

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

January 13, 2014

Those present at 5:00 p.m.:

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

Absent: District 2, Jerry Clifton

Staff Members: City Manager Carol Houck
City Secretary Renee Bensley
City Solicitor Bruce Herron
Deputy City Manager Andrew Haines
Finance Director Lou Vitola
Planning & Development Director Maureen Feeney Roser
Assistant PW & Water Resources Director Tom Coleman

- A. Executive Session pursuant to 29 *Del. C.* §10004 (b)(2) for the purpose of discussions on site acquisitions for publicly funded capital improvements.
- B. 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.

02:38

Council entered into Executive Session at 5:00 p.m. and returned to the table at 6:55 p.m. Ms. Sierer advised that the review of the Data Center’s zoning verification since the City’s November 1, 2013 letter has been a complex, difficult process. The City has taken all information received, analyzed it, done a tremendous job and amount of independent research on the data provided and has worked diligently toward making its decision. City staff has advised that they now likely have sufficient information to make the final zoning decision and anticipate that a decision will be made within the next 48 to 72 hours. Immediately upon that decision being made it will be posted on the City’s website. City Council and staff continue to have concerns about the environmental impacts of the proposal. Accordingly, in the event that the zoning verification is provided to the Data Center’s project, Ms. Sierer will entertain a motion to authorize and direct the City Manager to retain an independent environmental consultant to evaluate the TDC power plant proposal, the air permit application and associated environmental factors and that based upon the City’s determination that the use of formal bidding is not practical for this contract, Council waives the requirements of Section 2-23.

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THE CITY MANAGER BE AUTHORIZED TO ENGAGE AN ENVIRONMENTAL CONSULTANT (ONE THAT DOES NOT HAVE ANY CONFLICT OF INTEREST WITH THE CURRENT PROJECT) AND THAT THE BIDDING REQUIREMENTS OF SECTION 2-23 BE WAIVED BECAUSE OF THE TIME FRAME INVOLVED IN EVALUATING THE PERMITS.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

1. The regular Council meeting began at 7:00 p.m. with a moment of silent meditation and the Pledge of Allegiance.

2. PRESENTATION OF PROCLAMATIONS HONORING HARRY MCKENRY AND ANITA HUNTER FOR THEIR VOLUNTEER WORK ON BEHALF OF THE NEWARK POLICE DEPARTMENT

05:54

Council unanimously endorsed the proclamations to Newark Police Department volunteers Harry McKenry and Anita Hunter for their many years of dedicated service.

3. 1. ITEMS NOT ON PUBLISHED AGENDA

11:51 A. Public

4. Carol McKelvey, District 4, felt it was a good idea to think communally and understand Council's actions were for the benefit of the whole community.

5. Martin Willis, New Castle, asked the City to support the TDC project. He and many other Delawareans lost unemployment benefits and needed private sector jobs. He also discussed rolling blackouts and said there was not enough new source power generation.

6. Margaret Cassling, District 1, said the expected rise in natural gas prices should be considered when judging whether the TDC project could remain financially viable.

7. David Cassling, District 1, did not think the health and safety of Newark residents should be entrusted to a company with no experience in building the TDC project. Security and access to the STAR campus was also a concern.

8. Jan Baty spoke for Newark resident Helen Fuhrman. She asked if an environmental impact study would be done for the proposed power plant and the source of the project's funding.

9. Dr. Philip Pollner, a Newark area physician, was concerned about the impact of pollution on the health of his patients and community residents. He suggested that the environmental consultant meet with local medical professionals to discuss medical consequences to the community.

10. John Wessels, District 2, referred to item 9-B-1 for the abatement of FOIA fees. He did not think it was relevant because other tax payers were not asked if they objected to paying these fees.

11. Sheila Lynch, a Newark resident, urged Council to update the noise ordinance since she felt noise pollution had adverse health, social and economic effects.

12. Amy Roe, District 4, felt the FOIA issues on the agenda should be open to public comment. She referenced a 10/31/13 email exchange between Ms. Houck and Mr. Walton about the Delaware Economic Development Office application by TDC and asked that the City Manager be directed to withdraw the City's sponsorship of same.

13. Jackie LaGasse, District 3, asked why the TDC project had to be built in the middle of the City and did not feel Newark should cater to the University's whims.

14. Jeff Lawrence, District 3, was disappointed in the City's representative government and objected to fee increases and discouraging public comment. He proposed fewer liberty-reducing bills and said residents would remove Council members from their positions who do not serve the public and make improvements in the City.

