

**CITY OF NEWARK  
DELAWARE  
COUNCIL MEETING MINUTES  
April 15, 2014**

Those present at 7:00 p.m.:

Presiding: Mayor Polly Sierer  
District 1, Mark Morehead  
District 2, Todd Ruckle  
District 3, Rob Gifford  
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  
Public Works and Water Resources Director Tom Coleman  
Community Affairs Officer Dana Johnston  
Deputy City Manager Andrew Haines  
Finance Director Lou Vitola  
Parks & Recreation Director Charlie Emerson  
Planning & Development Director Maureen Feeney Roser

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

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

**06:23**

**John Morgan**, District 1, read a resolution he introduced on 4/7 at the University Faculty Senate meeting requesting that the administration not give final approval for the power plant project to proceed without first obtaining a formal recommendation from the University Faculty Senate.

**Jared Wasilefsky**, UD student, discussed efforts to gather support for the Box Tops for Education program and asked for the City's support in helping to create a community engagement initiative.

**Amy Roe**, District 4, asked that the Rules of Procedure (removed from the organizational meeting agenda) be available for public comment at a future Council meeting. She provided to Council members Gifford and Ruckle the letter dated 3/10/14 asking the City to withdraw public sponsorship from The Data Centers LLC.

**Jen Wallace**, District 3, does not support limiting the comment period for public elected officials. If this was done she felt representatives of the University and Council members should also follow the same time limit.

**Donna Means, District 5**, congratulated new and returning Council members.

3. 1-B. **ELECTED OFFICIALS:** None

4. 1-C. **UNIVERSITY**

**25:08**

(1) Administration – Caitlin Olsen, UD Assistant Director of Government Relations reported 4/12 was UD's first decision day – the next was scheduled for 4/19; spring break ended; AG Day was scheduled for 4/26 at UD's Townsend Hall.

Councilman Markham asked if it was possible to get a date for completion of the UD working group review of the TDC project as well as add items for the University to address such as Bloom boxes, the size and the power requirements of the power plant. Ms. Olsen will take these questions back to the administration.

5. **1-C-2. STUDENT BODY REPRESENTATIVE:** None

## **6. 1-D. COUNCIL MEMBERS**

**28:30**

### **Mr. Chapman**

- Thanked District 5 residents for re-electing him to serve on Council for another two years and the Election Board volunteers for their efforts and noted that National Prescription Drug Take-Back Day was scheduled from 10 a.m. to 2 p.m. 4/26 at Newark Senior Center and the UD Public Safety Building on Academy Street.

### **Mr. Gifford**

- Thanked his supporters in District 3.
- Began meeting with City staff and started his training.
- Attended the Conservation Advisory Commission meeting where they discussed whether air monitoring was ever used for the idling ban and how Council could better utilize the group.
- Reviewed the Marshall's report for municipal building security.
- Requested that the City Solicitor look into the exhaust stack height in TDC's air permit and whether the building height and stack height fall under the same Code.

### **Ms. Hadden**

- Attended the Medal of Honor ceremony honoring Delaware recipients.
- Attended the League of Local Governments meeting where storm water management and infrastructure was discussed.
- Attended a land use/development workshop through UD IPA and encouraged Council members to take advantage of the classes they offer.
- Attended the grand opening for the new Delaware Air National Guard Training and Recruiting Center.
- Attended the ceremony honoring retired Council member Jerry Clifton at the Masonic Lodge in Newark.
  - Announced the rail car safety meeting on 4/17 at Aetna Fire Station #8.

### **Mr. Markham**

- Thanked constituents in District 6 for re-electing him to a fifth term and thanked Council for electing him as Deputy Mayor.
- Asked Public Works to see how the City can support DeIDOT or warn people about Paper Mill and Possum Park intersection where there have been many accidents.
- Attended the Nefosky Run honoring former Chief Nefosky.
- Participated in the Paper Mill Falls clean up.
- Enjoyed the Senior Center fund raiser casino night.

### **Mr. Morehead**

- Recognized Master Cpl. Paul Keld for his selection as Newark Police Officer of the Year by the Lions Club.
- In Districts 1 and 5, the State was working to rebuild the banks on the Christina Creek in conjunction with Public Works. The project was State funded.

### **Mr. Ruckle**

- Thanked everyone for coming out to vote and thanked his wife for her support.

### **Ms. Sierer**

- Attended Design and Merchants Committee meetings.
- Attended the event honoring Jerry Clifton at the Masonic Lodge.
- Attended the open house at the new Delaware National Guard offices at Rittenhouse Station.
- Attended the UD Public Policy land use class and recommended Council attend.
- Attended the Downtown Newark Partnership merchant's event at the Deer Park.

### **City Manager Houck**

- Recognized Officer Keld for the award bestowed upon him.
- Noted that weather permitting planting would begin from Casho Mill Road to Suburban Plaza (Elkton Road portion).
- Newark was named 2013 Tree City USA by the Arbor Day Foundation, and also received a Tree City USA growth award for demonstrating environmental improvement and higher level of tree care.

- There were 119 respondents to the community garden survey. A meeting would be conducted in the near future and the projected start date was 2015.
- An employee recognition program (WOW) was introduced by the City to commend exceptional customer service by City employees.
- CSX was assisting the City with drainage and trimming in Cherry Hill Manor. They helped in College Square last year and it was hoped they would return to that area. Aesthetic improvements were planned at the railroad station at Main and South Main, and the DNP Design Committee was providing input for the project.

