Council was responsible to oversee utility affairs. She had a letter of intent signed between DEMEC on 12/17/12 to take 60 megawatts of power from the power plant on an intermittent basis subject to Council or City of Newark review, DEMEC Board of Directors and all necessary regulatory approvals. She provided Council with an email from 6/13 stating no approval of the power purchase agreement would be needed from Newark City Council. The agreement would be between TDC and DEMEC and would require approval by DEMEC's Board of Directors. Ms. Roe said it was the responsibility of City Council to direct the City's involvement in the DEMEC Board of Directors, and she asked them to do that. She asked Council to review and have a public hearing on the purchase power agreement and a vote on whether to engage in a purchase power agreement with TDC through DEMEC. She noted that Pat McCullar, President of DEMEC has come to Council numerous times and stated he takes his direction from the City. She thought it was not unreasonable to ask Council to do its job in overseeing utility affairs.

Another question posed by Ms. Roe from the 9/3 meeting regarded Air Liquide who would be compressing CO₂. She asked if they would be buying their power from the City or from TDC and asked if they needed to apply for zoning review. She foresaw a problem with spinoff industries such as Air Liquide purchasing power from TDC as to whether that was a separate business. Ms. Houck responded that they would have to purchase electricity from the City.

9. Ed Wirth, Arbour Park resident, quoted information from the UD Science and Technology Campus Master Plan. While he thought TDC was suitable for the site, he did not think the power plant was. He noted that Microsoft, Google, Facebook and many others had data centers similar to the one proposed but with one exception – they were all powered by the grid. He said plenty of power was available on the site from two 138 KV lines – there was enough for Chrysler, and there should be enough for the proposed data center. Further, Google and Microsoft were equivalent in size and operated satisfactorily with grid power. He asked why was a separate power plant was needed to run this center. Mr. Clifton thought Mr. Wirth brought up a good point that the City did not sell Chrysler Corporation electric because it did not have the capability to do so.

10. Beth Sheridan, an Arbour Park resident, commended the Police Department for being proactive during the I'm Shmacked incident. She commented that President Harker made statements about a black eye for the University, being open and transparent and issues of safety, yet she did not hear him voice those concerns to residents about the power plant. With the Code enforcement mentioned by Mr. Chapman, she asked how enforcement would occur with the power plant.

11. Jen Wallace, District 3, asked if UD had to buy power from the City and how long their contract ran. Ms. Houck responded that the City supplied power to UD, and a 15 year contract was signed at the end of 2012. Ms Wallace asked under what terms UD would be able to get out of their contract, and Ms. Houck advised she was aware of none. Ms. Wallace asked if UD would be able to purchase power from The Data Centers. Ms. Houck responded they would not, and the City had the assurance of a 15 year agreement to the sole right to sell electricity within its territory. Ms. Wallace did not have confidence in Council and was disappointed the City was in this position. She said residents in overwhelming numbers did not want this in their backyard and did not buy Mr. Walton's opinion and thought Council should not buy Mr. Walton's opinion.

12. John Kowalko, State Representative, announced that he and Representative Paul Baumbach would host a community town hall meeting on 9/24. They encouraged participation from members of the community to express their thoughts, concerns, suggestions, opposition and support for the power plant. While he knew the City signed a new contract recently with the University, he said that was not the contract to provide to the lessors of the STAR Campus businesses. Ms. Houck explained that all power coming into the campus would be provided by the City, and there would be no other provision of electricity. Mr. Clifton added if the City found they could not provide enough power, there was a process for the City to let Delmarva take over. Ms. Houck explained the City would upgrade its infrastructure or work out an agreement with Delmarva.

13. Tim Kim, UD English Language Institute, represented a group of community members who proposed resurrecting the Newark youth police academy and had several partners interested in helping with financing. ELI had over 200 international students in the Newark area, and they were concerned about some of the crime happening in the neighborhood around Madison Drive. They wanted to have a better outreach and communication with the Police Department. Mr. Clifton informed Mr. Kim that in the past the youth police academy was funded through the City's budget and was a tremendous opportunity for the NPD to work with the youth in the community while building relationships. According to Mr. Clifton, a property owner agreed to help fund \$10,000 towards the academy, and he thought the City should move forward with reinstating it upon receipt of the funding. He said it was a good investment for the future and if it goes forward, he would like to get some of the young people involved from the at-risk areas.