15. Brett Zingarelli, District 4, discussed TDC's response to the City regarding electric sales to third parties. In reference to building security he did not see a purpose for metal detectors since firearms were not banned in the municipal building. Regarding public comment, he said censoring residents would not help anybody.

16. Rob Gifford, District 3, urged Council to deny the zoning for TDC. He relayed comments from Dr. John Morgan that the Court security fee seemed inappropriate and would make it more difficult for taxpayers to access the building.

17. Joseph Schorah represented 30 members of Sheet Metal Workers Local 19. He pointed out some misconceptions regarding the TDC project and the use of contractors.

18. **1-B. UNIVERSITY**

46:48

(1) **Administration** – Caitlin Olsen, University of Delaware Assistant Director of Government Relations, noted students would return from winter break on 2/9. She indicated interest in resuming the Town & Gown Committee. Newark night was 1/30 at the Bob Carpenter Center with the women’s basketball game.

19. **1-B-2. STUDENT BODY REPRESENTATIVE** – None

20. **1-C. COUNCIL MEMBERS**

48:19

Mr. Markham

- Explained the recent power reductions were critical to avoid shut downs. The City was asked to reduce about two megawatt hours, and citizens voluntarily reduced one megawatt hour. The University was prepared to go on emergency power for several of their buildings but that was not necessary.
- Residents have asked why the City does not pre-treat roads with brine – this option is under discussion but probably will not take place until next year.
- Relayed concerns about issues with incorrect utility billings in the Finance Department. He hoped the new online billing system would be sped up and that solid processes would be put in place to eliminate erroneous billing. He also questioned the option for installing a second meter for outside water use only.

Mr. Chapman

- Praised actions by the City regarding power reductions.

Ms. Hadden

- Recognized the City’s use of InformMe to notify residents of power reductions.
- Met with a constituent group regarding the STAR Campus and associated co-generator plant.
- Attended Aetna’s 150 year anniversary.
- Thanked the Newark Police Department for adopting a needy family.

Mr. Tuttle

- Enjoyed the ribbon tying ceremony of three businesses into a new partnership, the CBI group, Placers and Barton Career Advisors.

Mr. Morehead

- Will be absent from the 1/27/14 Council meeting.
- Discussed the conversion to the Wi-Fi system by the Police Department with the Honeywell project. Mr. Coleman reported the department was currently testing the routers which were fully in use as of last Wednesday. They were looking at any holes or dark areas that would impact effectiveness of the program.
- Expressed concern about numerous potholes in the City creating dangerous driving conditions – Public Works is making repairs as they become aware of them, and residents are encouraged to notify the City of pothole locations though the InformMe system.

Ms. Sierer

- Looked forward to working with everyone in 2014 and encouraged citizens to sign up for InformMe on the City’s website.

01:06:00

MOTION BY MR. MARKHAM, SECONDED BY MR. CHAPMAN: TO REMOVE ITEM 7-C FROM THE AGENDA, SECOND READING BILL 13-47, ORDINANCE AMENDING CHAPTER 13, FINANCE, REVENUE AND TAXATION, BY CREATING A PASS-THROUGH MECHANISM FOR CREDIT CARD PROCESSING FEES.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.
Absent – Clifton.

21. APPROVAL OF CONSENT AGENDA

01:06:25

- A. Approval of Special Council Meeting Minutes – December 3, 2013
- B. Receipt of Alderman's Reports – December 12 & 26, 2013
- C. Receipt of Planning Commission Meeting Minutes – December 3, 2013
- D. Reappointment of LTC Sheldon H. Slater, USAF (Ret.), Anne Slater, Paddy Wilcox, Janet Urbaniak, David MacIntyre, Dennis Stiff, Bob Cronin, and Jason Urbankak and Appointment of Amanda MacIntyre, Charlie Cox and Clint Slack to the Newark Memorial Day Parade Committee For One Year Terms to Expire January 15, 2015
- E. Reappointment of Marvin Howard, Fred Dingle, Joseph McCoy, John Brook, Krista Milkovics, Heather Dunigan, Sally Miller, Richard Rind, Ruth Mayer, and Jim Grimes, Sr. and Appointment of Lt. William Hargrove and Lou Vitola to the Downtown Newark Partnership – Newark Parking Committee For Three Year Terms to Expire January 15, 2017
- F. Appointment of Jeffrey Bergstrom as Chair of the Board of Adjustment to Serve at the Pleasure of the Mayor
- G. Reappointment of Gloria Hickey and Alice Liechty to the Board of Election For Three Year Terms to Expire January 15, 2017
- H. **First Reading – Bill 14-01** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, to Delete Article V, Board of Health, in Its Entirety – **Second Reading – January 27, 2014**
- I. **First Reading – Bill 14-02** – An Ordinance Amending Chapter 27, Subdivisions, Appendix III, Section VIII, Wetlands, Code of the City of Newark, Delaware, to Give the Public Works and Water Resources Director Authority, in Certain Instances, to Modify the Site Design and Construction Requirements Concerning Wetlands – **Second Reading – February 10, 2014**

Ms. Bensley read the Consent Agenda in its entirety.

