

**CITY OF NEWARK
DELAWARE
COUNCIL MEETING MINUTES
June 9, 2014**

Those present at 6:05 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 (Arrived 7:09 p.m.)

Staff Members: City Manager Carol Houck
City Secretary Renee Bensley
City Solicitor Bruce Herron
Community Affairs Officer Dana Johnston
Deputy City Manager Andrew Haines
IT Manager Joshua Brechbuehl
Parks & Recreation Director Charlie Emerson
Planning & Development Director Maureen Feeney Roser
P & D Development Supervisor Mike Fortner
Water & Wastewater Director Tom Coleman
Purchasing Administrator Cenise Wright

EXECUTIVE SESSION

A. 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.

B. Executive Session pursuant to 29 *Del. C.* §10006 (b)(6) and (9) for the purpose of discussion of the content of documents, excluded from the definition of "public record" in § 10002 of this title where such discussion may disclose the contents of such documents and personnel matters in which the names, competency and abilities of individual employees are discussed (Public Works and Water Resources Supervisor).

Council entered into Executive Session at 6:05 p.m. and returned to the table at 6:53 p.m. Ms. Sierer advised Council concluded the Executive Session.

MOTION BY MR. CHAPMAN, SECONDED BY MR. MOREHEAD: THAT COUNCIL APPROVE RESOLUTION OF THE EMPLOYEE ON-THE-JOB INJURY PERMANENT PARTIAL IMPAIRMENT CLAIM AS SET FORTH IN THE DEPUTY CITY MANAGER'S MEMO TO COUNCIL AS OUTLINED IN THE EXECUTIVE SESSION.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Markham.

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 THE CONSERVATION ADVISORY COMMISSION BETTER NEWARK AWARD TO RUTHIE & BEN TOOLE AND THE RESIDENTS OF FOUNTAINVIEW

05:53

The Better Newark Award was read by Ms. Hadden and presented by Ms. Sierer to Ruthie and Ben Toole for their efforts in installing a dry river bed to control storm water runoff and the addition of native plantings with a natural rock patio to create a unique property in the City.

The Better Newark Award was also presented to the Fountainview community for their efforts to improve storm water management and being recognized as a Certified Wildlife Habitat by the National Wildlife Federation.

3. MOTION MS. HADDEN, SECONDED BY MR. CHAPMAN: TO MOVE ITEM 6-A-1, RESOLUTION TO PHIL THOMPSON, TO ITEM #4.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

4. **6A1. RESOLUTION 14-__:** **RETIREMENT OF PHIL THOMPSON, LANDSCAPE SPECIALIST**

10:03

The resolution was read by Mr. Ruckle and unanimously endorsed by Council honoring Mr. Thompson for his 24 years serving the City as a Landscape Specialist.

(Resolution No. 14-U)

5. MOTION BY MS. HADDEN, SECONDED BY MR. RUCKLE: TO MOVE ITEM 3A2, HB 333 UPDATE TO 1D, LOBBYIST.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

6. MOTION BY MS. HADDEN, SECONDED BY MR. RUCKLE, TO MOVE ITEM 1C1, UD ADMINISTRATION, BEFORE 1A.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

7. **1-C-1. UNIVERSITY ADMINISTRATION**

15:53

Mr. Deadwyler discussed UD Alumni weekend which had over 5,000 attendees. The Mug Night event on The Green featured live music and ran over 30 minutes past the 11:00 deadline agreed upon with the City. This prompted complaints from residents disturbed by the noise. He introduced Cindy Campanella, Director of Alumni Relations, who described precautions taken to be considerate of the community. She apologized for exceeding the time in the City's noise waiver. She said UD will ensure they will not exceed the time next year and will work with City staff during the planning stages.

Mr. Chapman wanted to hear within 30 days the university's plan to take precautions next year. Ms. Hadden would like to be involved in planning future UD events that directly impact her constituents.

Mr. Zingarelli tried to raise a Point of Order but was advised by Ms. Bensley that only a member of Council could call a Point of Order.