Mr. Markham agreed it seemed like a good idea in the past. Ms. Houck would pursue the opportunity.

14. 1-C. COUNCIL MEMBERS

01:07:21

Mr. Morehead

Mr. Morehead stated Council had been dealt a bad hand in this situation with The Data Centers. There were State laws tying Council's hands, and he asked that as well as speaking to Council, the residents tomorrow night speak to their State legislators and requested that the State legislators work on the residents' behalf to even the playing field. Mr. Morehead said he wanted to make several clarifications. There were residents who believed this was a good idea on the merits of the proposed project. There were folks who thought the offset in jobs, tax revenues and the greater economic good of development for the whole region when Delaware is suffering so badly was a benefit outweighing the concerns of the neighborhood. Mr. Morehead believed this decision was pushed forward by a small number of people with a bottom line of what was good for them was going to be good for Newark. He thought that was a direct threat to transparency and our way of government, and said Council should do everything in its power to address that issue. He thought it was inherently understood that this process was done incorrectly. He implicitly trusted Max Walton and said based on his opinion and the laws, this was how a court would decide this issue regarding the three words customarily, incidental and subordinate. He said the words customarily and incidental were a wash, the City would lose that battle, but subordinate may be where there was still some room. As more facts come out Council may have the opportunity to do something legal, but in the short term did not. He stated Council was represented on the Board of Directors of DEMEC by one person and asked that Council direct the City's representative to bring any purchase power agreement having to do with The Data Centers or any entity representing The Data Centers and that power, to bring that agreement to Council for review in public where the public will have their say. He otherwise did not see any way this could be returned to the public domain and since the Board of Directors meeting was in 48 hours, he asked to make that decision tonight.

Mr. Clifton asked if there was consensus among Council to give that direction. Ms. Hadden, Mr. Tuttle and Mr. Chapman responded yes. Mr. Clifton said then Ms. Houck had her direction. Ms. Houck stated nothing was on the agenda for tomorrow on this topic. Mr. Morehead said he understood but wanted to make sure the agreement came back to the people where it belonged.

15. Mr. Tuttle

Mr. Tuttle thought it was important to recognize that the City was in a difficult situation brought about in a lot of ways by some very good intentions. He read the Planning Commission minutes on the website of the discussion that occurred in September 2011 when they recommended that Council adopt this STC zoning which applied currently to the STAR Campus. It was fascinating to see the hypotheticals raised about what could be done on this site. One of them was specifically about power generation and a member of the Planning Commission asked, suppose some entity (the example given was IKEA) rented space on the STAR Campus and wanted to be self sufficient and generate their own power, could they do that? Roy Lopata, then City Planning Director said yes, they could be self sufficient and generate their own power, that would be considered an accessory use. The follow up question was about nuclear generation, with the consensus being well, probably. Mr. Tuttle was not sure anybody took that too seriously but he thought what was missing was a concept of scale and unfortunately the zoning language does not quantify things that way. So the Planning Commission voted unanimously to recommend the creation of the new zone and when it came to Council several months later they were in the midst of trying to decide how to hire a new City Manager and may not have paid as much attention as one might think. They were presented with a zone in which the University of Delaware for the first time was actually agreeing to some limitation on what could happen on their land because there were a lot of things that were not allowed or not allowed without a Special Use permit. There were limitations on what could happen but swallowed up in that was a recognition there were a lot of things that could happen. Clearly, the activity within The Data Center itself was covered. The City's Counsel and independent counsel have both advised the way the definition works is it applies to TDC making their own power too. Mr. Tuttle was not pleased with the situation or the fact that among all the responses TDC posted on their website they did not address how far away they would be from a residential area, school or park. He followed up but had not gotten a response yet. He agreed Council was not in a position to do much legally but applauded the public for making their voices heard. He noticed last weekend some voices were directed to the landlord involved and encouraged that to continue because he believed there was some responsibility there. Mr. Tuttle noted that the University presented descriptions of what the STAR Campus might be like. He did not understand how this enterprise fit into any of that – Council does not decide what the University puts on their land. They have their own board, but it was important for them to understand the public's feelings as well.

