

**CITY OF NEWARK
DELAWARE
COUNCIL MEETING MINUTES
October 14, 2013**

Those present at 7:00 p.m.:

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

Staff Members: City Manager Carol Houck
City Secretary Renee Bensley
City Solicitor Bruce Herron
Deputy City Manager Andrew Haines
Finance Director Lou Vitola
Newark Police Department Chief Paul Tiernan
Planning & Development Director Maureen Feeney Roser
Public Works & Water Resources Director Roy Simonson

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. MOREHEAD: THAT ITEM 8A BE MOVED AFTER THE CONSENT AGENDA AND ITEM 6A BE MOVED TO IMMEDIATELY BEFORE ITEM 4A1 AND THAT ITEM 6B, EMERGENCY RECOMMENDATION TO REPAIR A STORMWATER EMBANKMENT AT CREEK BEND COURT, BE ADDED TO THE AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

3. PRESENTATION OF PROCLAMATIONS THANKING K9 UNIT BENEFACTORS

04:39

Council unanimously endorsed the proclamations presented by Acting Mayor Jerry Clifton to Bill Sullivan and Nic DeCaire who were recognized for their tireless efforts to raise funds and support the canine officers of the Newark Police Department K9 Unit. Veterinarian Dr. Miki King, who played a large role in the health of the two canines, although not present at the meeting, was also recognized for her contributions.

4. 1. ITEMS NOT ON PUBLISHED AGENDA

A. Public

10:34

Catherine Ciferni, District 2, was concerned about what she perceived as a gap in communications between the citizens, the staff and Council. She said it was rare for Council to comment on the record and felt they should not run for office if they were not willing to do so. She also disagreed with the shutdown of the Town & Gown Committee.

5. Rebecca Arenson, District 3, discussed the 9/3 meeting sponsored by the City with The Data Centers LLC. She said many people left the meeting with more concerns, and further research convinced them they did not want the power plant near their families. She summarized the concerns against the power plant including emissions that can contribute to a number of health problems, noise and lower property values. She questioned the University's commitment to environmental responsibility, sustainability and reduced emissions and asked why they would not use this site for education and research as promised. She said many in Newark would want any new construction built

in Newark to be union, but they wanted good paying jobs after the construction phase as well. She called for a transparent and accountable City Council and submitted a petition with more than 1,200 signatures in opposition to the power plant's location.

6. Amy Roe, District 4, discussed the STC zoning in regard to the comments made by Max Walton, Esq., in his memo to the City of 9/9/13. She said the minutes of the 3/12/12 meeting where STC zoning was adopted stated that assuming approval, Ms. Feeney Roser said a letter would be signed formally binding the City and the University to its zoning category. According to the response to Mr. Roe's FOIA request, no such letter was drafted or signed and her request was closed. Her point was that Council approved the STC zoning upon the premise of a binding contract. She asked where that stood and whether City staff was accountable when making promises that determined a major Zoning Code change. The electric contract signed 1/23/13 stated the University may obtain and execute an indicative offer with Utility for energy supply from a power producer located on premises owned or controlled by University if Utility had a contract with said power producer for energy supply. Ms. Roe learned from the Finance Director that revenue from electric sales from the City to UD was \$3.5 million. The Finance Director estimated that TDC would pay \$1.6 million in property taxes, so there was a \$1.9 million shortfall if UD obtained its power directly from TDC. She said this shortfall was equivalent to a 36% property tax increase. Ms. Roe referenced a TDC presentation at the University where it was estimated that the property taxes they would pay to the City were \$990,000, not \$1.6 million. Ms. Roe claimed that if a power plant was built on the UD campus, the University could bypass the \$3.5 million in payments to the City, leading to a potential shortfall of over \$2.5 million. She asked who knew about the power plant plans when the contract was signed in January 2013. Based on information obtained through FOIA, she understood that the University, the City Manager, the Finance Director, the City Solicitor and DEMEC knew about the power plant because they had signed a letter of intent for 60MW of power. She has no evidence that Council knew about the power plant. She felt the City was playing a dangerous game with its finances which could have a detrimental financial impact to Newark residents.

Mr. Clifton asked Ms. Houck and Mr. Herron to follow up on Ms. Roe's comments on the contract and if possible report their findings to Council at the 10/28 meeting.

7. Sam Lathem, President of Delaware State AFL-CIO, and a retiree of the Newark Assembly Chrysler plant, said he saw this type of behavior from groups of people who tried to close the plant when he was there. He referenced the loss of jobs at the closing of the plant in Claymont. He said those who came out of the Chrysler plant have not forgotten where they came from and will fight to make sure working men and women in Delaware have an opportunity for good jobs and to send their children to college.

8. Joe Williams, business agent for the elevator constructors, represented members of the local that work in Newark and New Castle County. He said they were in favor of the Data Center which in order to be built had to go through a DNREC hearing, had to pass a number of codes and regulations, and the Data Center when built would produce a lot less pollution than when the Chrysler plant was running. It would put their members to work at a time when there was little construction in the State and jobs were needed.

9. Len Schwartz, Devon, said it just came to his attention at today's meeting that his house was in the most inner circle next to the power plant. He saw a photo shown by Professor Morgan of the Physics Department of what the plume of steam and smoke from a large power plant similar to the proposed plant looked like. It was scary and he did not want to be 3/10 mile away from that. He questioned the \$1.1 billion source of funding and was told TDC is a private company, and they do not have to give out that information. As far as he could tell TDC has never built a data center or a power plant and he wondered what investors would risk their money on the project. Mr. Schwartz said Mr. Kern from TDC talked about 100% reliability and an efficiency of conversion from natural gas to electricity in excess of 75%-80% which Mr. Schwartz said were unrealistic numbers. Mr. Schwartz was sympathetic to union workers wanting jobs but said the largest data center in the world was on the Arctic Circle. It was there because there was lots of unused hydropower and they do not have to worry about cooling the computers. Photographs of the data center, showed a huge building with no people so he wondered about the jobs. Mr. Schwartz referenced a Bloom Energy compulsory contribution of \$4-\$5/month per customer on electric bills and commented there were 12

states with a tax on Internet access, and Delaware was not one of them. If such a tax were in place it would be an unfair tax and would also secure the funding they needed.

Mr. Markham did not believe the Bloom Energy subsidy appeared on any City electric bills, and Mr. Clifton added that charge was for Delmarva customers only.