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

35:58

Jeff Lawrence, District 3, referenced the May 27 Council meeting where the Finance Director stated "We are not recommending a tax for the storm water solution but were recommending the creation of a utility supported by user fees." He cited an article exploring the difference between user fees and taxes.

John Morgan, District 1, discussed complaints about the noise level at alumni weekend. He took measurements along South College Avenue and got readings in the mid-50's. He felt the City's current limit of 52 dba in residential areas was too high, and should be in the low 40's. Regarding TDC he asked for a representative of the City to question the discrepancy in construction jobs between 5,000 in their grant application and 1,000 jobs in their air permit application.

Amy Roe, District 4, said the noise from UD's Mug Night was so loud her house was vibrating. Ms. Roe reviewed documents that she obtained via a FOIA request on TDC. She pointed out that Council members were not copied on any of the e-mail exchanges. Ms. Roe commented about the continuing lack of transparency on this issue and having to rely on FOIA to learn critical information about actions taken by the City.

Tom Uffner, District 4, pointed out that the Executive Session held tonight was illegal pursuant to Title 29, Section 10004 (d) which required a motion and a majority vote before the public to go into executive session. He noted the inner lobby door was locked at 6:00 p.m. In his opinion anything discussed at the session should be null and void and votes taken afterward should not count. Mr. Herron was not aware the door was locked and confirmed there was no problem having an executive session prior to the regularly scheduled meeting as long as it was properly noticed. Ms. Bensley reported that the agenda was published in the Newark Post (including start time), on the web and in the building, and copies were available in the City Secretary's office.

Catherine Ciferni, District 2, commented on the procedure for going into executive session. She expressed concern that her photo was being taken at the security booth and wanted to know what was being done with the photos since the public was told there would be no online registry available to staff. It was Ms. Ciferni's belief that the security booth was not ADA compliant.

Jen Wallace, District 3, was concerned the University was allowed to have time at the podium before the public. There were comments made about noise when Mr. Deadwyler was not in the room so UD had an opportunity to give their side of the issue before having to listen to the residents who had to deal with the noise.

Martin Willis, New Castle, DE discussed the Liberty Environmental study regarding TDC's air permit application and said the consultant hired by the City never spoke to TDC or DNREC. Mr. Willis did not believe the Liberty Environmental study should be used to undermine DNREC's authority.

Brett Zingarelli, District 4, discussed his point of order; was concerned Ms. Houck interrupted others while speaking; questioned how Council was representing residents and remarked about the lobby doors being locked at the start of the executive session.

Nancy Willing, District 3, said Robert's Rules provide that all comments be generated through the Chair and suggested Newark follow that procedure. She felt there was no reason for a misunderstanding of the noise waiver by the University on mug night and they should be fined for a noise violation.

Francis Young, Townsend Road resident and property owner at Villa Belmont received a ticket for parking in a fire lane. The ticket was reduced by the Alderman's Court, but he felt he should not have to pay it at all because of the access situation.

Larry Laber, District 6, asked for a response to an e-mail he sent to the City in March; said the University violated noise waivers on two occasions and should not be given any more; claimed children not wearing seat belts delivered circulars for Mr. Markham's re-election campaign.

9. 1-B. ELECTED OFFICIALS

01:15:28

State Representative Kowalko advised that HB 331 which he sponsored rescinded the University's exemption from FOIA requirements was scheduled for a committee hearing on Thursday at 1 p.m. in Dover; HB 333 attempted to clarify municipal taxation rights. His issue was that when a municipal government is chartered, an entity is created that is duly representative for its public by an elected body. He felt the State's interference was a violation of the autonomy of a duly-elected government.

He noted there was an active court case regarding HB 333 with the town of Dewey Beach and was disturbed the State was attempting to interfere in an active court case by imposing legislation; Mr. Kowalko did not agree with the denial of \$3 million from the University by the Joint Finance Committee and the attempt to coerce a decision from the University on the TDC project. Mr. Kowalko also agreed the City needed to comply with FOIA laws for executive sessions.