16. Ms. Hadden

Regarding The Data Centers, Ms. Hadden stated she was frustrated with what appeared to be a lack of transparency in the beginning, although a lot of businesses do come and talk to the City before coming on board. She was also frustrated with the University's attitude toward the community that they either do not care or think this will go away. Ms. Hadden was frustrated there was not much that could be done legally and she supported bringing it back to the people if at all possible. She does not understand how STC zoning could include an industrial park. She said Council needs to listen, pay attention, do research and grab any possible opportunities when they become available.

MOTION BY MS. HADDEN, SECONDED BY MR. MOREHEAD: TO MOVE ITEM 7-B AND 9-A-1 REGARDING NO PARKING ANYTIME DESIGNATION ON PORTIONS OF RITTER LANE TO ITEM #20.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Funk.

17. Mr. Chapman

Mr. Chapman thought it was evident in the comments made thus far that Council was listening as a representative body and were being inundated by public comments.

He was pleased to see that the public comments were including the proposed landlords, the State Representatives, and the State bodies in recognition that the City Council was limited in what they could do. As he continued to become informed on this situation he would attempt to identify areas where there might be some control and provide opportunities for the public to make comments and guide Council's direction.

18. Mr. Markham

Mr. Markham said he understood the passion but wanted people to realize there may be other voices out there that were afraid to speak. He asked that when the public had their conversations that they had a balance of good versus bad to establish a good rapport and have a really good conversation. He said he was the tech guy and did have some background on what they were doing and where they were going with the proposed project. He looked at this from a view point of how could the City improve the project because he knew there were restrictions just like any other project that comes before Council. Council does not get to control who comes to the City to build. He looks at a project by saying, how can I make this better, how can I solve the most number of problems and tried to make a balanced decision across all the projects. He develops a spreadsheet with the different questions and issues and comes up with a list and knows where his decision comes from based on answering these questions. Mr. Markham said he is going to find a balanced decision that represents his constituents.

19. Mr. Clifton

Mr. Clifton said he knew Council would do everything legally possible to represent each and every constituent. His personal opinion regarding the generating capability was that selling back 25-50% of a product did not sound like an accessory use but sounded like another business. Mr. Clifton said one of his biggest fears was that the University would latch on to their STC zoning exemption and there would be a lack of oversight and control by Council and the citizens. As he understood it, the Science and Technology Campus was zoned that way for the issue of taxation for the City. Mr. Clifton heard there was a movement on campus where the employees, professors and staff will be reaching out to the administration to state their opposition to this project. He applauded the public for bringing their concerns to their State representatives but said there was a third entity they should approach as well.

20. 7. ORDINANCES FOR SECOND READING AND PUBLIC HEARING:

- B. 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”

01:44:54

(Secretary's Note: The public hearings for the Ordinance and the Resolution were held under Item #7-A.)

Ms. Bensley read Bill 13-30 by title only.

MOTION BY MS. HADDEN, SECONDED BY MR. TUTTLE: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 13-30.

Chief Tiernan reported a petition was reviewed at the last Traffic Committee meeting from 11 of 15 residents on Ritter Lane asking that the parking restrictions already in place from South College Avenue to Orchard Road be extended down to Apple Road. The Traffic Committee voted unanimously to approve the request and recommend it to Council.

Mr. Tuttle asked for verification that there was an error in the public notice in terms of the geographic area that was going to be considered at the meeting. Chief Tiernan said yes, it was two blocks short of Apple Road.

The Chair opened the discussion to the public.

Mr. Wisniewski spoke on behalf of Irvine and Martha Wisniewski, Ritter Lane, who did not want restricted parking on Ritter Lane and wanted their names to be stricken from the petition they signed but did not read.

Linda Raffaele, 442 Beverly Road (corner of Beverly and Ritter) was not on the first petition, and she did not support it. She opposed the change because she felt there was not a parking issue in the blocks from Apple to Beverly and Beverly to Townsend. While there may be a parking issue in the third block she believed it was the one that was first publicized as being from Orchard to Townsend. After the last meeting she circulated a petition urging Council to vote against Bill 13-30. Ms. Raffaele felt a parking restriction on Ritter would lead to more parking on adjacent roads which already had more public parking. Ms. Raffaele provided the names of two people who signed the original petition but changed their mind and urged Council not to restrict parking.