10. Kira Bell, Minquil Drive, was uncomfortable with the way information was being shared by the City and the University. She thought it was sketchy, misleading and untruthful. In her opinion important people have known things for longer than they have said. She supported unions and wanted to see something built on the property

11. David Herman, District 4, was sorry the leadership at UD acting in an arrogant, non-transparent way. He said the University has thought they will get whatever they want. He thought it was important that City and State government stand up and say, not necessarily. He said there may be a difference between data centers which could provide jobs and power plants which supply dangerous ingredients to the environment.

12. Nancy Willing, Barksdale Estates, said her sister and brother-in-law own three properties in Devon, and the project will impact them more than her. They recently came across a FOIA document the State originally did not find that established an RAS, a sit down with DNREC, power plant representatives and the University. The FOIA document was November 2011 which put the Planning Commission presentation of the zoning for this property just two months prior to that (September 2011) and put the vote by Council seven months afterward. Ms. Willing said the City has let on that the public was presented an idea that accessory use of a generation facility on the STC property amounted to about the same as a one megawatt IKEA might need for back-up generation. However, UD and TDC met with DNREC and discussed the power plant at the current scale, so she said there was duplicity and problems with honesty in the way the zoning was laid out. She added if the University had eminent domain, the City needed to challenge them for bringing the project forward in this manner.

13. Bonnie Meredith, Arbour Park, attended the Faculty Senate Executive Committee meeting and expressed skepticism about the STAR Campus and the proposed TDC project. She felt the pressure to improve the economic outlook in Delaware was driving a hasty, secretive and perhaps uninformed decision to promote TDC. She thought the City could dispel suspicion by providing transparency and specific answers to the public's questions. She said it was in the best interest of the City to dig deeper into the risk before buying into the benefits. Since this project is TDC's first patent-pending data center, it stood to reason that issues, setbacks and perhaps failure could be expected. Ms. Meredith asked what measures were taken to identify specific areas of risk to the City and its residents. Since the project was framed as an economic boon to Delaware and Newark, she asked who would provide the cost analysis of the risks and benefits.

14. Beth Sheridan, District 3, Arbour Park, said she wants jobs for the area, wants the City and the community to thrive, and understands unions and what they represent and want, but asked at what expense were these jobs wanted. People have spoken in favor of TDC but when asked, do you want it in your backyard, the answer is no. She referred to WILMAPCO's quarterly newsletter where two zip codes (19801 and 19802) in Wilmington were developing an asthma action plan since 26% of those residents have asthma, more than double the State rate. There were draft recommendations in the article and one key phrase was, "the separation of industrial and residential land uses." She said their concerns were real and thanked Council for listening to them.

15. Vince Ascione, a representative for the Operating Engineers Local 542, and former resident of Newark, said he had 70 families in the area where TDC would be built and was speaking for them and their concerns. His concern was the loss of manufacturing jobs with 36,000 presently unemployed in Delaware. In regard to TDC, natural gas would power the generators, which was a cleaner form of energy. In the area surrounding Newark, 59% of the residents or approximately 18,462 people had gas in their homes. He heard comments about the pollution and said the main roads by UD during football games or other busy times probably produced more pollution than TDC would. He heard conflicting talk about decibel levels between 45 – 50 decibels. He said he knows what it is like to lose a job and get paid poverty level wages and people want a chance to live and have the opportunity to better themselves and their families.

16. Harry Gravell, President of the Delaware Building & Construction Trades Council, testified in Dover for a power plant being built there now by Calpine, a natural gas generation plant. He reported that Dover City Council and the City Manager were in favor of the project. He understood the power plant was the issue but said if it was not part of TDC, the 5,000 families of the Delaware Building Trades Council would lose at least 1,000 jobs. He said it appeared a lot of the audience was union fans which surprised him because they do not get a lot of work in Newark, especially at UD. He felt this project was the best available technology.

17. John Bland, Business Agent with Boilermakers Local 13, said over the last 25 years he built about six similar boilers, but this was one of the smallest boilers he had seen – most were 350-700 megawatts. He noted this would create good paying jobs although once the plant was built there was very little maintenance. He felt sorry for the kids who went to college and paid for a degree and then could not find a job because the Sierra Club was chasing industrial jobs overseas. He added that EPA standards were hard on everybody, and it was difficult to make money. He noted there were three 150MW units on Hay Road which could not be heard running a quarter of a mile away.

18. Jen Wallace, District 3, had concerns regarding the Electric Service Agreement between the City and the University dated 1/23/13, especially in light of her questions at the 9/23 Council meeting. At that time she asked Council if UD had to purchase power from the City or whether they would be allowed to purchase power from TDC. The City Manager stated that the University had to buy power from the City and could not purchase power from any other source. Ms. Wallace had concerns that the University could purchase power from TDC in light of the ESA which stated the University may, at its option, obtain and execute an indicative offer with Utility (City) for energy supply from a power producer located on premises owned or controlled by University of Utility has a contract with said power producer for energy supply. University and Utility shall cooperate and take all steps reasonably necessary to facilitate the availability and procurement of energy from any such power producer. Ms. Wallace also pointed out the letter of intent from DEMEC to TDC of 12/17/12 (which the City Manager is listed as having received a copy) expresses interest in a contract between DEMEC and TDC for the purchase of power from TDC. She thought this meant that as long as the City contracted with TDC via DEMEC that the University would also be able to obtain power from TDC. She asked Council to review these documents as she was concerned the City had the potential of losing electric revenue from the University. Ms. Wallace also was disturbed by the City Manager's responses to her questions at the 9/23 Council meeting and said she was not forthcoming in her responses which left Ms. Wallace wondering how she could not be aware of these points in a contract she executed.

Ms. Houck responded that her answer remained the same and that all of the concerns will be addressed at the next Council meeting.

19. Anne Marin, a Cherry Hill resident, works in IT and said they were not union jobs. She also has an economics background. According to the Bureau of Labor Statistics in May 2012 the average IT worker had an average annual salary of \$84,390 in the Wilmington, DE-Maryland-New Jersey area. The annual tenth percentile was \$47,890 and the average weekly salary in 2013 was \$1,000/week or \$52,000/year. According to TDC, the jobs they are bringing to Newark on average will pay \$46,500 (below what she stated.) She talked about the multiplier effect and said Chrysler had a huge multiplier effect because the jobs came to Delaware. Three things go to a multiplier effect – most importantly, local inter-industry purchases. This data center will be filled with thousands of servers employing thousands of servers, not people and most likely the servers will not be built in Delaware. She said Governor Markell wants people to think these are great high paying jobs, but according to Ms. Marin, they would not come to Delaware. The second most important part of a multiplier effect was direct local household income. She wanted union construction jobs and a building where there will be thousands of people working and earning good wages for their families, not thousands of servers earning income for people who do not care about Newark or Delaware.