Mr. Morehead referenced Senate Bill 198 which removed the automatic public hearing process and asked how it had gotten so far. Mr. Kowalko said in the waning days of the session many people were too willing to try to be more expedient in forfeiting people's rights. He planned to oppose the bill and may be offering an amendment to it.

10. 1-C. UNIVERSITY
(1) Administration (See Item #7)

11. 1-C-2. STUDENT BODY REPRESENTATIVE: None

12. 1-D. LOBBYIST

01:25:31

Mr. Maxwell was asked by Mr. Morehead if a bill could be back dated to which he replied it could although they could not commit a future General Assembly to it. Mr. Maxwell agreed with Mr. Kowalko on several points. Local prerogative was granted to every municipality by the Legislature and there were specific powers that accrued within the charters and Title 29 as it applied to the counties. HB 333 was an important item on the agenda. He was encouraged that several legislators from both the minority and majority party of the House were trying to achieve a compromise.

Mr. Kowalko thought the objections to HB 333 subsection b would be overwhelmingly rejected. Mr. Herron explained the basic point of the opposition letter signed by several municipal solicitors was that if it was determined the bill was going to pass, they proposed several amendments that should be included.

Mr. Maxwell reported that on June 17 the Bond Bill Committee would hold its hearing on DeIDOT and it was important to protect the \$5 million in the Governor's budget for municipal street aid.

Mr. Maxwell further noted that 1.1% of the City's budget was in State grants. He said it was a good idea to review what Newark was asking for in capital support in the bond bill and make the local legislators aware of the City's requests.

Mr. Maxwell noted the Joint Finance Committee took an action to put \$3 million in the Governor's budget in a contingency fund and commented that local government actions did not go unnoticed by the Legislature. Mr. Kowalko said the purpose of withholding the \$3 million was intended to move the agenda of the TDC project forward without regard to the facts. He urged the City not to compromise their principles because of being bullied.

13. 1-E. CITY MANAGER: None

14. 1-F. COUNCIL MEMBERS

01:45:27

Mr. Ruckle

- Announced a meeting on June 17 to discuss crime in District 2. The meeting would be held at the Newark Senior Center where the Chief Paul Tiernan would present information on efforts to curtail these crimes.

Mr. Morehead

- Raised questions on the water tank at the Retreat at Newark project at Suburban Plaza and believed Council should have been included in the approval process.
- Asked when he could expect staff's report on the definitions of neighborhoods and accessory use.
- He did not remember Council setting up a subcommittee to review the RFP for the lobbyist position being vacated by Mr. Maxwell. Ms. Houck responded the draft RFP was sent to Council at least twice asking for input before it went out – there were no

comments received from Council. It was stated two members of Council would take part in the Committee with staff and Ms. Sierer determined she and Mr. Markham would represent Council. Mr. Morehead believed it was the entire Council's responsibility to form those committees.

Mr. Markham

- Said *U Don't Need It* appeared to be successful and asked for a report on the amount of material diverted.
- Noted the Conservation Advisory Commission would have a presentation by the Finance Director on green energy on June 10 and would also have a discussion on community solar.
- Requested the City Secretary draft a letter to the legislature supporting full funding of municipal street aid.

Ms. Hadden

- Attended the service at the Delaware Memorial Bridge and expressed appreciation for the service of veterans; attended the Wilmington Memorial Day parade where Nancy Willing acted as grand marshal; attended a designing for complete communities workshop; attended a meeting with the City Manager and Chief of Police to address resident issues at Blair Court.

Mr. Gifford

- Referenced a shooting incident on Cornwall Drive in the Binns neighborhood and addressed a communication issue that was resolved with the Police Department.
- Discussed the pothole problem on Elkton Road at the intersection with Rt. 4 as well as water ponding at Dunkin Donuts.
- Felt the law should be followed in regard to the noise issue with the University on alumni weekend.
- Noticed the lobby door was locked when he arrived at 5:45 p.m. and apologized for not being more responsive to the situation.
- Thought Council rules should also be tightened up and it would be a good idea for Ms. Sierer to identify who would be speaking (member of staff or the public).
- He would follow up on Dr. Morgan's request but thought that was intended when he made the motion at the April 28 meeting which was for TDC to redo the grant and the job numbers.