7. 2. **ITEMS NOT FINISHED AT PREVIOUS MEETING:** None

8. 3. **ORDINANCES FOR SECOND READING & PUBLIC HEARING**

A. **Bill 14-07** – An Ordinance Amending Chapter 20, Motor Vehicles, Code of the City of Newark, Delaware, By Updating Prohibited U-Turns to Match Current Traffic Patterns and Signage

**47:21**

Ms. Bensley read Bill 14-07 by title only.

MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR BILL 14-07.

Mr. Coleman presented the recommendation to adjust and remove references to Elkton Road where it should be called South Main Street. It also eliminated a prohibited u-turn at one location where it was not possible to make the turn due to a new island and added one prohibited u-turn on Route 896 headed northbound at Welsh Tract Road where there was signage to prohibit u-turns but no Code reference for enforcement.

**Council Comments:**

Mr. Morehead asked to consider placing one or more northbound u-turns on South Main Street. Mr. Coleman stated this subject was being discussed with DeIDOT.

There were no public comments.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.

Nay – 0.

**(ORDINANCE NO. 14-09)**

9. 3-B. **BILL 14-08 – AN ORDINANCE AMENDING CHAPTER 26, STREETS, CODE OF THE CITY OF NEWARK, DELAWARE, BY EXTENDING THE TIME TO CLEAR SIDEWALKS AFTER INCLEMENT WEATHER EVENTS**

**50:24**

Ms. Bensley read Bill 14-08 by title only.

MOTION BY MS. HADDEN, SECONDED BY MR. MOREHEAD: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR BILL 14-08.

Mr. Coleman reported in reviewing departmental and external procedures it was determined the City's property was not always cleared within the 24-hour window, and it was almost 48 hours before staff would be able to check for sidewalk violations.

**Council/Staff Comments:**

Time limit for clearing routes like Main Street should be 24 hours, 48 hours for residents and a shorter time period for the City and commercial properties. Issue of where to put the snow from the commercial downtown space has not been resolved. Most complaints are from residential areas while downtown has only a few offenders. Regarding the City's liability for slip and fall claims, the State Tort Claims Act generally provides immunity for the City. Education about pedestrian safety needs to be stressed. Homeowners should not be required to clear adjacent sidewalks. Staff intended to prepare a comprehensive snow plan.

**Public Comment**

John Morgan, District 1, felt this issue should not be rushed through and that residents should be encouraged or required to clear sidewalks as soon as practical

following a storm. Further, the City should consider discussion with UD on their program for removing snow from parking lots, which could be applied on Main Street. The City could also clear Main Street businesses for a fee.

Donna Means, District 5, did not agree with a blanket policy for a 48 hour time limit for shoveling. She expressed concerns about residents shoveling snow into the street after the plows have cleared which creates dangerous conditions.

MOTION BY MR. MOREHEAD, SECONDED BY MR. CHAPMAN: THAT BILL 14-08 BE POSTPONED INDEFINITELY.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.  
Nay – 0.

**10. 3-C. BILL 14-11 – AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE BY REZONING FROM BL (LIMITED BUSINESS) TO BB (CENTRAL BUSINESS DISTRICT) 0.426 ACRES LOCATED AT 201 EAST DELAWARE AVENUE (SEE 4-A & 4-B)**

**01:13:48**

MOTION BY MR. MARKHAM, SECONDED BY MR. GIFFORD: THAT THE SECOND READING AND PUBLIC HEARING FOR BILL 14-11, THE RELATED MAJOR SUBDIVISION, AND SPECIAL USE PERMIT BE HELD AT THIS TIME.

Ms. Bensley read Bill 14-11 by title only.

Lisa Goodman represented the developer, Delaware Avenue Associates, LLC and was accompanied by Joe Charma, Project Engineer and John Winkler, Project Architect.

Ms. Goodman referred to visuals of the project which would redevelop 0.426 acres on the southeast corner of Delaware Avenue and Haines Street and was formerly the home of the New Century Club. The property was currently zoned BL and the proposed rezoning was to BB. Although the current building was on the site for almost 100 years, it was not on the Historic Registry or on the Newark list of historic properties. The building had profound issues and was not a candidate for redevelopment.

The proposal was to redevelop the site with a building consisting of 1,751 square feet of office in the front and 14 spaces in the rear undercover on the first floor. There were 17 spaces to the rear at the existing parking lot. The building was compliant as to parking. On the second and third floor there would be two floors each of six apartments for a total of 12 apartments with eight three bedroom and four two bedroom. The developer would deed restrict the project to four unrelated tenants per apartment.

The site plan and the rendering proposed to preserve an existing 36” diameter pin oak on the site along the Haines Street side and provided five new street trees. Green roof technology (a living roof) was planned.

The property next to the building was owned by the Masonic Lodge which had a separate entrance and no need to the property for access. The developer agreed to provide an easement to the Lodge for cross access.

A marker on site for the New Century Club would come down during construction but would go back up and be placed in front of the building.

The zoning was consistent with the Comprehensive Plan for downtown Newark which referred to this site as commercial and pedestrian-oriented and included administrative and professional offices as proposed on the site. It was consistent with mixed-use development including Campus Edge and 132 Delaware Avenue.

The special use permit was necessary in the BB zoning to allow apartments on the second and third floors. The project was below the average number of units per acre and in the middle of the average number of bedrooms per acre. There would be no negative impact on the health or safety of the residents and was not detrimental to the public welfare or injurious to property and was consistent with the Comp Plan.

The project was Code compliant for parking and the developer made it clear in the lease to students how many parking spaces were allowed per apartment.