20. Bill Halberstadt, an Arbour Park resident and a retired electrical engineer stated that 248 megawatts was a large number. In computing the amount of natural gas it took to produce 248 megawatts of power and then adding in 40% for the inefficiency of the conversion of natural gas to power, this was a stupendous number compared to the

amount of natural gas used by Newark households. His overall conclusion after studying the facts and doing research was that a 248 megawatt power plant should not be located in the middle of a residential area.

21. Ed Wirth, Arbour Park, supported TDC and the jobs it will provide which fit the objectives of the UD Tech campus. However, he opposed the power plant which did not fit the character of the campus, was unnecessary and would be an environmental concern. According to Mr. Wirth most data centers primarily used the grid for power with battery and generator back up. In this case there were three high voltage lines that would adequately supply the power requirements and were proven 99.99% effective in reliability. The power plant proposal appeared to be devious since their website stated that the developed power will be sent to the grid, an industrial function not tech oriented. This type of generation would also produce more noise than any other power supplies. Mr. Wirth said there were also a lot of questions for a billion dollar facility by a start-up company without a reasonable business plan. He commented that the company is only two years into the process and has a long period of design work to go. He questioned how they could be so optimistic in the projections of cost and utilization and noted they will not explain financial aspects under the guise of being a private company.

22. Rob Gifford, District 3, responded to a question about pollution in the Chrysler plant. He stated that this particular facility on a square foot or acre basis per area had three times the NOx emissions of the Chrysler site, so if other companies came in with a similar footprint there could be a serious pollution issue. He was surprised that the power plant information was not as transparent as he hoped. He then asked whether Council members knew about the meeting between 1743 Holdings, The Data Centers and the State regulators on 11/22/2011 before the STC zoning was passed by the City.

Mr. Markham responded that the public comment section of the Council meeting was not a question and answer session.

Mr. Gifford said that the State suggested keeping emissions below 25 tons per year. There were few NOx credits available and trying to find them could significantly slow down the permitting time frame. He recommended early community involvement in the project planning to reduce the chance of significant delays. He was concerned that TDC proposed a plant with 80 tons of NOx emissions a year and failed to include the community until they were forced to have a meeting. Earlier today at the University meeting he asked the question and the 1743 Holdings' folks or University of Delaware did admit that they knew about the power plant prior to the zoning being approved by the City in March 2012. Looking at the previous MI zoning it appeared the building height was changed to accommodate the plan, and they added the data processing line. He noticed they changed the height from 55' to 150'. Mr. Gifford said one of their members stated that to characterize this power plant as a minor consequence without intention or calculation was a gross misrepresentation of the facts, and he agreed. He wanted transparency for the City's dealings with the University and TDC.

23. Donna Means, Fairfield Crest, and a Newark resident for 18 years, was against the power plant but not so much the data center. She did not understand why Bloom boxes could not be used to power the data center. She worked for several unions, so she is a pro union person. She was disappointed that Governor Markell was such a strong proponent of the power plant. Last year Council passed a water rate increase to pay for repair of the infrastructure, but she recently learned that the State gave millions of dollars for infrastructure repair so the power plant could go forward. She also learned the City had passed another water rate increase and asked what was going on and why the public could not get answers tonight.

Mr. Clifton said when answering the questions raised by the public it was the desire of Council to respond with complete and accurate information. There were a lot of issues brought up tonight that he did not expect staff to answer immediately.

24. John Nichols, a citizen activist from Middletown, studied Delaware energy issues for the last five years. He said Delaware has the strictest renewable portfolio standard east of the Mississippi and required 25% of its energy to come from renewable energy by 2025, and 3.5% of that from solar. He said in-state generation was desperately needed since Delaware has a congestion problem. Electricity has to be imported at high

cost because PJM which manages the grid has to dispatch energy out of economic order meaning a higher cost as part of the pricing in the supply charge. Having this plant available would provide ongoing jobs because it would lower the cost of energy. He said an industrial society cannot be powered using wind and solar because it was not reliable generation. Mr. Nichols said he reached out to people about the Bloom project and asked them to challenge it on the environmental issues. He said Bloom emits more CO₂ and more volatile organic compounds than a combined cycle natural gas plant. He added that the combined cycle natural gas plant will provide three times the capacity that will come out of the Bloom project which will only provide 30 megawatts of energy. He believed the not in my backyard attitude had to stop and to have this renewable portfolio standard, the natural gas resources had to be available to back it up.

25. Tim Boulden, a Newark resident and business owner, worked year after year to provide high paying jobs with great benefits and is proud of that. He had some concerns on transparency but had a greater concern for the economic conditions in the City and the State. Delaware used to be known as the pro-business state, the corporate capital of the world. He thinks the image of Delaware in the country changed considerably and the message being sent is that Delaware is closed for business. He said a broad based economy was needed with union jobs, IT jobs and the infrastructure, whether for natural gas or whether for data. The State has great opportunities with great road and rail access and the Port of Wilmington but they were not being taken advantage of, so where Delaware was better than the worst in terms of the economic performance, now it is at the bottom of the barrel because they are not doing anything. While there may be concerns for environmental impact, he trusted the City and the State to protect people but also stressed the need to make sure it is known Delaware is open for business.

26. Connie Merlet, Kells Avenue, said she does not belong to the Sierra Club but is one of the 1,200 people who signed the petition presented tonight. She lives within a one mile radius; however, her business which is a day care is in the half-mile radius. She has 55 children, and five of the children have asthma. There are 59 permanent jobs in her business, and all but one live within City limits and two of them have asthma. She plans to live in Newark for the rest of her life. As far as unions, she heard a retired Chrysler employee say he worked there for 39 years. Chrysler was open for 50 years and provided thousands of jobs every single year until the waning days. It provided good, important union jobs. The union jobs at TDC will last only two years but will affect Ms. Merlet for the rest of her life. There are numerous building projects going on in Newark with housing developments and University projects. There are not a lot of union jobs from UD. She said she would fight for union UD jobs and any time the unions want to stand up and fight for UD construction jobs because the building is not going to end, she would be there fighting with them. She thought a number of the 1,200 people who signed the petition would also fight for UD construction worker jobs. The State pays a lot of money to UD every year, and they should all be 100% construction UD jobs.