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

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

22. 3. ITEMS NOT FINISHED AT PREVIOUS MEETING

- A. **Bill 13-41** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Establishing a Court Security Fee (*Postponed from December 9, 2013 Meeting by Request of Council*)

01:08:44

Ms. Bensley read Bill 13-41 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 13-41.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Mr. Vitola reported that staff originally wanted to establish a fee that would provide for the most robust security measures being considered including the 2014 projects and the third-party services required to manage them. Specifically that included the installation of the x-ray and scanning equipment and a full-time third party service to handle the equipment and process visitors. Instead, staff recommended starting with a

base line level of security in 2014 which included a part-time bailiff for Alderman's Court and improvements limited to card readers throughout the building, two door upgrades at Alderman's Court, bullet resistant glass in the police hallway and enclosures in the Finance and Parks Departments. With the reduction in scope of the 2014 items the expenses could be met with a Court security fee of \$5 instead of \$10. The fee would not apply to not guilty verdicts or parking tickets and would generate about \$75,000 a year.

Council Comments:

Amendments more closely aligned with first fee discussion at Council workshop; Court security fee should have to do with the Court; Wilmington has metal detectors and other items at the entrance to County or City Council – what are their procedures if someone walks through with a gun that has a permit (City Solicitor investigating); review the fee for sunset in three years.

AMENDMENT BY MS. HADDEN, SECONDED BY MR. TUTTLE: TO AMEND BILL NO. 13-41 BY ADDING THAT THE ORDINANCE SHALL EXPIRE WITHOUT FURTHER ACTION BY COUNCIL ON JANUARY 1, 2017 AND THAT THE FEE BE CHANGED FROM \$10 TO \$5.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

Study was conducted regarding building security – based on layout, what solutions are proposed; NPD secure, visitor's center first step for main municipal building, Court secured; bailiff in outer area of Court, we are checking off boxes identified by Federal Marshal's report; 2015 moves upstairs and 2014 building will be secured for night meetings while providing opportunity for restrooms; eventually area outside welcome station will require buzzing to enter doors during regular work day and then card access after hours.

Public Comment:

Brett Zingarelli, District 4, said access cards were the best idea to secure a building, and he did not agree with the fee.

Jeff Lawrence, District 3, asked if the fee would be applied to traffic violations - he did not want to encourage more speeding tickets to generate revenue. He felt the City should find a way to cut costs internally.

MOTION BY MR. CHAPMAN, SECONDED BY MR. TUTTLE: THAT BILL 13-41 BE APPROVED AS AMENDED.

Question on the Motion as amended was called

MOTION AS AMENDED PASSED. VOTE: 5 to 1.

Aye – Chapman, Hadden, Markham, Sierer, Tuttle.

Nay – Morehead.

Absent – Clifton.

(ORDINANCE NO. 14-01)

23. 4. SPECIAL DEPARTMENTAL REPORTS:

A. Special Reports from Manager & Staff:

1. Request to Postpone Bill 13-42 (Stormwater Utility and Stormwater User Charges) Indefinitely – City Manager

01:33:48

Ms. Houck reported that after the public meetings were held in February, a new version of the bill would be brought to Council.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT BILL 13-42 (STORMWATER UTILITY AND STORMWATER USER CHARGES) BE POSTPONED INDEFINITELY.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

24. 4-A-2. STAFF REPORT ON POTENTIAL OF COUNCIL MEETING VIDEO – DEPUTY CITY MANAGER

01:43:12

Mr. Haines reported that Mr. Chapman requested a discussion about opening Council meetings for further public access and participation. Options mentioned for consideration were videotaped meetings with scheduled replay, live streaming on the City's website or Channel 22 and adding a television set for viewing in the lobby. Council expressed concern about the expense based on viewing statistics and server capacity. Staff was authorized to continue to pursue this option.