**Council/Staff Comments:**

With the expansion of the downtown district, Staff recommended including Delaware Avenue and wanted this property to be looked at as the downtown core district and evaluated for its impact on parking and traffic. There was concern this would be the first BB project on that side of the street. Planning Commission said it met the Comp Plan but there was no discussion of the fact that there were different districts. The Comp Plan called for commercial, pedestrian-oriented uses which would allow residential but the extra language about the downtown core cautions was added to the Planning & Development report. Zoning maps were being updated as part of the new Comp Plan and the new map would show the entire downtown district and the land uses in it as well as the recommendations for the land use.

Concerns were expressed about the rezoning and it not being technically consistent with the Comp Plan. It would have been helpful if the Planning Commission addressed this in their recommendations to Council.

The zoning change was required because BL does not allow apartments.

In the departmental report for rezoning requests, Planning & Development was asked to provide the differences in the area requirements. There was a discussion about the difference in the setbacks between the current and the proposed structure as this would set a precedent or standard for the rest of that side of the road for future development. There has been negative feedback about the encroaching building structures to the sidewalk.

This is a natural progression from one side of the street to the other. Revenue from the new building will generate nearly \$10,000 in the first year and then in the second year and thereafter \$2,400 per year.

Ms. Goodman said from their point of view the major difference between BL and BB was that BB permitted mixed use (with a special use permit), and that was the way this district was developing.

Joe Charma explained BB zoning allowed a true mixed use or an urban design. With respect to the setback, the BB district allowed a zero front yard and a zero side yard. They had two front yards and one side yard and a 20' rear yard. The front yard on Haines Street was set at 16 feet – that could be zero on the front yard for a three-story building. The front yard on Delaware Avenue was 15 feet. The side yard against the Masonic Lodge was 10 feet, so the developer did not push the building to the limits they could have because they wanted to maintain open space on the site for lawn and landscaping. He believed those setbacks were probably greater than BL setbacks.

- BL front yard setback was 20 feet – the project was set at 15 and 16 feet
- BL side yard was a 25 foot aggregate
- BL rear yard was 15 feet – the project minimum was 15 feet but was well beyond that – it was against the driveway running from Haines Street to Continental Court

The Comp Plan would not change the zoning and Council would be looking at the zoning parcel by parcel and comparing it against what was already done.

The developer would be comfortable with conditioning approval of the rezoning on the setbacks being presented on the plan tonight which would set precedent for being comfortable with BB but not wanting zero setbacks in this area. The project was not in the DNP review district, however, while the BB district allowed zero setback, the Design Review Committee has told applicants to push the buildings back and encouraging thoughtful future planning.

When asked about the stormwater standards that this project falls under, Mr. Charma stated that stormwater would come under the previous requirements but the applicant is meeting or exceeding the new stormwater requirements. The plan infiltrates all of the roof area.

It was confirmed that the Newark Historical Society planned to document inside and outside the existing structure and efforts will be made to recycle the old timbers. The New Century Club sign will be mounted on a post on the Delaware Avenue side. A suggestion was made to use dark sky lighting on the outside of the building and consider buying LED street lights (as was done on Main Street).

**Public Comments:**

Amy Roe, District 4, pointed out that a zoning change from BL to BB was permanent and the effects of that should be considered. Ms. Roe spoke on the potentially detrimental impact on surrounding parcels if BB jumped across the street and wanted Council to address that in making its decision.

Donna Means, District 5, applauded the project for the green roof to help with storm water. She did not feel the number of parking spaces provided was adequate.

Jen Wallace, District 3, did not support the zoning change as she objected to more apartments in the City, particularly downtown. She felt it changed the character of the town and set a precedent.

Ms. Goodman noted that the applicant agreed to maintain the setbacks shown on the plan which would remain in perpetuity. The applicant further agreed to restrict the project to no more than four unrelated tenants per apartment.

AMENDMENT BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: TO AMEND BILL NO. 14-11 BY ADDING THE FOLLOWING WORDING AFTER SECTION 1, "NOW, THEREFORE, BE IT FURTHER ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF NEWARK: THAT THIS REZONING IS CONDITIONED UPON ADHERENCE TO THE SETBACKS AS INCLUDED IN THE LANDMARK SCIENCE AND ENGINEERING PLAN ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "B" DATED OCTOBER 13, 2013 AND REVISIONS AS OF DECEMBER 20, 2013."

Question on the Amendment was called.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.  
Nay – 0.

MOTION BY MR. MARKHAM, SECONDED BY MR. CHAPMAN: TO ADOPT BILL 14-11 AS AMENDED.

Mr. Chapman supported the amended rezoning based on the direction of the updated Comp Plan and since the existing Comp Plan does not oppose this. In regard to the immediate vicinity impact, he did not think there would be a material change.

Mr. Gifford would vote no as he did not believe it met Comprehensive Plan #4.

Ms. Hadden said because this site was previously business and with the amendment holding the setback to the current plan and with the voluntary deed restriction on density, she felt this was a good use of the area and that it fit the intent of the Comp Plan so she would vote yes.

Mr. Markham would support the project because it fit the Comp Plan, would not have a negative impact on adjacent areas and fit the development pattern of that area.

Mr. Morehead had concerns about the number of apartments, but was pleased with the willingness of the owner to deed restrict the footprint of the building and the setbacks. It met the Comp Plan so he would vote in support.

Mr. Ruckle asked what the highest and best use of the land is. This may not just be for students as this is a family town and he can see an over 55 renter wanting to live here. This would be a walking distance in the City. He supported the plan.