27. Sheila Lynch, Alexandria Drive, Newark, said she does not see accountability or transparency, and she is tired of hearing that the power plant will be less polluting than Chrysler. She said at least Chrysler provided good paying jobs. She wanted to see union people go in and build something on the site that would be good for everybody.

28. Robert Carl, business manager of Local 42 Insulators and Asbestos Workers. They are leaders in green energy and always think energy conservation is the best thing around. He represents 30 families within the Newark vicinity and has not had any issue with them endorsing TDC or the power plant. They make a great living out of these projects and he hoped the City moved forward with this project.

29. Robyn Harland, Ethan Allen Court, is President of Cherry Hill Manor community association. On behalf of Council she said there were only three Council members who took up this project in 2011. She was with Paul Pomeroy at a presentation at the Embassy Suites put on by UD where she felt they bamboozled and lied to the attendees. She stated it was not what they projected when she went to the presentation – there was nothing about a data center and this is before they closed on the deal. It was already going to be a done deal. She stated that the University lied and presented something that did not exist. She said be mad at the people who presented it. She has nothing against the University except they pulled the wool over everybody's eyes to get that property. She feels that the plant is a done deal because UD does what it wants.

She stated that UD owns Newark and the only way it is going to stop it is for the entire community to get together. She is an ex union rep and there is nothing better than union jobs but the University is not going to let the unions in because they do not want to pay comparable rates. She stated that it has nothing to do with City Council, they were not even here, she sees five new people who were not even here when this happened because she was with Paul Pomeroy when he was on Council and went to this meeting. She wanted the audience to bear in mind, it is not the Council, it is the University.

30. Tony Papili, representative of approximately 1,000 members of Pipe Fitters and Plumbers Local 74, has been a City resident for 21 years. He asked Council and members of the public to allow due process to occur which would include State permits and regulations involving emissions and noise ordinances.

31. Debbie Coplein, Yorkshire, stated she is an unemployed single mother of a UD student so she understood the union's plea for jobs. However, she noted jobs resulting from the construction would be short lived. In spite of her education she was not capable of getting a job at TDC. Ms. Coplein detailed a number of health issues she experienced during her years in Yorkshire which was behind an industrial park where emissions were protected by environmental agencies. She was concerned about the power plant emissions. Regarding the University she felt they have gotten too powerful and said everybody must stand together to fight them and let them know residents take their community seriously and do not want a harmful plant in their backyard.

32. John Kowalko, State Representative, represents 23,000 citizens. He worked in the union for 37 years, with 25 years at a refinery. With due respect to Mr. Latham, the people who fought Chrysler's sometime harmful effects actually led to environmental improvements. He said people were fighting the battle for their own selves and he would not allow their interests, credibility or integrity to be disparaged or dismissed. Further, no one fought harder for union jobs in Delaware than he did, and he fought the University for not hiring in-state or union workers. Mr. Kowalko refuted Alan Levin's statement that this community is an organization of people who stifle economic development. Mr. Kowalko emphasized that Newark's residents were interested in their lives, the lives of their families, and the planet. At the Faculty Senate meeting he asked the exact route of the pipeline expansion as he believed that information had to be told to the public. Mr. Kowalko said he wants an open dialogue and consideration of his constituents.

33. 1-B. UNIVERSITY

01:49:48

(1) Administration –Rick Deadwyler, Jr., University of Delaware Director of Government Relations said he would continue working in the spirit of transparency, honesty, and accessibility by attending Council meetings and making himself available to respond to questions.

Mr. Deadwyler reported the University celebrated a very successful 23rd homecoming weekend with thousands of students, alumni and families who came to participate in a range of activities. An unfortunate accident occurred involving a bus load of sorority members. Approximately 30 students were injured. He thanked the first responders for supporting those involved.

The University established an internal working group and hosted a community meeting to encourage openness, awareness and understanding of concerns regarding the Data Center project. A number of subject matter experts were identified to serve on the group who would evaluate the ongoing plans of TDC. Reports will be shared with the University's leadership and with the University community.

The University will host a ribbon cutting on 10/17 for the 194,000 square foot ISE (Interdisciplinary Science & Engineering) Lab.

Mr. Clifton asked if the working group would be restricted to UD professionals accountable to the University upper echelon or if there would be a mechanism for reporting to the public. Mr. Deadwyler replied the group would be comprised of internal, senior administrative level representatives from the University as well as experienced subject matter tenured faculty from various departments. Their primary accountability would be to the academic and administrative senior leadership of the University but there would be a communications component for the University community as well.

Mr. Markham said part of the goal was to get the University's answers to the questions from people tonight. Mr. Deadwyler said they held an open meeting to the community today to capture questions so their subject matter experts would be available to respond to them. They were working through that process now. An e-mail address would be made available for faculty, administrators, students and others in the University community to send their questions and allow the internal working group to respond to them. Mr. Markham asked if they were planning to publish those questions as they were received. Mr. Deadwyler said the internal working group would respond to them as a part of the University's consideration process but not for external response.

Ms. Hadden said she was familiar with this group and there were very good scientists and engineers on the board. This was an advisory board that would report to the UD with their findings and was an effort by the University to check out the viability of the project to see whether it would be a good fit or would be harmful to the community. Ms. Hadden provided the email address which was datacenterproject@udel.edu

Mr. Markham asked if today's meeting was recorded somewhere. Mr. Chapman said it could be accessed at udel.edu/podcast. Mr. Markham stated that the City currently did not have plans for the project and asked if Mr. Deadwyler knew when plans would be submitted. Mr. Deadwyler said he was not at liberty to speak on TDC's behalf.

34. 1-B (2) STUDENT BODY REPRESENTATIVE

02:01:02

Geoffrey Heath, a senior political science major at the University, introduced himself as a Governmental Affairs Senator for the undergraduate Student Government Association. He and Andrew Miller, a Governmental Affairs Senator along with Jessica Bork, Student Government Association President will attend Council meetings and work with the City and UD on behalf of the community.

Mr. Chapman asked Mr. Heath if they would research why the former Town & Gown Committee had been dissolved. He would be interested in their insight as to why the group was disbanded and if there was an interest for it to come back, perhaps in some other format. Mr. Clifton added that Ms. Bensley, City Secretary, would be able to provide information on the Town & Gown.

35. 1-C. COUNCIL MEMBERS

02:04:48

Mr. Markham

- Mr. Markham reported that National Prescription Drug Take Back Day would be held on 10/26/13 at the Newark Senior Center and at the UD Public Safety building.