Mr. Chapman

- Asked Mr. Herron to follow up and provide a determination on the water holding tank at the Retreat at Newark complex.

Ms. Sierer

- Toured the City parks with Mr. Emerson and Mr. Ruckle.
- Met with Sam Beard, national Executive Director of the Jefferson Awards who expressed interest in working with the City on promoting community service for the youth in Newark.

15. 2. **ITEMS NOT FINISHED AT PREVIOUS MEETING:**
A. **Bill 14-15 – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Updating Management Classifications and Fringe Benefits (*Postponed From the May 27, 2014 Council Meeting By Request of Staff.*)**

02:05:56

Ms. Bensley read Bill 14-15 in its entirety.

MOTION BY MS. HADDEN, SECONDED BY MR. RUCKLE: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 14-15.

Mr. Haines explained the bill was postponed to clarify amendments 2 and 3. Staff was advised by Mr. Herron they would not have to hold another first reading and re-advertise the bill for the title edit that was necessary. In amendments 2 and 3 there were three tiers in the management ordinance regarding the management staff. The intent was to bucket and codify the titles in those positions to the operational reality of where they fall. Field management, the staff categorized as supervisory employees,

were the few management employees eligible for time and a half should they be called in for emergencies such as snow storms, etc.

In amendment 4C Mr. Morehead pointed out an issue where Code stated the Planning & Development Director was required to attend two Planning Commission meetings and one Council meeting per month. The requirement was the reverse. According to Mr. Herron that edit that could be adopted by Council as an amendment.

Mr. Haines pointed out that amendment 5 was an edit to update the actual number of paid management holidays from 10 to 12.

Amendment 6 was being cleaned up from a technical language standpoint in all the union agreements to have consistency of emergency leave and how emergency leave was defined.

Mr. Morehead questioned amendment 1 where the Director of Legislative Services was not listed as a management employee but in amendment 4A was included with management employees. Ms. Bensley and Ms. Houck were appointed employees who did not fall in the management group but Council referenced the benefits for Ms. Bensley as a management employee.

The last sentence in amendment 4A regarding overtime pay stated the method of compensation for management employees (including the city secretary/treasurer) shall be designated by the employee's department director and/or city manager. Mr. Morehead felt this was problematic since Ms. Bensley reported directly to Council.

AMENDMENT BY MR. CHAPMAN, SECONDED BY MR. MOREHEAD: THAT AMENDMENT 4A, LAST SENTENCE, BE CHANGED TO READ, "THE METHOD OF COMPENSATION SHALL BE DESIGNATED BY THE EMPLOYEE'S DEPARTMENT DIRECTOR AND/OR CITY MANAGER, WITH THE EXCEPTION OF THE DIRECTOR OF LEGISLATIVE SERVICES WHOSE METHOD OF COMPENSATION SHALL BE DESIGNATED BY MAYOR AND COUNCIL."

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

AMENDMENT BY MR. CHAPMAN, SECONDED BY MS. HADDEN: TO CHANGE ALL REFERENCES TO THE DIRECTOR OF LEGISLATIVE SERVICES TO CITY SECRETARY/TREASURER TO BE CONSISTENT WITH OTHER REFERENCES IN THE CODE AND CHARTER.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Herron thought this amendment sufficiently clarified that it applied to all the amendments before Council in this document.

AMENDMENT BY MR. MOREHEAD, SECONDED BY MS. HADDEN: CHANGE THE LAST SENTENCE IN AMENDMENT 4C, (PLANNING & DEVELOPMENT DIRECTOR) TO READ, ONE PLANNING COMMISSION MEETING PER MONTH AND TWO COUNCIL MEETINGS PER MONTH.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Mr. Markham asked why the amount of insurance coverage was codified in amendment 9. Mr. Haines explained the fringe benefits section of Chapter 2 was where the benefits provided to management were covered. There was not a union for management or a collective bargaining agreement, so those benefits were done through Code. Mr. Herron said this was consistent and did not see any problems with it.