Ms. Sierer would vote yes for the rezoning because it fit and complied with the Comp Plan and was not detrimental to the surrounding area.

MOTION PASSED. VOTE: 6 TO 1.

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

Nay – Gifford.

**(ORDINANCE NO. 14-10)**

11. **3-D. BILL 14-12 – AN ORDINANCE AMENDING CHAPTER 2, ADMINISTRATION, CODE OF THE CITY OF NEWARK, DELAWARE, BY CLARIFYING THE AUTHORITY OF THE CITY MANAGER TO PROMULGATE PROCEDURES AND POLICIES RELATED TO THE SECURITY OF CITY-OWNED FACILITIES**
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**02:33:42**

Ms. Bensley read Bill 14-12 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 14-12.

Mr. Herron presented the proposed amendment to the portion of the Code regarding the powers and duties of the City Manager who requested him to give an opinion regarding her authority with regard to safety and security procedures and policies related to City-owned facilities. It was his view she had the authority to enact those procedures pursuant to existing language in the Code; however, to make that authority clear, the amendment was proposed.

**Council/Staff Comments:**

Questions were raised as to the purpose of the ordinance. Ms. Houck responded that concerns had been raised regarding modifications that had already taken place and that additional modifications were not on the table right now. In addition, it was noted that any future capital expenditures in this area higher than \$25,000 would have to come to Council first. Additional questions were raised regarding the wording of the ordinance and the applicability of it to the firearms issue. Mr. Herron confirmed that the existing state statute does not allow for the regulation of the carrying of firearms by municipalities, so this ordinance would not change that. Ms. Houck added that while the current language in the Code has been interpreted as such that she has the authority to create safety and security procedures for City property, the City Solicitor recommended this Code amendment.

There were no public comments.

Question on the Motion was called.

MOTION PASSED. VOTE: 5 TO 2.

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

Nay – Gifford, Morehead.

**(ORDINANCE NO. 14-11)**

12. **3-E. BILL 14-13 – 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**
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**02:52:42**

Ms. Bensley read Bill 14-13 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 14-13.

Mr. Coleman explained the bill came into focus in reviewing the plans for the Newark Shopping Center in regard to riparian buffers. The requirement for previously developed parcels did not have a maximum width associated with it similar to the riparian buffer width associated with undeveloped parcels. This created a situation where it is no longer an incentive to redevelop if a parcel has only been partially developed. The regulation only applies to Army Corp jurisdictional wetlands. For non-jurisdictional wetlands there is not a similar requirement.

One of the nuances of the previously developed parcels – the way it is written is it is from the wetlands jurisdictional line to the impervious surface so if the existing

impervious surface is one foot away from the wetland line the riparian buffer is one foot wide. It was set up like that so as to not make it a disincentive to redevelop a property.

The Code change sets a cap on the width of riparian buffers on previously developed parcels in line with the cap on the width of riparian buffers on undeveloped parcels. It makes no other change associated to riparian buffers in the width section.

The second part of the bill is associated with wetlands and the ability to construct constructed wetlands either on the same location or adjacent to existing wetlands. At the Newark Shopping Center east of the bowling alley there are low quality wetlands that were determined to be jurisdictional by the Army Corps. They receive drainage from a large portion of the east market section of East Main Street where there is currently no storm water management and is largely impervious. In order to meet their storm water requirements on site they propose doing a constructed storm water wetland in the location of the existing low-quality wetlands. A benefit to the City of this is there is no way to separate out flow generating onsite from flow coming offsite, so in order to build the wetlands they have to take all the flow that is coming from Main Street through the property. In this particular project the wetlands were really low quality and it was surprising the Corps took jurisdiction but they determined it was connected to the White Clay. It does drain into the White Clay and will provide a defined water quality benefit to the White Clay and on jurisdictional wetlands will allow the City to do what can already be done on non-jurisdictional wetlands which is enhance existing wetlands to improve water quality associated with storm water management. There is no prohibition to doing that on non-jurisdictional, only on jurisdictional wetlands so this would put us in line so we are treating both types of wetlands the same and then on jurisdictional wetlands there would be the additional layers of permitting required to go through the Federal government in addition to any State and local requirements. Our requirements would still be more stringent than the Army Corps because the City would only allow disturbance for enhancement.

**Council/Staff Comments:**

Ms. Hadden commented that the City ends up with a better wetland, higher quality water and less discharge from the White Clay by making this change. Mr. Coleman added that a developer can go to zero for the riparian buffer only if there was existing impervious that was in the wetlands and you could put back exactly what was there but there was no change in that requirement. It is a situation that will affect a lot of parcels with not much development on the parcel but back to jurisdictional wetlands especially in considering the reach the Corps took in taking jurisdiction of these particular wetlands significantly far away from the White Clay Creek so if they are able to take them where they go through a road into a pipe and before they end at the creek, that is pretty far away.

Discussion continued regarding the language proposed in the ordinance including whether there was a simpler way to achieve the same goal, the risk of potentially having a riparian buffer of zero, the equity of having separate standards for developed versus undeveloped parcels and the history of the ordinance. Mr. Coleman stated that if there is existing impervious surface 25 feet away, the riparian buffer in that location would be 25 feet away and then say it is gently sloping away from the wetlands it would get wider until it hit the 50 foot mark and then run parallel to the wetlands at 50 feet. The intention of the wording was not take anything away from existing developed parcels but to at the same time provide riparian buffer for undeveloped portions of existing previously developed parcels. Ms. Houck added that the information was taken to CAC and the Planning Commission and was brought back to Council as a new bill. Mr. Coleman also noted that current proposal to have a consistent interpretation for developed and undeveloped parcels in the Code is how things are handled in New Castle County as well surrounding areas where the riparian buffer goes to the impervious surface on previously developed parcels and then it is capped at the same capped as undeveloped parcels.