Mr. Chapman

- Mr. Chapman said he appreciated Ms. Ciferni's comment that as elected officials Council should not be afraid of going on the record or sharing their opinion since that is what they were elected to do. He mentioned at the last meeting in response to all of the public comments related to TDC and the combined power generation project that he is listening. He received many comments on both sides and tonight wanted to respond to some comments that were made and that seemed to be increasing that he and some of his colleagues on Council have acted improperly in not sharing information they had when they had it as they received it. When it comes to this project, this proposal that is not yet a proposal, he is learning things as the public is – he had no information that the public did not have. He was at the same meeting at the University tonight. He learned information there that he did not know before. He applauds the public conversation and is glad for it. Representative Kowalko stated that it was because of citizens speaking out about pollution from the former Chrysler plant that they did a better job. That is what it takes – a community balance between business progression, being open for business, expanding and taking a look into opportunities such as this as well as neighbors, friends, family members, every day citizens here in our City to share the concerns that the business men and women, the big financiers, are not thinking about because it does not factor into the bottom line. So he appreciates that balance. He purposely did not answer Mr. Gifford's question when he addressed Council because in that format some organization to the meeting would be lost. Also, he does not know what he was doing on 11/22/11, but at that time he was not a member of Council and had no idea about that meeting. Mr. Chapman reiterated he is sharing information as he receives it and as

it is asked of him. He is attending the meetings and gathering as much information as he can himself and will continue to do so. He cannot help but take it personally when he is accused of back door dealings and such, and thus his reason for comment.

Ms. Hadden

- Ms. Hadden asked those present to observe a moment of silence to reflect on the passing of Herman Row, a long-time resident of Arbour Park.
- Ms. Hadden attended a financial workshop on 10/7 which she thought went well.
- Ms. Hadden attended the open public session today sponsored by the UD Faculty Senate. She thanked the University for setting up the review committee and becoming part of the conversation openly and publicly.
- Ms. Hadden said homecoming was a great success because she did not receive one complaint.

Mr. Tuttle

- Mr. Tuttle had no comments at this time.

Mr. Morehead

- Mr. Morehead referred to the National Prescription Drug Take Back Day on 10/26 and thanked the Newark Police for their effort. The site is at the Senior Center in White Chapel from 10 am – 2 pm, and any drugs could be brought in, no questions asked, and they would be weighed and incinerated. This helps to keep drugs from the water supply, take them off the street and out of the medicine cabinets for safety purposes.
- Mr. Morehead attended the Newark Bike Project celebration of their new temporary location. Donated bicycles are refurbished and put back into the local community. There is also a fix your own bike program on Tuesday nights.
- Mr. Morehead passed a document to Mr. Vitola they had discussed about transferring electric accounts
- Mr. Morehead attended the Faculty Senate Executive Committee open meeting. Mr. Chapman said in view of the fact that there were only six Council members (seven with the mayor), they needed the public to pay attention as government works better with everybody involved. He said it was clear in looking at the FOIA documents that some people knew parts of this story earlier than other people. That information was contained in some of the newsletters that are in that community that do not necessarily come out into the Newark City community. What he saw routinely mentioned was a data center which did not trigger anything for him. Some of the UD documents indicate a data center and cogeneration facility, which would have triggered something for him, but he did not see it, and it was not picked up by Council. Mr. Morehead pointed out one of the interesting things that happened today was Gene Kern actually said the DNREC application had been made, and that was the first time he heard that being said. Mr. Morehead noted that in the Delaware Infrastructure Investment Committee meeting of 4/25/13, the listing for TDC (also called the Wolf Technology Center), referred to the Wolf Technology Center 1. In the slides shown today he saw that same thing. He asked Ms. Houck if she was aware of any mention of a second Data Center. Ms. Houck replied if she remembered correctly, the pictures brought for the 9/3 meeting referred to phase 1 and phase 2. Mr. Morehead said phase 1 and phase 2 was of one data center. Ms. Houck thinks it is two different buildings on the same plot of land. Mr. Markham commented that TDC talked about building multiples of these across the country and since they have never built one, this could be one of x.

Mr. Clifton

- Mr. Clifton also attended the Newark Bike Project opening. He was hopeful the community could help find another location for them that would be as accessible as this one. Mr. Clifton noted Newark has come a long way for cyclists but has a long way to go and needs to keep working towards that end.
- Mr. Clifton distributed to the City Manager, City Secretary and to Council an overview from a neighbor on smart water meters for condos. Due to the late hour, there were about 6-7 people present from Fountainview who had to leave before being able to make public comment. He provided an overview of their concerns. Fountainview was no different from other condos and other similar builds within the City. The smart electric meters were installed, and he thinks most of the Fountainview residents strongly support both electric and water smart meters. They found out they would not get smart water meters because during construction laterals were not installed to each unit

although each unit does have a current meter that is readable from the hallway. At a recent meeting there, the discussion was that Fountainview residents were being treated disproportionately because of the word condo. Mr. Clifton said a condominium is nothing more than another fee simple owned home. Original discussion with the City Manager and the Public Works Director was that they cannot shut the meters off. The residents want to come back and address this issue with Council. He believed the role of the City was to make sure that everyone was treated equally across the board.

36. 2. APPROVAL OF CONSENT AGENDA

02:26:23

Ms. Bensley read the Consent Agenda in its entirety.

- A. Approval of Regular Council Meeting Minutes – September 23, 2013
- B. Approval of Special Council Meeting Minutes – September 30, 2013
- C. Approval of Council Workshop Minutes – September 30, 2013
- D. Receipt of Alderman’s Report – September 25, 2013
- E. Receipt of Planning Commission Minutes – September 3, 2013
- F. Approval of District Polling Places for the November 26, 2013 Special Election
- G. Appointment of Curtis Bedford to the Board of Adjustment to Complete the Vacant At-Large Term to Expire September 15, 2016.
- H. **First Reading – Bill 13-34** – An Ordinance Amending Chapter 19, Minors, Code of the City of Newark, Delaware, By Establishing Immunity For Persons Who Suffer or Report an Alcohol or Drug Overdose or Other Life Threatening Medical Emergency – **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.

37. 3. ITEMS NOT FINISHED AT PREVIOUS MEETING:

- A. Recommendation to Waive Bidding for Parking Control Equipment Maintenance and Service Agreement – **Postponed from September 23, 2013 Meeting by Request of Council – Withdrawn by Staff to be Rebid in 2014**

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

- A. **Request of Albert and Margaret Suber for a Minor Subdivision of the Property Located at 392 Stafford Avenue to Insert a Lot Line Creating Two Parcels with No New Proposed Construction**

02:27:36

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THE MINOR SUBDIVISION BE APPROVED AS PRESENTED.