Carla Stone, corner of Apple and Ritter, supported the petition because of the numerous students who parked on Ritter starting early in the morning and leaving in the evening. There have been times when she was unable to get out of her driveway on Ritter Lane. She never had any problem with people coming to her house as she gave them a parking pass. She said there was also a problem with overnight parking, especially Thursday through Sunday nights when there was a lot of noise, litter and lots of traffic during football games. Ms. Stone said there was no reason for students to be parking there, and residents could obtain resident stickers and parking passes, so she did not see this as a burden. She urged Council to support the parking restriction.

Dennis Williams, has been a Ritter Lane resident since 1976. He supported the proposed ordinance to extend the Ritter Lane parking extension from Orchard to Apple. He said Ritter Lane experienced an increase in on-street parking over the past several years, especially in the area closest to the Orchard Road intersection where the current parking restrictions end. He observed that some of the cars parked in the area were "day parkers"; another category included football game and special events parkers and student rental residents (who would be entitled to the same permits as other residents). However, he noted it could be difficult to identify the number of cars associated with the student rentals. Last was the party parker category. It was his understanding that under special parking permit restrictions they would be able to and would need to obtain permission for a large group for extra parking if they were going to have a party. He fully supported the inconvenience to reduce problems and requested Council to approve the measure. He would be glad to scale it back but said those residents needed to realize that this would push the problem their way. That was the motivation behind the group of people doing the initial petition to take it clear to Apple because it might get to the point where people might not be willing to park and then have to walk back.

Victoria McHugh, south corner of Apple and Ritter, expressed her opposition to this action. She also read a letter from Dave Hill, a 22 year resident of Apple Road, who opposed further restriction of parking on Ritter Lane. Ms McHugh said there seemed to be a division between the people who lived on one side of Orchard and the other side of Orchard on Ritter. For those living on the Apple Road side of Orchard, there was no parking problem. Her driveway faced Ritter, and the front of her house faced Apple, a busy street. Her driveway accommodated only one car, and they park on Ritter as do her visitors. If they were to have permitted parking on Ritter, the reality is unless they stayed a long time they would park on Apple where there was more traffic. She noted that the agenda from the 8/20 Traffic Committee meeting stated the issue was to designate both sides of Ritter Lane between Orchard and Townsend and for that reason she did not attend the meeting to express her opposition. On football game days, people do not even get down to her end of the street – she believed they lived too far away to be impacted frequently. She added when the petition was first presented to her, the women who initiated it were very clear they were trying to curb student behavior including litter, drunkenness and public urination. Ms. McHugh felt these issues could be addressed appropriately by contacting the police rather than parking restrictions.

Jeff McCurdy, a Beverly Road resident, was on the fringe of the proposed restrictions and reiterated that this proposal was to curb the actions of students and was not a parking issue. He was opposed to this measure and thought it was missing the mark based on the intentions.

Donna Organist, Ritter Lane, attended the Traffic Committee meeting where the parking issue was discussed. Although she lives in a block with special residential parking, she does have problems when cars are parked on both sides of the street between Orchard and Townsend and down to Apple. She said this happens in the daytime. It was interesting to her that the people opposing the change live on Apple Road – they want parking on Ritter Lane so they do not have parking on Apple Road. It seemed to her the City should consider the people living on Ritter Lane, and she urged Council to pass the special residential parking.

Brett Zingarelli, Barksdale Road, said if the information went out incorrectly and residents did not attend the meeting since they thought it would not affect them, that they should have the opportunity to meet with the Traffic Committee before the decision was made. Ms. Houck asked if a correction was made when the problem was figured out. Chief Tiernan said a correction was sent out, but even with that information the Traffic Committee makes a decision by the majority of people on that block.

Victoria McHugh clarified that she lives on Apple Road although her back yard is separately deeded as a Ritter Lane address. The right-hand border of her property is on Ritter Lane, and she parks on Ritter because of the placement of her driveway. She referenced two other neighbors who signed the original petition but withdrew their support later when they realized the implications.