**Public Comments:**

Amy Roe, District 4, explained why she felt riparian buffers should be wider on previously developed property versus undeveloped property and asked Council to consider that one of the best ways of preventing flooding and preventing the need for a stormwater fee is to protect wetlands. While she would like to see a wider border, she

asked Council to oppose this bill to help protect the community from flooding. Mr. Coleman offered additional information in response to Ms. Roe's comments.

Marilyn Minster, Minster's Jeweler's, Newark Shopping Center, urged Council to pass the amendment because it needed to promote consistency and help approved development projects move forward.

Joe Charma, a member of the New Castle County Water Resources Protection Area Advisory Council, said the changes proposed by Public Works were consistent with New Castle County ordinances which were very strict and that the 50 foot buffer was almost a national standard. Mr. Charma gave additional information regarding the history of the current Code section and why he felt the ordinance was an improvement. He also stated that he helped work on the ordinance when it was initially proposed by the Planning Department.

Council asked if this change in the way of redevelopment moving forward at the Newark Shopping Center, which Mr. Coleman stated that it was and that this change would allow the development of the bowling alley side of the parcel since the current development plan proposes impervious surfaces outside the existing impervious footprint, which would not be allowed if the ordinance was not changed. Additionally they proposed a constructed storm water wetlands that would also not be allowed if the ordinance failed. The project being reviewed was not brought up because it might cloud the issue of the merit of the bill. The change if made would affect every project that has jurisdictional wetlands. If the Code was not changed, a jurisdictional determination would be required on any property that has wetlands on it which could be a significant delay to any development that comes through.

Mr. Coleman said the intention of the Code was that it would be a 50 foot buffer unless a site that had been developed prior to the Code being enacted had impervious surfaces within 50 feet of the buffer. The intention was to allow them to put back what was there and protect everything else.

Ms. Roser offered additional background on the creation of the original ordinance and added that it seemed logical that the standards for undeveloped and developed land should be the same. The law right now would allow them to build right up to it if it has already gone closer, but in this case developed lands were treated more stringently than undeveloped lands.

Council questioned if additional and much more extensive development was appropriate, especially with regard to a wetland area and asked if there was any other way to get around these problems on a case-by-case basis. Mr. Coleman offered additional examples to help illustrate the intent of the ordinance being considered.

Mr. Charma also offered possible scenarios and stated that he felt it would be bad policy to review these project by project and make it a project-driven decision instead of an environmental decision to fix a part of the Code that is considered broken. He added that there is evidence that 50 feet is a good number. The minimum filtration distance needed is 25 feet of vegetated land that provides for filtration and removes nutrients, suspended solids, does what you want to do to storm water before it discharges. The 50 feet provides an opportunity to reforest and create more of a habitat.

Question on the Motion was called

MOTION PASSED. VOTE: 4 TO 3.

Aye – Hadden, Markham, Ruckle, Sierer.

Nay – Chapman, Gifford, Morehead.

**(ORDINANCE NO. 14-13)**

- 13. 4. RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:**
- A.** Request of Delaware Avenue Associates, LLC For the Major Subdivision of 0.426 Acres Located at 201 East Delaware Avenue in Order to Demolish the Existing Building on the Site and Construct One Three-Story Mixed Use Building Containing 1,751 Square Feet of Office Space and

Parking on the First Floor and 12 Upper Floor Apartments (**Resolution and Agreement Included**)

**02:32:10**

**(NOTE: The public hearing for item 4-A was held under item 3-C.)**

MOTION BY MR. MARKHAM, SECONDED BY MR. CHAPMAN: TO APPROVE THE RESOLUTION AND AGREEMENT AS PRESENTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.

Nay – 0.

**14. 4-B. REQUEST OF DELAWARE AVENUE ASSOCIATES, LLC FOR A SPECIAL USE PERMIT FOR 12 APARTMENTS AS PART OF THE MAJOR SUBDIVISION PLAN AT THE PROPERTY LOCATED AT 201 EAST DELAWARE AVENUE)**

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**02:33:11**

**(NOTE: The public hearing for item 4-B was held under item 3-C.)**

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.

Nay – 0.

**15. 4-C. REQUEST OF DELI DAYS, LLC TO LIFT THE EXISTING DEED RESTRICTION PROHIBITING THE SALE OF ALCOHOL AT THE PROPERTY LOCATED AT 168 EAST MAIN STREET**

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**03:33:12**

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT THIS BE THE PUBLIC HEARING FOR AGENDA ITEMS 4-C AND 4-D

Lisa Goodman, Esq. represented the applicant and was joined by Project Engineer Joe Charma and Project Architect John Winkler. Two approvals were being sought to allow Arena's Deli to open its seventh location in Delaware in an existing building on Main Street at the former site of the Pita Pit and Coldstone Creamery. The project received the unanimous recommendation of the Planning Commission who granted a parking waiver for the existing site. The Special Use Permit was requested to serve alcohol and seeking to lift the deed restriction that said no alcohol.