Ms. Feeney Roser reported the request for the minor subdivision was to reinsert a lot line at the property to create two lots out of the half-acre lot. This same lot line was removed by administrative subdivision in 2010 and circumstances have changed and the applicant requested that it be reinserted. No new construction was proposed, but it would create a buildable lot and thus would be a minor subdivision. Both lots met all the Zoning Code requirements and had a positive recommendation from the Planning Commission. Mr. Markham asked if anyone spoke at the Planning Commission meeting regarding the request. Ms. Feeney Roser said there was no public comment.

Mr. Clifton said he spoke with a neighbor who did not know why it was not two lots to begin with and most people were surprised it was still a vacant lot.

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.

39. 4. SPECIAL DEPARTMENTAL REPORTS:

A. Special Reports from Manager & Staff

1. Report on City of Boston Housing 2020 Initiative

(Secretary's note: This item was discussed in conjunction with item #6A.)

40. 5. FINANCIAL STATEMENT: (None)

41. 6. RECOMMENDATIONS ON CONTRACTS & BIDS:

A. Recommendation to Award RFP 13-04 – Rental Housing Needs Assessment Study

02:30:49

Ms. Feeney Roser detailed the recommendation contained in staff's report to Council dated 10/2/13 to award RFP 13-04 to study and evaluate the City's rental housing needs to Urban Partners, Philadelphia, PA. Based on the dramatic increase in the number of rental housing development proposals and the concern for the associated impact on the community, a two phase RFP was developed to evaluate the rental housing need. The first phase would provide an inventory of current rental housing units and make a determination on the number of additional units needed to meet future demand as well as to make recommendations on the type and location of these units should they be necessary.

Phase II would include an assessment of current homeownership assistance programs and current single family rental occupancy and maintenance controls as well as the downtown mixed-use development strategy as tools to balance the impact associated with off-campus student rental housing growth. This phase of the contract would also cover reviewing other communities' best practices which is something the City already begun to consider.

The RFP was advertised in the *News Journal* and on the City's website. Nine firms submitted proposals which were reviewed by an evaluation committee and ranked. The top three ranked firms were invited to make oral presentations and then once again those firms were ranked by the committee. Once the ranking was completed, the pricing envelopes were opened. Ms. Feeney Roser reported that not only was Urban Partners the highest ranked firm, but they were also the most reasonably priced firm. Their references checked out, and money was available to cover the cost for both phases of the study in the Planning & Development Department and the Legislative budget.

Urban Partners proposed a six-month process which would include a market analysis of rental housing needs including inventory, pricing and supply characteristics and growth projections as well as key stakeholder and focus group interviews to provide a complete rental housing needs assessment report for the City. The project leads, Mr. Isaac Kwan and Mr. James Hartling were present to answer any questions from Council about the project.

Mr. Clifton asked for clarification on the rankings. Ms. Feeney Roser explained by the end of the oral proposal by the three highest ranking firms, Urban Partners ranked highest of the three.

Mr. Markham asked for other university locations where Urban Partners worked similar to Newark in terms of college rentals and whether they worked with the landlord community. Mr. Hartling replied they worked with Swarthmore, Mansfield (University of Connecticut), Reading (through a foundation involved with Albright College), Temple University, Drexel University, LaSalle and University Sciences in Philadelphia and with government entities in Richmond adjacent to VCU. They worked with the landlord community in an associated way and were always closely engaged with the property owners whenever dealing with the rental housing situation and making sure they understood their perspective. He said the other point represented by Ms. Feeney Roser was that it was critical to assess the best practices in comparable communities. When they worked with UConn they reached out to find other cities around the country with similar circumstances and were able to successfully translate those experiences to that

scale. He thought they should do the same thing with Newark and already suggested several possibilities in their proposal.

Ms. Hadden asked whether surveys were used in other communities. Mr. Kwan said it could be a combination depending on how available information would be online. They can call city staff or get first hand interviews and commit to do at least two to three comparable in depth analyses of case studies that could be applied to the City. Ms. Hadden requested a projected time frame. Mr. Kwan said they mapped out about a six to seven month process. Mr. Hartling added given what they observed this evening, sometimes the processes got extended depending on the community involved.

Mr. Morehead was pleased non-student housing needs were included because there was a large non-student rental housing population living in town. He noted that originally, a focus group of community members was discussed, but he was not hearing much beyond a bit of Internet searching. Ms. Feeney Roser said one of the important parts to the study from staff's perspective was to get stakeholder interviews and focus groups with those folks who feel very strongly one way or another about rental housing. Ms. Feeney Roser thought it would be best to select people who would participate although all of the meetings would be open. Mr. Morehead asked Ms. Feeney Roser to keep Council abreast of the selection and meeting process. Mr. Markham suggested including someone from the Newark Housing Authority since they were involved in housing needs throughout the City. Mr. Chapman suggested something similar to an open house as part of the data gathering process.

Mr. Haines provided a brief overview of the findings in his memo that tied into the rental housing discussion. The Boston metro area has 58 universities and colleges, with 30 in Boston proper. They do not view the college students as a target for their rental housing. Under the university rental header they require an institutional master plan so if any of the organizations try to expand they must address the impact on enrollment and how they are capturing enrollment. They look not only at the low-income housing as a primary target for their rentals but also young professionals. The City has an ordinance covering the number of unrelated people living in a house and because of the economy, their number is four. They view rentals not as a primary residence, but essentially a business and therefore have two different tax brackets. There is a higher millage assessed against the rental properties. One way they try to encourage owner-occupied rentals is that the owners of a primary residence with a rental permit receive a \$1,700 tax credit off of that higher millage rate. This has helped with absentee landlords but does not take away from the investment properties. Mr. Haines thought the inclusionary development was interesting – Boston looked at waiver requests but do not concede density at all. They concede height, set back or impervious coverage from a better design standpoint but because there is an opportunity to come in with a by-right plan, but anything else would be discretionary. They make inclusionary development should developers want to take the conditions and receive the waivers saying 15% of the units must be below market affordability. It gets the diversity they want from a housing stock standpoint but if a developer does not want to pursue that, there is a fee in lieu of they remit, and the city uses that money specifically to target low income housing.

Although Newark was much smaller in size, Mr. Haines believed that if the City wanted to engage some redevelopment ideas, there were a number of opportunities that could be applied to incentivize owner occupancy on Main Street and some other good mix of housing stock.