Mr. Morehead discussed janitorial services being brought in house and was informed the current employees who worked through a third-party contractor could apply. The intent was to hire four part-time positions in order to have at least a 12 hour window of coverage throughout the day.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: IN AMENDMENT 2, REMOVE THE DELETION FOR RECREATION SUPERINTENDENT AND LEAVE IT IN PLACE AT LEVEL 21; AND THAT "PARKS SUPERVISOR" BE CHANGED TO "PARKS SUPERINTENDENT IN AMENDMENT 2. IN AMENDMENT 3 REMOVE THE DELETION OF PARKS SUPERVISOR AND DELETE THE RECREATION SUPERINTENDENT LEVEL 21.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

There was no public comment.

Question on the Motion as amended was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Ruckle.

16. 2-B. RECOMMENDATION TO WAIVE BID FOR NETWORK CABLING SERVICES – ADDITIONAL INFORMATION (POSTPONED FROM THE MAY 12, 2014 COUNCIL MEETING BY REQUEST OF COUNCIL)

02:32:27

Mr. Haines reviewed the revised staff memo dated June 2 which responded to questions about the CAT6 operation. Advantech was the middle of three bidders; however, staff recommended Advantech based on their previous experience working in the building. VOIP did not investigate the walls and the ceilings. It was also felt the marginal time line or change order to go around the existing facility would eat up that differential and further, the warranty of work – the benchmark of trying to have one provider do the cabling – would insure the quality and productivity of all the cabling.

Council Comments:

Mr. Morehead noted there were two recommendations – one for \$42,120 including the Auto CAD drawings and the other for \$37,800 not including the CAD drawings. Based on mapping work done in the building by IT, it was determined the CAD drawings were not needed.

Mr. Chapman questioned the decision to waive the bid for the cabling services. Mr. Haines explained that:

- o Solicitation of quotes was sometimes done to be able to benchmark whether the project would exceed the threshold to need a bid;
- o Advantech was a state contractor;
- o The uniqueness that Advantech was awarded the door access ID project;
- o The City later began looking at a VOIP system and the cabling need and functionality for the building was challenging - it would be more efficient to have one company in the walls and ceilings dropping the lines; and
- o Formal bidding would put the timeline at July before the project could be awarded – companies would have to provide bid bonds and then surety bonds with costs of \$7,000-\$10,000 passed onto the contracts.

There was no public comment.

Question on the Motion was called.

MOTION BY MR. CHAPMAN, SECONDED BY MR. RUCKLE: TO WAIVE THE BID AND APPROVE THE PURCHASE OF NETWORK CABLING SERVICES FROM ADVANTECH INC. OF DOVER, DE AT THE TOTAL COST OF \$42,120.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

17. 2-C. BOARDS AND COMMISSIONS APPLICATION PROCESS – DIRECTOR OF LEGISLATIVE SERVICES (POSTPONED FROM THE MAY 12, 2014 COUNCIL MEETING BY REQUEST OF COUNCIL)

02:45:48

Ms. Bensley presented a draft application for Council's consideration.

Council Comments:

Mr. Morehead suggested a separate application for each board and commission as well as adding a statement to provide to the City Secretary any changes in the application during the consideration process or during the applicant's term. He asked if the financial information was public information. Ms. Bensley said any information on the application itself would be public information. In response to Mr. Chapman's question she reported that New Castle County Council's commission disclosures were public information posted on their Ethics Commission website.

Mr. Markham would not include tax information but would ask the applicant to certify they were in good standing and for conflict of interest would change other family members to immediate family members.

Ms. Hadden offered some minor changes in areas where there were duplications and suggested include the date on the form.

Mr. Ruckle wanted to add a thank you message to the form and would not ask for financial information.

Mr. Gifford asked how "personal relationship with any members of City Council" was defined. Mr. Chapman felt the questions were merely guidelines and the responses would not necessarily disqualify an applicant.