Mr. Chapman said as a clarification that Ms. McHugh was a Ritter Lane resident, regardless of her mailing address. Mr. Tuttle stated this was an interesting geographic question because this street separated his district from Ms. Hadden's and changed in the most recent reapportionment. Except for the block between Apple and Beverly on the south side of Ritter, all the houses had Ritter Lane addresses. No property on the north side of Ritter had a Ritter Lane address between Orchard and Apple although their driveways came out on Ritter. It was the same way on the south side of Ms. McHugh's block. It appeared that nobody with a Ritter address was in District 3 when in fact everybody on the north side of the street was. The reason the notice went out was because he made the point to the City Secretary that there were people with dwellings abutting Ritter who do not have Ritter addresses but ought to get the notice.

Mr. Clifton believed there were two issues – how residents were notified and how placards were disseminated to the residents in a residential parking restricted area. Ms. Bensley spoke about the notification process for this meeting. According to the Code the requirement was to notify everyone within a mailing address in the affected district. That would have been everyone with a Ritter Lane address between Apple and Orchard Roads. However, after a conversation with Mr. Tuttle, that was expanded to include every corner property on all of the intersecting streets (about 37 households). Only one letter was returned undeliverable, so at least 36 of those households should have been notified. Within that letter information was provided about the process Council would undergo tonight as far as the second reading of the bill that affects the section of the street being designated as a no parking district and also about the companion resolution that would also designate that same district as a special residential parking district. The information about the opportunity for public comment was provided and how to submit comments via mail, email or fax if they were unable to attend the meeting.

Regarding the permitting and placard process, Chief Tiernan advised once an ordinance was passed, the resident comes into the records division and submits their driver's license to receive their residential permits and guest passes. In regard to special events such as weddings, funerals, etc. they just call to get permission to park.

In light of the many different dynamics, Mr. Clifton said because of those unique issues maybe this should be looked at in a broader view to consider the impact.

Mr. Chapman asked Chief Tiernan if the department had an opinion as to the current parking situation's relationship to safety on that street. According to Chief Tiernan a site visit at 2:00 pm to the north side of Ritter Lane from Orchard to Townsend showed it was full of cars, so emergency vehicle access might be a problem. In light of the process breakdown, the confusion and the lack of clarity about ordinance changes, Mr. Chapman asked to defer the bill to another meeting. Mr. Clifton said Council could send it back through the entire process.

Mr. Herron was asked to consider whether the no parking petition was limited to the residents with an address on the street under consideration or whether the ordinance should be changed to include property owners whose access was from the street in question.

MOTION BY MR. CHAPMAN, SECONDED BY MR. MOREHEAD: TO SEND BILL 13-30 BACK TO THE TRAFFIC COMMITTEE TO PROPERLY NOTIFY THE AFFECTED RESIDENTS.

MOTION PASSED. VOTE: 4 to 2.

Aye – Chapman, Clifton, Morehead, Tuttle.

Nay – Hadden, Markham.

Absent – Funk.

Ms. Houck clarified that the current Code, unless more of these residents drop off the petition, they would still have the majority vote. Mr. Clifton felt within the petitions that were presented there was still some fluidity in what people understood they signed.

Mr. Morehead added the original mistake forced the bill to be sent back for proper notification.

Mr. Tuttle said the ordinance question (assuming it was enacted) raised the issue of who could avail themselves of relief by getting parking permits. If residents could not avail themselves of relief by getting permits because they do not have an address on Ritter Lane yet they park on Ritter Lane, then the ordinance had to be fixed, but the process had to start over with the Traffic Committee.

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

A. Council Members

1. **Resolution 13-__:** Designating Ritter Lane Between Orchard Road and Apple Road as a Special Residential Parking District

(See Item #7-B)

22. **2. APPROVAL OF CONSENT AGENDA**

02:29:35

Ms. Bensley read the Consent Agenda in its entirety.

- A. Approval of Regular Council Meeting Minutes – September 9, 2013
- B. Receipt of Alderman’s Report – September 10, 2013
- C. **First Reading – Bill 13-31** – An Ordinance Amending Chapter 31, Weapons, Code of the City of Newark, Delaware, By Clarifying the Right to Transport a Stun Gun or Taser Gun from a Store to Real Estate the Person Owns or Leases – **Second Reading – October 14, 2013**
- D. **First Reading – Bill 13-32** – An Ordinance Amending Chapter 30, Water, Code of the City of Newark, Delaware, Providing Protections for Contractors Hired By the City for Water Meter Installation – **Second Reading – October 14, 2013**
- E. **First Reading – Bill 13-33** – An Ordinance Amending the Zoning Map of the City of Newark, Delaware, By Rezoning from MI (General Industrial) to RA (Multi-Family Dwellings – High Rise Apartments) 0.708 Acres at 178 South Chapel Street – **Second Reading – October 28, 2013**

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

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Funk.