Mr. Clifton said he remembered that Ms. Feeney Roser explained several years ago that by census data a lot of the students were considered low-income occupants. So if the end game was to incentivize traditional family or single year-round residents, he was not sure how that worked. He mentioned that the Center Street overlay which he supported had not worked, and he had the same concerns with George Read Village. He questioned whether the City should modify free market initiative.

Ms. Hadden felt Mr. Haines did a wonderful job summarizing the initiative and was excited it was happening at this time. The purpose was to give Council and the City direction. She wanted to empower renters, homeowners and communities and hoped it would be something positive all around.

Mr. Markham asked to open the discussion to public comment.

Pat Wisniewski, an Apple Road resident, stated 42% of the acreage in the City belonged to the University. Ms. Hadden and Mr. Clifton added 46% was untaxed. Mr. Wisniewski relayed an incident when he worked as a hospice nurse about a family whose children were upset upon learning they did not own their family home. He said without the family's knowledge the University worked with their terminally ill mother and bought their Dallam Road house, telling her she could live out her life there. Mr. Wisniewski stated the University bought several other houses and extended their reach down Dallam. He felt the City should monitor the University's property purchases and questioned whether they were using the \$122-\$180 billion to make those purchases.

Catherine Ciferni asked about Ms. Feeney Roser's comment in her presentation about a focus group and reference to the meetings with people in the past tense. She asked if those meetings already occurred. Ms. Feeney Roser replied they did not.

David Robertson, New Street, was excited about the Boston initiative and the proposal to move ahead with the rental housing needs assessment. He pointed out there was a Town & Gown Committee for many years. He explained that if Council was interested in background information about college towns as far as co-development, there should be a copy of the reports he submitted over the past several years when the Town & Gown Committee existed in the City Secretary's office. Mansfield, Connecticut was mentioned earlier and was one of the towns he studied.

Mr. Morehead cautioned that the University of Massachusetts in Boston was way out in Columbia Point and did not affect the real estate there. He could not think of any of those other schools that were not private so they did not have the eminent domain capabilities and the state laws in their favor that Newark did.

Mr. Clifton offered several locations for consideration in the study – Trinity College in Hartford, Connecticut and Ames, Iowa.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT RFP 13-04 – RENTAL HOUSING NEEDS ASSESSMENT STUDY BE AWARDED TO URBAN PARTNERS, PHILADELPHIA, PA., IN THE AMOUNT OF \$32,420.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

42. 6-B. EMERGENCY RECOMMENDATION FOR REPAIRS TO A STORM WATER EMBANKMENT AND ASSOCIATED PIPING NEAR CREEK BEND COURT AND CREEK BEND DRIVE

02:59:26

Mr. Simonson detailed the staff memo to Council dated 10/11/13 to repair an embankment behind Creek Bend Drive. This structure was installed many years ago and does not function like a storm water basin would if it was designed today. The pipe failed during storms over the summer. Staff worked with the contracting community to develop a viable project and solicited four quotes. Two responded and were evaluated. It was recommended that Merit Construction be awarded the project based on their experience working in the City.

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THE CITY MANAGER BE AUTHORIZED TO ENTER INTO A CONTRACT WITH MERIT CONSTRUCTION ENGINEERS FOR THE REPAIRS TO A STORMWATER EMBANKMENT AND ASSOCIATED PIPING PROJECT AT THE RIDGEWOOD GLEN STORMWATER BASIN IN THE AMOUNT OF \$80,000.

MOTION PASSED. VOTE: 6 to 0.

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

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

- A. **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

03:02:25

Ms. Bensley read Bill 13-31 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 13-31.

Mr. Herron explained the current ordinance prohibited the possession or transport of stun and taser guns in the City. There was an exception for those who possessed them on their own property but current language prohibited a person from obtaining a stun or taser gun and then transporting it to his or her property. The addition of the words “or to” in the proposed amendment was intended to correct that situation.

Mr. Morehead thought the proposed change would create an open or concealed carry. Mr. Herron said it would be a case by case basis for the officer as to whether he had reasonable cause to believe it. Mr. Morehead pointed out that the amendment did not say they were coming from a store and found it to be very open wording.

Mr. Clifton said narrowing it down to say from time of purchase to the house would then stop the person from taking it from the house to a location outside the corporate limits of the City.

Ms. Hadden suggested an amendment to read: “This section shall not apply to any person who possesses, wears, carries or transports **after purchase** a stun gun or taser gun on real estate the person...”

Mr. Chapman felt this was still too vague and thought more time and research was needed before Council could make a decision.

Mr. Tuttle recalled the recommendation came from the Police Department because they did not want to run into people who were carrying stun guns. However, an awkward situation was created where an owner could not get their stun or taser gun home or their business. He felt the proposed amendment addressed the inconsistency and if somebody was found by the police to be carrying a stun or taser gun, then they had to raise the defense they were on their way home or on their way to their store and the police could determine if that was credible.

Mr. Morehead had two problems with the amendment – the intention was not clear and he had a problem with the summary of the bill having words in it that were not included in the bill itself.

Mr. Chapman thinks the law should be clearly stated to minimize confusion and if any homeowner wanted to purchase a stun or taser gun they should be able to review the Code to understand how they can legally do so.

Ms. Bensley advised if substantial changes were made to the ordinance it had to start over as a First Reading. Mr. Chapman recommended getting a statement from the Police Department to help understand their intentions.

MOTION BY MS. HADDEN, SECONDED BY MR. MOREHEAD: TO POSTPONE BILL NO. 13-31 INDEFINITELY.

MOTION PASSED. VOTE: 6 to 0.

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

Nay – 0.

44. **7-B 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**

03:23:30

Ms. Bensley read Bill 13-32 by title only.

MOTION BY MR. TUTTLE, SECONDED BY MR MOREHEAD: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 13-32.

Mr. Simonson explained the bill would address an issue raised as the water meters were being installed throughout the City. The provisions in the Code were sufficient for City staff to do the work themselves but did not cover contractors working for the City. This language extended to contractors working for the City similar protection afforded to the City doing the work themselves.

Mr. Morehead asked the total installation so far in the project. Mr. Simonson estimated about 66% for water, and Ms. Houck added that electric was expected to be completed next month.

Mr. Simonson reported it was not a question of compatibility with the new meters, it was a question of the serviceability of the meter setter itself. There were instances where when the old meter gets out, the meter set will break. In addition, replacement parts were no longer obtainable. It was within Code that all the plumbing from the curb stop at the edge of the right-of-way line into the house was the homeowners. Prior to the smart meter project with every meter the City installed where one of these was found, the homeowners changed it. Ms. Houck said it was important to know that homeowners were required to correct their plumbing before the smart meter project. Mr. Simonson said what changed was the quantity of meter installations – where 200 meters were installed before, with the Smart Meter project there were 9,000-10,000.