Ms. Bensley felt the form would be useful for information gathering and decisions would be made at the discretion of the Council member making the appointment.

It was decided to include an appended cover sheet listing all the boards and commissions, when they meet and the approximate amount of time involved per month. It was also suggested to have an online form.

Public Comments:

Catherine Ciferni, District 2, liked the progress that was made and said if a person was qualified, having a social relationship with a Council member should not matter. If they were not qualified and just had a relationship with a Council member, that should be a red flag. She recommended requesting a resume and having a 20-30 minute interview with the applicant.

Jen Wallace, District 3, agreed a resume was important as was professionalism.

John Morgan, District 1, thought it was important for a resume to include information about the applicant and the spouse's employer.

Don DelCollo, District 4, thought applicants should include their participation on boards, committees, non-profits, etc. out of the City.

Brett Zingarelli, District 4, was concerned since this was a volunteer position that almost anything that qualified someone to be on the board would then disqualify them.

Tom Uffner, District 4, did not agree a resume should be required since this was a volunteer position.

Ed Wilburg, non-resident, suggested there be one member with knowledge of what was being studied at the time and expanding to people outside the district.

Tom Fruehstorfer, District 1, thought a resume made sense to use as a check for conflicts of interest.

Ms. Bensley was directed to incorporate the changes agreed upon by Council and revise the application.

18. MOTION MR. MOREHEAD, SECONDED BY MR. GIFFORD: THAT ITEM 5A BE MOVED AFTER ITEM 2C.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

19. **5. RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:**

- A. Request of Ted Lake for a Special Use Permit For a Customary Home Occupation at the Residence Located at 308 Vassar Drive

03:36:20

Mr. Fortner presented the request for a Special Use Permit from Mr. Lake for the property at 308 Vassar Drive which was zoned RS.

Mr. Lake originally applied for a car detail business with no more than two cars per day which would be dropped off and serviced at his property. After meeting with his neighbors he changed his business model based on community concerns. Instead he would travel to the customer's home or location to perform the detailing. A Special Use Permit was still required since he would operate the office from his residence.

Council Comments:

Since the Special Use Permit goes with the property, Mr. Morehead asked if Council had the ability to sunset it with the sale of the house. Ms. Feeney Roser said Council could add a condition that the SUP goes away with the sale of the house.

Ted Lake, 308 Vassar Drive, said while he received support to the initial proposal to do auto detailing at his house, it was brought to his attention that a number of individuals voiced opposition. It was not his objective to proceed based on opposition from fellow neighbors. Thus, he withdrew his original proposal and decided to do mobile detailing instead. The house would serve only as an address for the business.

Mr. Markham asked whether Mr. Lake reapplied for the Special Use Permit since the original application differed from what was being requested tonight. Mr. Fortner replied he had not since the model changed but it was still the same business.

Ms. Feeney Roser explained that when approved Mr. Lake would get a letter detailing exactly what Council approved. Ms. Bensley further explained the letter enumerated not only the approval but any conditions included in the motion. Those conditions would also be recorded in the minutes of the meeting.

Mr. Chapman discussed whether this was a legal and binding process. Mr. Herron thought it could be done legally. Mr. Markham felt since it was advertised with information that changed it should be re-advertised.

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: TO TABLE THE APPLICATION UNTIL THE 6/23/14 COUNCIL MEETING AS UNFINISHED BUSINESS BASED ON AN APPLICATION BEING PROVIDED TO RECOGNIZE THE MOBILE NATURE OF THE BUSINESS PROPOSAL.

Ms. Bensley advised that a Special Use Permit required 15 days notification.

Public Comments:

Brett Zingarelli, District 4, said rather than postponing this indefinitely, Council should allow it to come to a vote.

Catherine Ciferni, provided Council with a letter from Vassar Drive residents Margaret and David Cassling.

John Morgan, District 1, had no concerns about the revised proposal. Regarding Special Use Permits in general he suggested the initial permit period have a limited duration of two or three years and then the owner could reapply. Mr. Chapman reported that a Special Use Permit could be revoked at any time.