25. 5. FINANCIAL STATEMENT: None

26. 6. RECOMMENDATIONS ON CONTRACTS & BIDS:

A. Recommendation to Award Contract No. 13-10 – Newark Water Treatment Plant Filter Rehabilitation

01:56:47

Mr. Coleman referred to the memo dated 1/8/14 wherein it was recommended to award Contract No. 13-10 to Heisey Mechanical, Ltd. to rehabilitate and repair three original filter units at the Newark Water Treatment Plant. Funding for the project in the amount of \$312,800 was available in CIP project W0805.

MOTION BY MR. TUTTLE, SECONDED BY MR. MOREHEAD: THAT CONTRACT NO. 13-10, NEWARK WATER TREATMENT PLANT FILTER REHABILITATION, BE AWARDED TO HEISEY MECHANICAL, LTD. IN THE TOTAL AMOUNT OF \$312,800.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

27. 6-A-B. RECOMMENDATION TO AWARD CONTRACT NO. 13-15 – PURCHASE OF LIQUID ALUMINUM SULFATE

02:02:18

Mr. Coleman detailed the memo of 11/27/13 for the purchase of 410 dry tons of liquid aluminum sulfate used at the Newark Water Treatment Plant. It was recommended to award Contract No. 13-15 to USALCO Baltimore Plant, LLC in the amount of \$386.98 per dry ton.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT CONTRACT NO. 13-15, PURCHASE OF LIQUID ALUMINUM SULFATE, BE AWARDED TO USALCO BALTIMORE PLANT, LLC IN THE TOTAL AMOUNT OF \$53,000 ANNUALLY.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

28. 6-C. RECOMMENDATION TO AWARD CONTRACT NO. 13-16 – WHITE CLAY CREEK WATER LINE CROSSING

02:04:26

Mr. Coleman referenced the 12/23/13 memo recommending the award of Contract No. 13-16, White Clay Creek Water Line Crossing, to provide a second crossing at a total cost of \$165,165.00 to Eastern States Construction Service, Inc. Funding was available from two capital projects.

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: THAT CONTRACT NO. 13-16, WHITE CLAY CREEK WATER LINE CROSSING, BE

AWARDED TO EASTERN STATES CONSTRUCTION SERVICE, INC. IN THE TOTAL AMOUNT OF \$165,165.00.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

29. 6-D. RECOMMENDATION TO PURCHASE AN AUTOMATED SIDE LOADER FROM A NJPA CONTRACT

02:09:36

Mr. Coleman recommended the purchase of a new automated side loader from Mid-Atlantic Waste Systems at a total cost of \$285,689.50. The truck would handle more weight than the single axle trucks used in the past and would eliminate second trips to the transfer station on heavy refuse days. It had an improved turning radius to help eliminate backing up and was expected to reduce the tire budget. The fleet currently consisted of six fully automated trucks and two semi automated trucks used as spares. The manufacturer agreed to extend the 2013 pricing to this Council meeting, saving approximately \$15,000. A Class A license was required to drive the vehicle.

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: TO AUTHORIZE THE PURCHASE OF AN AUTOMATED SIDE LOADER FROM MID-ATLANTIC WASTE SYSTEMS AT A TOTAL COST OF \$285,689.50.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton

30. 6-E. RECOMMENDATION TO RATIFY AGREEMENT BETWEEN CWA LOCAL 1036, COMMUNICATION WORKERS OF AMERICA NATIONAL UNION, AND THE CITY OF NEWARK, DELAWARE FOR THE TERM OF JANUARY 1, 2014 TO DECEMBER 31, 2016

02:17:13

Mr. Haines recommended ratification of the CWA Local 1036 Agreement. Once the draft document for the collective bargaining agreement was approved, it would be posted on the City's website as a public document. The focus was on the betterment of the City, and he noted there was a fair give and take process.

MOTION BY MS. HADDEN, SECONDED BY MR CHAPMAN: THAT THE AGREEMENT BETWEEN CWA LOCAL 1036, COMMUNICATION WORKERS OF AMERICA NATIONAL UNION AND THE CITY OF NEWARK, DELAWARE, BE RATIFIED FOR THE TERM OF JANUARY 1, 2014 TO DECEMBER 31, 2016.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

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

A. Bill 13-44 – An Ordinance Amending the Comprehensive Development Plan By Changing the Designation of Property Located at 49 South Chapel Street (**See 7-B and 8-A**)

NOTE: The public hearing for Bill 13-44, Bill 13-45, and the major subdivision, were held at this time.

02:20:18

Ms. Bensley read Bill 13-44 by title only.