Arena's was classified as a sit-down restaurant while the previous businesses were not and therefore were not required to have any parking (although they had 16 or 17 spaces in the back). The proposal was to dedicate that parking to the restaurant. The proposed plan was to redo the façade and the front of the building would be removed and moved back nine feet from the sidewalk. This would make a nicer streetscape and provide room for a patio with three tables and twelve seats. The restaurant technically required 41 parking spaces – they were providing 17. A parking waiver was granted recognizing the nearby parking in municipal lots for customers and staff and would result in a \$61,000 payment to the City.

Council was being asked to lift the deed restriction against serving alcohol that was put in place in 2000 for the Cyber Café and to allow the applicant to serve alcohol to 1:00 a.m. The City in 2005 enacted the Special Use Permit which allowed service to midnight, however the DABCC allows service to 1:00 a.m. The City's special use permit was revocable giving it control over the sale of alcohol. Arena's had a track record of responsible alcohol service. There were two letters of recommendation submitted from Greg Ferrese, the retired City Manager of Rehoboth and Hal Godwin, the Sussex County Deputy Administrator and former Mayor of Newark. Both had Arena's in their jurisdictions. Arena's has stringent requirements in place related to the serving and sale of alcohol and plans to use electronic ID stamps to ensure their servers do a good job.

**Council Comments:**

Mr. Ruckle asked if the restaurant would focus on the residents of Newark versus the students. Randy Schrader with Arena's said they absolutely will – Arena's has a

very diverse crowd and a lot of their planning included off-season times when only the residents would be there. Mr. Chapman wanted to better understand the original deed restriction. Ms. Goodman stated that Council did not have a mechanism for withdrawing an alcohol permit at that time. The applicants at that time did not care for it; also it was the method of service being considered by the Cyber Café which they wanted to be cafeteria style rather than sit down. Norm Gerschman, the property owner, stated that he had no problem with the City lifting the deed restriction.

There was no public discussion.

MOTION BY MR. MARKHAM, SECONDED BY MR. CHAPMAN: THAT COUNCIL AUTHORIZES AND HAS NO OBJECTION TO THE REMOVAL OF THE EXISTING DEED RESTRICTION AGAINST THE SALE OF ALCOHOLIC BEVERAGES ON THE PROPERTY LOCATED AT 168 E. MAIN STREET.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.

Nay – 0.

**16. 4-D. REQUEST OF DELI DAYS, LLC FOR A SPECIAL USE PERMIT FOR A RESTAURANT SERVING ALCOHOL IN THE BB ZONE AT THE PROPERTY LOCATED AT 168 EAST MAIN STREET**

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**03:54:56**

*(NOTE: The public hearing for item 4-D was held under item 4-C.)*

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT COUNCIL SHALL APPROVE THE SPECIAL USE PERMIT FOR THE SALE OF ALCOHOLIC BEVERAGES IN THE BB ZONE AT THE PROPERTY LOCATED AT 168 EAST MAIN STREET UNTIL 1:00 A.M. THIS APPROVAL SHALL BE CONDITIONED UPON THE APPLICANT DRAFTING DOCUMENTATION REMOVING THE DEED RESTRICTION AND SUBMITTING SAID DOCUMENTATION TO THE CITY SOLICITOR FOR APPROVAL PRIOR TO THE RECORDATION OF THE REMOVAL OF THE DEED RESTRICTION BY THE NEW CASTLE COUNTY RECORDER OF DEEDS. SAID RECORDED DOCUMENTATION SHALL BE SUBMITTED TO THE CITY SECRETARY AND THE PLANNING AND DEVELOPMENT DEPARTMENT PRIOR TO THE CERTIFICATE OF OCCUPANCY BEING ISSUED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.

Nay – 0.

**17. 4-E. REQUEST OF ALL PURPOSE, LLC FOR THE MINOR SUBDIVISION OF 0.3542 ACRES LOCATED AT 75 RAY STREET AND 0 ROSE STREET IN ORDER TO DEMOLISH THE EXISTING SINGLE FAMILY DWELLING ON THE SITE AND CONSTRUCT TWO ONE-FAMILY FOUR-BEDROOM DWELLINGS IN A SEMI-DETACHED DUPLEX LAYOUT (RESOLUTION AND AGREEMENT INCLUDED)**

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**03:55:38**

MOTION BY MR. CHAPMAN, SECONDED BY MR. MARKHAM: THAT THE RESOLUTION AND AGREEMENT BE APPROVED.

Mr. Alan Panaccione, property owner, requested a minor subdivision to take two tax parcels (one undersized) and move the lot line to make two legally sized building lots. The impervious coverage would be decreased by about 15% and the building size would increase about 5%. He understood the regulations outlined under the student home ordinance of three unrelated tenants with a maximum of two students, but indicated he was not sure if he would just build these or sell them fee simple or rent them to families. This would be dependent on the costs of the project.

There were no Council or public comments.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.  
Nay – 0.

**18. 4-F. REQUEST OF WARREN A. PRICE OF PRICE AUTOMOTIVE GROUP FOR A SPECIAL USE PERMIT TO INSTALL AN A-FRAME RADIO COMMUNICATIONS TOWER FOR COMPANY USE AT THE SITE LOCATED AT 1344 MARROWS ROAD**

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**03:59:04**

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT THE SPECIAL USE PERMIT BE GRANTED AS REQUESTED.

Mike Childers represented Price Automotive Group/Newark Toyota World and requested approval to build a radio communication tower on their property in order to communicate with a property they will occupy late in July/early August. It will help with the financial burden of a reoccurring cost and purchasing additional equipment.