Mr. Chapman said instead of all eventually failing due to age and corrosion and recommending the replacement as the problem arose, now there was access to see all of them and address them at once. He wanted to better understand this because he has received complaints from homeowners.

Ms. Houck noted some people see this as helping them to correct potential problems before they happen because of the risk for leaks and sudden flooding.

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, Clifton, Hadden, Markham, Morehead, Tuttle.

Nay – 0.

(ORDINANCE NO. 13-31)

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

A. Request of Albert and Margaret Suber for a Minor Subdivision of the Property Located at 392 Stafford Avenue to Insert a Lot Line Creating Two Parcels with No New Proposed Construction

(See Item #38)

46. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:

A. Council Members:

1. Resolution 13-__: In Memoriam William M. Redd, Jr.

03:34:26

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

MOTION PASSED. VOTE: 6 to 0.

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

Nay – 0.

(RESOLUTION NO. 13-GG)

47. 9-A-2. DISCUSSION REGARDING TRANSLATION OF LEGAL CONTRACTS, INCLUDING THE EXPLANATION OF IMPLICATIONS, PRIOR TO COUNCIL VOTE

03:35:22

Mr. Morehead said he learned from recent events the importance of Council being as well informed as possible to make informed decisions. Since Council was faced with many legal issues he thought Council should consider whether they should get legal advice before each decision, contract and law. Mr. Morehead was thinking of some of the contracts that have come up more recently – he felt there were implications Council did not understand – and wanted to prevent that from happening in the future.

Mr. Clifton agreed. He said the State seemed to have a good procedure where every bill had an executive summary and a fiscal impact statement as part of the bill.

Mr. Markham said the State goes back to legislative intent when interpreting bills, and the City could include something that says legislative intent that is not part of the law but is part of the research.

Mr. Herron noted with respect to ordinances it was his experience that either he or another member of staff summarized the bill and explained the purpose. This was included in a memo with the bill presented to Council. Mr. Herron said theoretically when a judge looked at a contract in the law, they looked at the plain language of the words. If they were ambiguous, then they go back to the intent. Further, Council members received contracts and ordinances well before the meeting and were free to ask for an interpretation of any questions. Mr. Morehead added the average person knows what they think they know and may not think they need an interpretation.

Mr. Chapman said his understanding of the solicitor's role was to be legal counsel for Mayor and Council and City staff as they maintain and amend the Code and all the ordinances therein. As far as the executive summary he thought this was covered by the staff recommendation that provided background information and a summary of the situation and process in its entirety. Ms. Feeney Roser was given the request and direction to provide more in depth background for staff recommendations. Regarding the legal opinion he thought what Mr. Morehead was requesting was proactive advice giving Council a legal opinion on the amendment, the zoning change or the ordinance being considered rather than just giving Council the legal document. He pointed out that Council would still have to rely on a single attorney's opinion and recognize that opinion may not cover something discovered later down the road. He was not opposed to Mr. Morehead's request but said it would require some criteria that would indicate when Council would want that additional opinion provided on the language.

In Ms. Hadden's opinion she thought Council voted in good faith based on information they had and that adding a process would not fix any future issues. When a project comes forward she suggested having criteria in place to consider the zoning and the intent, whether it would dramatically affect the quality of life and whether it needed more review or discussion by staff. She thinks people instinctively know when a certain line has been crossed, especially in regard to the public trust.

Mr. Markham felt staff heard they needed to speak up more and get more information and the City Solicitor would say he needed to provide more information and keep everybody out of hot water.

Mr. Herron stated it was impossible to anticipate every implication that could arise from each sentence in a contract. He did not think that was what Council was asking of the solicitor. It would be labor intensive and would not accomplish anything.

Mr. Morehead was not asking Council to make a decision tonight but was asking for a discussion of how to get to some middle ground.

There was no further discussion.

48. 9-A-3. DISCUSSION OF PROVIDING A PUBLIC COMMENT PERIOD DURING COUNCIL WORKSHOPS

03:53:51

In the interest of encouraging public involvement in government, Mr. Morehead suggested adding public comment to Council workshops. He suggested it come after all the information was presented at the workshop.

Mr. Clifton explained the workshop concept started in the late '90's when Council wanted the opportunity to discuss the issues at hand amongst members. Workshop sessions had to be done in public and were held in the second floor conference room. As attendance grew, the meetings were moved to the Council Chamber.

Mr. Chapman thought there was an argument to be made that at the workshops, staff asked for Council direction, and in those situations he thought public comment was valuable. Further, open conversation outweighed those instances where the meetings ended late and might bolster attendance. He hoped to increase community involvement in all processes and agreed public comment should be included at workshops.

Mr. Tuttle remarked that some municipalities do workshops routinely, although Newark does not. Some have one workshop and one Council meeting a month. Work gets done during the workshop providing the opportunity for learning more about an item before it gets to a vote. This might address some of Mr. Morehead's concerns.

Mr. Markham added that the former City Manager recommended Council consider changing to that schedule.

There was no further discussion.

49. 9-B. OTHERS:

04:00:09

1. EXECUTIVE SESSION PURSUANT TO 29 DEL. C. §10004 (b)(4) AND (6) FOR THE PURPOSE OF A STRATEGY SESSION INVOLVING LEGAL ADVICE OR OPINION FROM AN ATTORNEY-AT-LAW WITH RESPECT TO PENDING OR POTENTIAL LITIGATION AND DISCUSSION OF THE CONTENT OF DOCUMENTS, EXCLUDED FROM THE DEFINITION OF "PUBLIC RECORD" IN 29 DEL. C. §10002 WHERE SUCH DISCUSSION MAY DISCLOSE THE CONTENTS OF SUCH DOCUMENTS.

50. 9-B-2. EXECUTIVE SESSION PURSUANT TO 29 DEL. C. §10004 (B)(9) FOR THE PURPOSE OF DISCUSSING PERSONNEL MATTERS IN WHICH THE NAMES, COMPETENCY AND ABILITIES OF INDIVIDUAL EMPLOYEES ARE DISCUSSED (CITY MANAGER & CITY SECRETARY)

Council entered into Executive Session at 10:52 p.m. and returned to the table at 12:22 a.m. Mr. Clifton advised that no action was necessary by Council at this time.

51. Meeting adjourned at 12:22 a.m.

Renee K. Bensley
City Secretary