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 13-44.

Lisa Goodman, Esq. represented Angela Tsionas-Matulas of Continental Court LLC. Also present with the developer was Project Engineer Joe Charma, Landmark Engineering, and Project Architect John Winkler. The application would rezone .26 acres next to the existing Continental Court Apartments on South Chapel from BC to RA. Even though it was zoned commercial, the property was used for residential for quite some time and was currently vacant land. The plan was to construct six townhouse apartments which would become part of Continental Court.

The existing complex consists of 41 two-bedroom apartments and is deed restricted to no more than four unrelated tenants per unit. The proposed agreement would extend the deed restriction. Each new unit would have four bedrooms, a two car garage and one surface parking space. RA zoning permitted up to 36 dwelling units per acre; this project when combined with Continental Court would result in 17.8 dwelling units or 37 bedrooms per acre. The project required a Comprehensive Plan amendment. The Comp Plan currently mirrored the existing zoning for commercial/pedestrian oriented. The existing use was inconsistent with the Comp Plan because it was being used for residential. The developer proposed to continue the prior use as a residential rental. The rezoning met the test set forth by the Code – it was consistent with the character of the neighborhood and the zoning of the nearby properties, was consistent with the street in general, the suitability of the property for the use was perfect since it was already being used as a residential rental and had no negative impact on nearby properties. The project received a positive recommendation from the Planning Commission.

Council Comments:

Falls under stormwater regulations prior to January 1, 2014; revise end on South Chapel to add more interest and curb appeal and look more as if it was intended to face South Chapel (developer will work with P&D Department and share design changes with Mr. Chapman); no separate signage was anticipated; garage doors will be kept in the plan; one person, one bedroom is a direction the City should encourage and developer was commended; parking was side by side; building height 42 feet, and five dormers will remain.

Public Comments: None

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

(ORDINANCE NO. 14-02)

32. 7-B. BILL 13-45 – AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE BY REZONING FROM BC (GENERAL BUSINESS) TO RA (MULTI-FAMILY DWELLING – HIGH-RISE APARTMENTS) 0.26 ACRES LOCATED AT 49 SOUTH CHAPEL STREET (SEE 7-A AND 8-A)

02:47:10

Ms. Bensley read Bill 13-45 by title only.

MOTION BY MR. TUTTLE, SECONDED BY MR. MOREHEAD: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 13-45.

Council Comments for the rezoning:

Mr. Markham would vote in favor since the project conformed to the Comprehensive Plan requirements, would not have a negative impact on adjacent properties and met all applicable Code requirements.

Mr. Chapman was in favor of the project since the rezoning would bring this parcel into conformance and based on other comments outlined by Mr. Markham.

Ms. Hadden supported the project since it already had been used as residential rental in a heavily residential rental area and was a good fit to the area.

Mr. Tuttle supported the project since the RA zoning was consistent with the adjacent land use and the land use across the street and recognizing the property's past use as a residential site, it was consistent with all the requirements.

Mr. Morehead would vote for the zoning change because it brought the use into conformance and was a good use of this particular area

Ms. Sierer supported the rezoning since the property met Code requirements, the Comprehensive Plan and met density, parking and height requirements.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

(ORDINANCE NO. 14-03)

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

- A.** Request of Continental Court, LLC for the Major Subdivision of 2.64 Acres Located at 49 and 65 South Chapel Street in Order to Construct Six Additional Four-Bedroom Townhouse Style Apartments as Part of the Existing Continental Court Subdivision. *(Resolution and Agreement Included) (See 7-A and 7-B)*

02:50:15

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

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

(RESOLUTION NO. 14-A)

34. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:

- A. Council Members:**

- 1. Resolution 14-__:** In Memoriam Betty J. Stiltz

02:51:13

Ms. Stiltz was the first female City Secretary in Newark and served in the position from 1968 to 1984.

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

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

(RESOLUTION NO. 14-C)

35. 9-A-2. RESOLUTION 14-__: ADOPTION OF A FREEDOM OF INFORMATION ACT (FOIA) POLICY IN REGARDS TO OPEN RECORDS REQUIREMENTS FOR THE CITY OF NEWARK, DELAWARE

02:53:03

Ms. Bensley reported the resolution would clarify that the City was abiding by the required open records policies in 29 Del. C §10003, Examination and Copying of Public Records, and was modeled after that section. This would serve as the official open records policy for the City and would require amendments by Council in the event the Delaware State Legislature passed any amendments that would need to be incorporated.