Mr. Gifford pointed out that this application should go before the Planning Commission according to the Code. After checking the Code, Ms. Feeney Roser confirmed that was accurate and that the application should be sent back to the Planning Commission.

MOTION BY MR. GIFFORD, SECONDED BY MS. HADDEN: TO REFER ITEM 4-F TO THE PLANNING COMMISSION FOR FURTHER REVIEW.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.  
Nay – 0.

**19. 5. ITEMS SUBMITTED FOR PUBLISHED AGENDA:**

**A. Council Members:** None

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

**04:09:29**

**A.** Recommendation to Purchase a Building Access Security System from State of Delaware Contract No. GSS13599

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: TO AWARD STATE OF DELAWARE CONTRACT NO. GSS13599 TO ADVANTECH, INC. FOR A BUILDING ACCESS SECURITY SYSTEM IN THE TOTAL AMOUNT OF \$85,100.

Mr. Haines presented the proposal to purchase a building access security system, including fitting 38 doors in the building with card access, nine release buttons at various access points throughout the building, security equipment for the server room, 32 add-on licenses for the security software, and 300 standard access control badges. Mr. Haines explained that this would help to further the City's implementation of security issues found in the U.S. Marshals' report and would help to create levels of access and a more secure facility. While in the capital budget \$200,000 was budgeted to do every door in the building, the current proposal was to do 38 doors which would meet the intent of the Marshall's reports to provide a much more secure atmosphere, to provide gatekeeping and controls for the staff and Council alike but it would deny the free flow of traffic into doors and hallways and stairwells. It would also link the areas with buzzers immediately to Dispatch so we can have instant staff response for any necessary items. Advantech, Inc. of Dover, was on the State contract and they have worked with the City on the project coming to a total of \$85,100 and funding was in the Capital project A1401. Staff recommended moving forward with this project.

**Council/Staff Comments:**

Mr. Gifford asked where the doors to be fitted were located. Mr. Haines stated that primary access doors, including four in the foyer itself, the five doors created by the renovations on the first floor that would provide the separation enclosures for Parks and Recreation and Finance, the mailroom, and the door separating the Court which is temporarily a locked door. There are also intermittent offices included. Mr. Gifford asked why the project was not bid out. Mr. Haines responded that Advantech has a competitive number and that several companies have been reviewed to benchmark prices. From the cyber security analysis in 2013, the actual software was procured

through those funds last year, so this is just the physical door, the readers and the wiring, so we were able to leverage the same type of system. Mr. Ruckle asked if this item can be leased instead of purchased. Mr. Haines stated it could not because it is hardware, the physical readers and the related labor and the actual cards. However, the readers can be repurposed in the event of future renovations.

Mr. Chapman asked how access will be controlled. Mr. Haines stated that a grid would be created for the doors and then the different user groups would be created and assigned. Mr. Chapman asked how guests would get to different areas in the building. Mr. Haines stated that they will be buzzed in after checking in at the welcome center and would go to their destination. Second floor access is still under discussion based on the financial results of other planned projects.

Mr. Chapman asked why the welcome station is on the inside of the building entrance. Ms. Houck explained that was part of the problem with the facility. When Code Enforcement reviewed the area this was the best area for cutting through for access and still having it locked down. Mr. Haines continued by explaining that the first set of glass doors would still be accessible by sensor. The remainder of the foyer area would be locked down. Ms. Houck added that if someone left employment with the City, the card could be turned off to prohibit access. There is also a system to know where people are in the event of an incident. Ms. Hadden asked about the number of add-on licenses and if there were the free licenses. Mr. Haines stated that there were some with the first purchase. Mr. Morehead asked about use of the stairwell. Mr. Haines indicated that visitors will use the elevator as the preferred access control.

Mr. Gifford asked if there were other plans that were more expensive. Mr. Haines said that this had been budgeted for \$200,000 looking at every door. There are several different options, but the Marshall was brought back to review the proposed plan.

There was no public comment.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.

Nay – 0.

**21. 6-B. AWARD UPDATE FOR CONTRACT NO. 14-02 – GRASS CUTTING FOR 2014-2017**

**04:31:02**

Mr. Emerson reported that on 3/24/14 he presented Contract No. 14-02 for the award of grass cutting services for a three-year period to Elite Landscaping. The organization was unable to obtain the required bond to guarantee their work. He therefore recommended awarding the contract to the next responsible bidder, Ruppert Landscaping in the total amount of \$45,295. The difference in the cost of the contract was \$1,306.51. Ruppert has received high recommendations for this company from several local customers.

**Council/Staff Comments:**

Mr. Ruckle asked if the bonds could be provided before bids were submitted. Ms. Houck explained that they provide a surety bond with the bid but they have to do a full performance bond and they could not come up with the full amount. Mr. Emerson added that there were too many red flags to try to move forward on this. Mr. Ruckle asked if the City can go to Ruppert and ask them to match the other. Ms. Houck said the City could propose it to them but want the ok to move ahead.

There was no public comment.

MOTION BY MR. MARKHAM SECONDED BY MR. GIFFORD: TO AWARD CONTRACT NO. 14-02 FOR GRASS CUTTING AT THE RESERVOIR TO RUPPERT LANDSCAPE IN THE AMOUNT OF \$45,295.00 PER YEAR FOR A THREE-YEAR PERIOD.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.

Nay – 0.