Janet Arenson, District 1, was opposed to the original proposal but was not opposed to the change to a mobile detailing business.

Mr. Lake officially withdrew his Special Use Permit application. Therefore Mr. Morehead's motion was no longer applicable.

The meeting was recessed at 10:50 p.m. and resumed at 10:58 p.m.

20. 2-D. BOARDS AND COMMISSIONS REVIEW COMMITTEE MEMBERSHIP QUALIFICATIONS – DIRECTOR OF LEGISLATIVE SERVICES (POSTPONED FROM THE MAY 12, 2014 COUNCIL MEETING BY REQUEST OF COUNCIL)

04:10:49

Ms. Bensley reported the request to establish the committee originated at the Boards and Commissions workshop. It was suggested to have a seven member committee, one from each district and one mayoral appointment. There was an additional suggestion that two members of Council be added but should be non-voting members to avoid a conflict of interest. Today Council was asked to decide the number and specific qualifications of Committee members.

Council Comments:

The purpose of this was to develop qualifications to develop the review committee and that committee would discuss the Boards and Commissions and current procedures and processes. It was agreed to use the newly developed application form (once completed) and to limit the committee to seven members. It was agreed to interview proposed members at a regularly scheduled Council meeting.

Public Comments:

Catherine Ciferni thought FOIA experience was important since committee members would have to evaluate other boards for compliance. She emphasized the importance of interviewing and evaluating individual committee members.

Don DelCollo, District 4, thought Council members should pick one person from each of their districts for the board.

Carol McKelvey, District 4, suggested that training be made available to committee members similar to the Board of Adjustment trainings held.

John Morgan, District 1, favored a thorough process with interviews at a Council meeting to thoroughly scrutinize the people who will serve on the committee.

21. MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT ITEMS 3-A-1 TOWN & GOWN COMMITTEE AND ITEM 7B, RECOMMENDATION TO AWARD RFP NO. 13-02 – CREDIT/DEBIT CARD ENABLED SINGLE-SPACE PARKING METERS, BE POSTPONED TO THE 6/23/14 MEETING.

MOTION PASSED. VOTE: 6 to 1

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

Nay: Hadden.

22. 6-A-2. DISCUSSION ON COUNCIL-STAFF RETREAT SCHEDULED FOR 6/21/14

04:38:18

Mr. Gifford requested feedback from Council as he was unclear about the problem to be solved and the goal. Was the retreat aimed at a Council or staff issue and was this the best approach? He believed Council could have a discussion about issues without spending money to hire an outside consultant. He also thought since Council should vote whether to proceed with the retreat since they were involved in the event.

Mr. Chapman cited a number of changes (including staff and Council members) that occurred during his time on Council and prompted the discussion of an off-site forum. Ms. Sierer agreed with Mr. Chapman's comments and said she was new to the governmental process and thought the education would be beneficial. Ms. Hadden was looking forward to learning more about the Council-Manager form of government and hoped it would help her to better serve her constituents. Mr. Morehead said a critical

piece to this was that Council was not involved in the decision-making process and had little information about the retreat. Mr. Chapman thought Mr. Gifford's questions and concerns were valid and was glad for the conversation.

Ms. Houck said prior to the Council election the idea was pushed by Council as attested to by Ms. Sierer and Mr. Chapman. It was her view that Council members were on board and thus plans moved forward.

Mr. Markham thought there was over-sensitivity at times on what Council does and how. This would be a public meeting, not a vacation, and a chance to communicate with staff. Mr. Markham hoped to better learn to set expectations with staff so they understand what is important to Council. He would also like to see meetings in the community with senior staff having no set topic but with open conversation.

Mr. Ruckle saw this as an opportunity to build relationships and would attend.

Ms. Sierer reported the consultant was present and part of the agenda would come from the interview process based on items pertinent to Council members.