Council Comments:

FOIA should remain under the responsibility of the City Secretary's office; electronic document management system will add efficiency, speed and result in lower fees; administrative costs mirror the State Code; there are no administrative charges for staff time of less than one hour; consider a financial hardship waiver; FOIA request was not the only way to obtain information – residents could work through Council.

Public Comments:

Amy Roe, District 4, expressed concerns about how FOIA requests were handled by the City and said fees were vague, they were not fair and should be clarified; perhaps the first hour of staff time should be free; there should be maximum time limits to fulfill a FOIA request and employees should have to conduct the City's business on City e-mail and not on personal e-mail.

Brett Zingarelli, District 4, felt information belonged to the residents and the cost for requested information was excessive.

Jeff Lawrence, District 3, asked how much was collected in 2013 from FOIA fees. Ms. Bensley estimated roughly \$800-\$1,000.

Jim McKelvey, District 4, questioned the comment about conducting City business on private email which sounded like a potential for a closed door meeting.

AMENDMENT BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: ON PAGE 3 UNDER ITEM k(2), ADMINISTRATIVE FEES ADD - THE FIRST HOUR OF STAFF TIME FOR THE MOST EXPENSIVE PAY GRADE HOUR SHALL NOT BE CHARGED.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Clifton.

MOTION BY MR. MOREHEAD, SECONDED BY MR. TUTTLE: THAT THE RESOLUTION BE APPROVED AS AMENDED.

MOTION PASSED UNANIMOUSLY.

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

Nay – 0.

Absent – Clifton.

(RESOLUTION NO. 14-B)

36. 9-A-3. DISCUSSION REGARDING CANCELLATION OF COUNCIL MEETING FOR THE APRIL 8, 2014 MUNICIPAL ELECTION

04:04:55

MOTION BY MR. CHAPMAN, SECONDED BY MS. HADDEN: THAT THE RULES OF PROCEDURE BE AMENDED TO ALLOW CITY COUNCIL TO HAVE THE DISCRETION TO MOVE A MEETING OF COUNCIL FROM MONDAY TO TUESDAY IN THE EVENT THE MEETING FALLS AFTER THE ELECTION OF A NEW MEMBER OF COUNCIL BUT BEFORE THE NEWLY ELECTED COUNCIL MEMBER(S) IS ELIGIBLE TO BE SWORN INTO OFFICE.

MOTION PASSED UNANIMOUSLY.

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

Nay – 0.

Absent – Clifton.

37. 9-A-4. DISCUSSION REGARDING POTENTIAL AMENDMENTS FOR THE RULES OF PROCEDURE OF THE NEWARK CITY COUNCIL

04:20:15

Council Comments:

Open public comment should be at the beginning of the meeting; retain three minute time limit for public comment; provide rules and procedures at each meeting;

ceding time when someone is no longer present should be prohibited; drastic changes at this time not a good idea; schedule a separate Council meeting for the budget and encourage public attendance; consider opening all items for public discussion (except the Consent Agenda) with a three minute limit per person at a later time.

Ms. Bensley and Ms. Houck were requested to provide a synopsis of Council's comments prior to the next Council meeting.

Council requested that a police officer be detailed to future Council meetings for the entirety of the meeting.

Public Comments:

Amy Roe, District 4, requested that public comment period be returned to a five minute time limit.

Jeff Lawrence, District 3, felt Council should not changing anything to allow open government and an engaged community.

Rob Gifford, District 3, said five minute public comment would be good for presenting technical material.

Brett Zingarelli, District 4, noted the public can request additional time to speak.

38. 9-B. OTHERS:

1. Request of Amy Roe to Waive Fees Assessed for her November 12, 2013 FOIA Request and to Refund FOIA Request Fees Paid in 2013.

05:01:03

Amy Roe, District 4, amended her request and asked that the fees she was assessed thus far this year and the ones for her 11/12/13 FOIA request and anyone else assessed FOIA fees in 2013 be in compliance with the FOIA policy adopted tonight stating the first hour was free.

Council Comments:

The City abided by the State's FOIA policy, and the City's policy is now a virtual mirror of the State's policy.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THE FOIA POLICY ADOPTED TONIGHT BE APPLIED RETROACTIVELY TO JANUARY 2, 2013 OVER ALL FOIA REQUESTS DURING THAT TIME PERIOD.

MOTION PASSED UNANIMOUSLY.

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

Nay – 0.

Absent – Clifton.

39. Meeting adjourned at 12:04 a.m.

Renee K. Bensley
City Secretary