22. 7. **SPECIAL DEPARTMENTAL REPORTS:**  
A. Special Reports from Manager & Staff:  
1. RSA Recalculation – Finance Director

**04:36:29**

Mr. Vitola presented electric rate stabilization adjustment (RSA) which serves to adjust the electric rates in response to fluctuating market conditions or over or under collections from a prior period. The RSA was recently established for 2014 based on expected power supply costs, but the City's wholesale power cost would increase this month by just slightly over 5%. This movement would cause the RSA to decrease from \$0.0078 per kilowatt hour to \$0.0045 per kilowatt hour. The other components of the RSA will stay the same. The 2013 over collection was still being distributed back to customers through the RSA and there was no change in the expected margin – this is what the RSA was designed to do. Many jurisdictions in Delaware and beyond Delaware automatically recalculate the variable portion based on the wholesale power supply so it does not need to get back to Council. The City requires Council approval for the RSA change which would be effective with the next billing cycle.

**Council/Staff Comments:**

Mr. Vitola stated that the rate was expected not to change again and gave the history of the rate changes and their consequences. However, as a wholesaler DEMEC has very stable rates. They still do move in extenuating circumstances as was seen from the fall into the winter. Mr. Morehead asked if it is clear to Mr. Vitola what the 5.12% increase does for the supplier. Mr. Vitola stated that part of it is the reactive services, which is one of the ancillary charges that PJM allocates among all the participating transmission owners and generation owners in the grid. That skyrocketed based on recalculation but they realized they were overburdening different portions of the grid with that calculation so it was abated – it was not going away forever but the 5% was a way to pay back the evils of late fall and early winter. It would be there forever as a line item on the PJM bill to DEMEC but it was not going to be as bad as it has been in the last five or six months. The reactive services line item will always be in the bill but it is not going to cause a 5% wholesale increase indefinitely. This DEMEC rate should be in effect through December 2014 and from then there should be a decrease. Mr. Vitola was asked to come back in three months and let Council know the direction of the electric prices.

Mr. Chapman asked for clarity on the rate projections. Mr. Vitola explained that the projection was that power rates were going to fall and continue to fall through 2017 and they did. Rates are still 11% under 2011. If they fall again as expected in 2015 and then to a lesser extent in 2016 there is still an overall decrease from the 2008-2009 era down through 2016-2017. That trend is still in play but there was an unexpected six months that consumed DEMEC's RSA which they had in place for this purpose and they held rates stable for as long as possible.

Mr. Chapman asked if the end user gets their bill last month as compared to 12 months prior, are they paying the same rate or the different rate prior to the RSA adjustment. Mr. Vitola explained that the base rates and the tariff and those tiers have not changed since 2011 – the RSA has moved in response to wholesale power costs. Ms. Houck added that the City has been giving money back and will continue to do so.

Mr. Vitola stated that the wholesale rate increase of 5.12% will not impact the residential user on a one-to-one ratio. The increase was equivalent to about 2.11% for the average user of 725 kilowatt hours a month. The base rates have been stable since 2011 and there has been a give back every year since 2011. The give back is shrinking but rates are still competitive with respect to all of the City's services and Delmarva.

There was no public comment.

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: TO REDUCE THE RSA RATE FROM \$0.0078 TO \$0.0045 PER KILOWATT HOUR.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.  
Nay – 0.

**23. 8. FINANCIAL STATEMENT: (Ending February 28, 2014)**

**04:50:46**

Mr. Vitola presented the February 2014 Financial Statement. On a Citywide consolidated basis, a deficit of \$214,000 was shown which was about \$750,000 off the budget pace. Last month there was a discussion about how the encumbrance balances make the statements look artificially bad. The negative expense variance did narrow since last month and would continue to narrow but in the first two months the impact was evident. March financials were still being finalized but the negative expense variance improved for all funds for that reason and that will bear out in next month's report. The deficit was exacerbated this month because governmental revenue also fell behind expectations. Court fines, park fees, transfer taxes and other revenues were all behind budget. The shortfall in the first two months was attributed to weather. Some of the variances related to timing issues such as grants and franchise fees. The Enterprise funds were the most significant positive in the two month period. Electric and water results were both stronger than the budget and that trend continued into March to the extent that despite the continued shortfall in the government receipts through March, a consolidated surplus was realized at the end of the first quarter. The cash position at the end of February was \$27.2 million – that was \$20.9 million in the reserve, \$1.1 million in the Smart meter accounts and \$5.2 million in operating cash.

**Council/Staff Comments:**

Mr. Vitola stated that the concern with weather-related revenue shortfalls was that is not something that recovers.

There were no public comments.

MOTION BY MR. MARKHAM, SECONDED BY MR. CHAPMAN: THAT THE FINANCIAL STATEMENT ENDED FEBRUARY 28, 2014 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.  
Nay – 0.

**24. APPROVAL OF CONSENT AGENDA**

**04:54:52**

- A. Approval of Regular Council Meeting Minutes – March 10, 2014
- B. Approval of Regular Council Meeting Minutes – March 24, 2014
- C. Approval of Council Workshop Minutes – March 17, 2014
- D. Receipt of Alderman's Report – March 25, 2014
- E. Receipt of Planning Commission Minutes – March 4, 2014
- F. **First Reading – Bill 14-14 – An Ordinance Amending Chapter 20, Motor Vehicles, Code of the City of Newark, Delaware, By Adding South Main Street to the Designated Emergency Snow Removal Routes – Second Reading – April 28, 2014**

Ms. Bensley read the Consent Agenda in its entirety.

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.  
Nay – 0.

**25. Meeting adjourned at 11:44 p.m.**

Renee K. Bensley  
Director of Legislative Services  
City Secretary