23. 3. ITEMS NOT FINISHED AT PREVIOUS MEETING

A. Recommendation on COLA Increase for Retirees – Finance Director – *Postponed from September 9, 2013 Meeting by Request of Council*

02:31:18

Mr. Vitola reported this was the fourth meeting when staff was presenting different COLA scenarios for their consideration. Staff's recommendation not to provide a COLA increase at this time still stands. The primary reason for that recommendation was the funded status of the pension plan which was below 65%. However, staff was asked to review alternatives and to research the concept of a 13th check which would provide a one-time benefit to pensioners without burdening the liability side of the pension equation long term. If Council elected to provide some form of a COLA increase, the proposed payment was equal to a 0.5% increase for every year since the last increase on a one-time basis in the form of one check at the end of 2013. That would cost the pension account almost \$77,800 and would impact the funded status by less than 0.2%. Another idea was a check to each pensioner equal to their monthly check which would cost \$265,326 and would take the funded status from 64.9% to 64%. If the one-time benefit was considered, they would recommend the accumulated 0.5% increase since the last increase.

Mr. Clifton (who was not present when this was previously discussed by Council) understood the fiscal condition of the pension fund and did not disagree with staff's recommendation regarding a permanent increase at this time. He thought it would be irresponsible to do so but also believed should be done for those pensioners who have not received an increase since 2006. He felt the \$77,000 expense was a good compromise that would have a minimal impact on the pension fund.

Mr. Chapman was in agreement that Council should not make any COLA increases for permanent consideration and commended staff for the creativity of finding the 13th check option. He agreed with the lower amount but noted he was concerned about setting a precedent. In light of Council's fiduciary responsibility to make changes or decisions related to the overall health of the pension fund, he stressed they should review this situation every time it comes for review.

Ms. Houck clarified that staff's original recommendation was to do nothing, and these options were in response to Council's request.

Mr. Morehead asked if this should be deferred to the budget discussion this year in which additional funding could be requested for this fund to cover it and fulfill the fiduciary responsibility at the same time. Mr. Vitola said that was already being done – their proposal was to shrink the amortization period from 30 years to 29 and reduce the rate of return assumption from 7.5% to 7.4%. By making more realistic and conservative assumptions it would push the annual required contribution up by \$300,000 in 2014.

Mr. Chapman noted the pending recommendation to increase the ARC funding was along the lines of what he spoke about last year, and he would most likely be pushing for at least that with future contributions throughout the budgetary process.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT COUNCIL APPROVES FUNDING \$77,797 IN THE FORM OF A 13TH CHECK AT THE RATE OF 0.5% TO THE CITY'S RETIREES COMMENCING IN JANUARY 2006.

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

Nay – 0.

Absent – Funk.

24. 4. SPECIAL DEPARTMENTAL REPORTS:

A. Special Reports from Manager & Staff: None

25. 5. FINANCIAL STATEMENT: (Ending August 31, 2013)

02:44:45

Mr. Vitola presented the unaudited financial statements for the first eight months of the year which showed a consolidated operating surplus of \$1.5 million, a reduction of about \$400,000 from July's financials. The majority of the positive variances were attributable to the governmental funds where revenues continued to beat expectations.

Permit revenues were stronger than expected on new development. Transfer taxes continued to track higher than anticipated, and other items such as grants and property taxes also continued to be stronger than originally budgeted. In the previous period the strong revenues were partially offset by higher expenses but now through eight months those expenses have normalized. As a whole the enterprise funds outperformed the budget through August. Electric purchases continued to be lower than the budget on volume and unit price. Sewer expenses continued to track higher than the budget, and the recent rate increase will help to abate that over the remainder of the year from the damages done the first two-thirds of the year. Water sales lagged the budget due to the wet spring and summer, the straight line method used to spread the rate increase over the year and the delay in the implementation of the water increase from July 1 to September 1. The deficit in the other funds improved over the last several months and was now less than budgeted. Part of that was due to lower vehicle maintenance expenses since May. The RSA pass back grew to \$2.2 million through August, and the cash balance was \$30.6 million as of August 31 which consisted of \$6.9 million in the operating accounts, \$3 million in the Smart Meter account and \$20.7 million in reserves.

Mr. Vitola reported that Fitch Ratings conducted its surveillance ratings on the City, and they affirmed the rating of AA+ with a stable outlook. Only 3% of the municipalities in the country have this rating.

Mr. Markham questioned the cash balance – after taking out the \$3 million for the Smart Meters and taking out the remaining \$2.6 million for the RSA, the remaining cash balance would be \$25 million. Mr. Vitola responded the RSA was funded with current revenues so there was no need to dip into the actual cash balance. Mr. Markham said this meant the cash balance was \$27.6 million to which Mr. Vitola responded yes.

Mr. Markham pointed out at times there were mixed feelings regarding the University but there were some real positives with their permits on the STAR campus contributing directly to the City's bottom line with permit fees.

Mr. Morehead thought the RSA was funded with current resources within the electric fund. His understanding was that customers were overbilled last year and that money was available. He asked if it was money on hand since last year or was it like Social Security (paid and funded this year)? Mr. Vitola reported, it was last year's revenues overcollected and moved over to a liability.

Mr. Clifton asked how the rate of return was on property taxes at one week out from the end of tax season. Mr. Vitola said so far returns were slightly ahead of projection for the year, but this account was prorated in the budget and September's results would have to be considered to determine if it was beating budget or not.

Mr. Morehead asked if Finance kept track of properties in foreclosure and asked if the City was being paid taxes by the banks. Ms. Bensley advised that Mr. Smith, Finance Accountant, checked the sheriff sale list monthly and filed a lien certificate against any properties scheduled for sheriff sale with outstanding monies owed to the City through the City Secretary's office. Once the property goes to sheriff sale and the deed was transferred, the entity on the deed received all further City billings.

MOTION BY MR. MARKHAM, SECONDED BY MR. CHAPMAN: THAT THE AUGUST 31, 2013 FINANCIAL REPORT BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Funk.

26. 6. RECOMMENDATIONS ON CONTRACTS & BIDS:

- A.** Recommendation to Waive Bidding for Parking Control Equipment Maintenance and Service Agreement

02:56:10

Ms. Houck reported this recommendation would authorize an increase to the annual agreement with Best Associates to bring it in line with the actual cost of servicing the City's parking system. The annual maintenance and service agreement would increase from \$24,900 to \$32,500. Ms. Houck advised there was a recent conversation between the Parking Division and Best Associates where they demonstrated there were more calls for service and for items not covered.

Mr. Chapman stated that he never received a response or any follow up to his questions regarding upgrading equipment and before he cast his vote to increase maintenance costs on the existing equipment he would like to know more about that. Ms. Houck and Mr. Vitola said the number was prepared and it was \$400,000. Mr. Chapman stated that it came up in relation to solving a problem of the additional entrance/exit and he had requested staff to challenge themselves to think outside the box, raise the bar and bring ourselves up to a higher standard. Mr. Chapman asked if staff was prepared to provide more information since he did not get the opportunity to review the information before the meeting. Ms. Houck said \$400,000 was the estimate to outfit Lot #3 and there were long-term plans that could possibly be another garage in addition to the options being explored in Lot #1. Ms. Houck continued by saying the City is putting in all the changes for Lot #3 to have the exit but is also exploring other options including a pilot for Smart Parking Meters and parking garages. Mr. Chapman stated that the cost of upgrading to a system similar to what he thought might exist was going to be \$400,000 for that one lot which seems like a lot of money. The proposal was to continue to band-aid the situation, see how parking throughout the City develops and if an overarching upgrade could be done to the whole system.

Mr. Houck explained this proposal was to help maintain what was currently in our lots. Making changes to lot #3 at this time with equipment would be a substantial cost that would have to be budgeted. Certainly there will be talks about budget where Council will have the insight of staff had been working on for some time in less than a month. Council would see between the Smart Meters, parking meters and the possibilities of what could be done in Lot #1 and Lot #3 that the City should take those steps in that fashion because they are quite costly.

Mr. Chapman asked if this alteration in the current annual maintenance and service agreement came up for review on an annual basis. His assumption was this could be pulled back and alterations could be made in the future and that any decision today locked in with Best Associates permanently. Ms. Houck said this was annual and the reason it was before Council was the new value of the work was over the threshold.

Mr. Morehead asked when the current agreement runs out. Ms. Houck thought it was in the near future.

Mr. Clifton advised he has done this with the Federal Government for quite a few years and when he put a request in to waive a bid requirement it was because there was a qualified reason to do that. Mr. Clifton stated that what he is seeing here is we are at the threshold of the contract running out and it's a one-year contract but he does not know that a case has been made to say what the qualified reasons are to waive a contract that would normally be bid. Ms. Houck replied the fact that there are several vendors noted. The location of a vendor for a quick recovery when the lots go down has been noted and the City has had a very good experience with this vendor over the years for service calls.

Mr. Clifton said it goes back to his original point that another company potentially could be doing the same thing cheaper that they may have good response time, great customer service and are qualified to do it. Ms. Houck said adequate response time was mentioned because of the location of the other vendor.

Ms. Hadden asked if that was built into our request for quotation that the responses need to be addressed. Ms. Houck said often it is – this did not go through that process but that is a common requirement. Ms. Hadden asked if we could make that a future requirement. Ms. Houck stated this price had been in place since 2008.

Mr. Chapman said contracts were typically reviewed every three years and the fact that it is being brought up now it made sense to increase the funds a bit. Mr. Chapman asked if Council approved this recommendation tonight that was an increase of about \$7,000, would there be any past expenses. Ms. Houck said in the past this was not a formal bid contract but was a maintenance service agreement, and it was under the threshold. It was entered into on an annual basis under the authority of the \$25,000 threshold. Mr. Chapman said with that, going out to bid made a lot of sense and the bidding process should include future projections. Ms. Houck said it may also come back as a three year thing and we do have to put more effort in at that point.

Council questioned what time period the \$32,500 covered, but Ms. Houck did not have that information.

MOTION BY MR. CHAPMAN, SECONDED BY MR. MOREHEAD: TO POSTPONE TO THE 10/14/13 COUNCIL MEETING AND INCLUDE INFORMATION ABOUT CURRENT SERVICE AGREEMENT START/END DATES AS WELL AS A RECOMMENDATION TO ENTER INTO A FULL BID PROCESS.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Funk.

27. 7. ORDINANCES FOR SECOND READING AND PUBLIC HEARING:

A. 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

03:10:42

Ms. Bensley read Bill 13-29 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 13-29.

Ms. Bensley explained that at the request of Council during the 8/26/13 Council meeting, Bill 13-29 was prepared to provide for an organizational structure for City Council meetings in the event the Mayor and Deputy Mayor were unable to attend but a quorum would still be present. The bill would amend Chapter 2 of the Code and the newly created Sections 2-8(a) and (b) of the Code as written in Bill 13-29 would mirror Section 310 of the Charter, Mayor's relationship to Council. Section 2-8(c) would provide for a succession of leadership by designating the Council member with the most seniority as determined by the date of first election as the presiding officer of any meeting where both the Mayor and Deputy Mayor were absent.

If passed, the bill would alleviate potential confusion or conflict surrounding leadership of Council meetings and would codify what has already been tradition. It would also remove the need for electing a Chairman Pro Tempore in the absence of the Mayor and Deputy Mayor as the duty of leading a meeting would already be codified.

Mr. Clifton referenced the issue of the emergency operations plan and what would happen to the government if four members of Council were not available. The last time he read it, it referred back to the Charter and he was not sure the Charter defined the continuity of government in that situation. Ms. Houck was getting back information on what other cities have in place and planned to bring a recommendation to Council.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

(ORDINANCE NO. 13-28)

28. **7-B. 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”**
(SEE ITEM #20)
29. **8. RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:** None
30. **9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:**
 - A. **Council Members:**
 1. **Resolution 13-__:** Designating Ritter Lane Between Orchard Road and Apple Road as a Special Residential Parking District**(SEE ITEM #21)**
31. **9-B. OTHERS:** None
32. **Meeting adjourned at 10:09 pm.**

Renee K. Bensley
City Secretary