Public Comments:

Jeff Lawrence, District 3, reminded Council they were not a team but were elected to represent their constituents. He felt if the retreat was to go forward it should be a workshop held in the municipal building. He agreed with Mr. Gifford there needed to be clearly set objectives.

John Morgan, District 1, agreed workshop was a better term to use. He felt there were communication lapses in the last year between staff and Council. He suggested making it as inclusive as possible.

Tom Uffner, District 4, said his biggest concern was that the meeting should be held in the municipal building.

Catherine Ciferni, District 2, preferred the meeting be held as a workshop and asked if it had to be recorded. She thought a tutorial from the AG's office would be beneficial before embarking on a workshop.

Jen Wallace, District 3, asked for over cautious transparency moving forward and felt approval for the event should have been brought to Council for approval.

Brett Zingarelli said the retreat made him uncomfortable and he did not think it should happen. Team and relationship building scared him because separation of powers was there for a reason. He asked how the decision was made to pay a facilitator for the retreat because he did not witness the vote to approve the event.

Council Comments:

Mr. Gifford asked if the path was going to be changed or left the same. His inclination was to indefinitely postpone the event. The only reason he was thinking of postponing was he could not define an agenda tonight.

Mr. Morehead did not oppose team building but it was a question of process and leadership that had to be right. He would not support the current direction.

Mr. Chapman was disappointed that Council was constantly being nitpicked. He agreed Mr. Gifford was right to have questions and concerns. He was sad about the public approaching everything with severe skepticism.

MOTION BY MR. GIFFORD, SECONDED BY MR. MOREHEAD: TO POSTPONE THE RETREAT UNTIL COUNCIL DEFINES AN EVENT THEY WANT TO HAVE AT A FUTURE COUNCIL MEETING.

MOTION FAILED. VOTE: 3 to 4

Aye – Chapman, Gifford, Morehead.

Nay – Hadden, Markham, Ruckle, Sierer.

23. 3. SPECIAL DEPARTMENTAL REPORTS:

A. Special Reports from Manager & Staff

1. Town & Gown Committee Reinstatement Update – Director of Legislative Services

(Postponed to the 6/23/14 Council meeting)

24. 3-A-2. HB 333 UPDATE – CITY MANAGER

(See Item #12)

25. ORDINANCES FOR SECOND READING & PUBLIC HEARING: None

26. 5. **RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:**
 - A. Request of Ted Lake for a Special Use Permit For a Customary Home Occupation at the Residence Located at 308 Vassar Drive

(See Item #19)

27. 6. ITEMS SUBMITTED FOR PUBLISHED AGENDA:

- A. **Council Members:**
 1. **Resolution 14-__:** Retirement of Phil Thompson, Landscape Specialist

(See Item #4)

28. 6-A-2. DISCUSSION OF COUNCIL-STAFF RETREAT SCHEDULED FOR JUNE 21, 2014 – COUNCILMAN GIFFORD

(See Item #22)

29. 6-B. OTHERS: None

30. 7. RECOMMENDATIONS ON CONTRACTS & BIDS:

- A. Recommendation to Award Contract 14-03R – 2014 ADA Handicap Ramp Installation Program

05:31:38

Mr. Coleman detailed the staff memo dated May 21, 2014. The contract was for the 2014 ADA Handicap Ramp Installation Program. This program was required in order to stay compliant with the Federal mandate for handicapped accessibility for pedestrian facilities. The contract was originally bid on March 25. Only one bid was received from Paoli Services for just under \$130,000. The amount per ramp was higher than expected and higher than paid for in the past. Since only one bid was received it was decided to put out the bid again at which time four bids were received. The lowest responsible bidder was Fontana Concrete Contractors who also had this year and last year's street contract. Their bid was \$102,300. Fontana's work in the City has held up well and they were awarded four of the last eight street contracts. Council was asked to approve the contract with Fontana for \$102,300.

Council Comments:

At Mr. Gifford's request Mr. Coleman reported there was an issue with handicapped ramps installed last year. They did not fare well over the winter. Two contractors were doing ramps – Fontana and another contractor – as part of the ADA ramp contract. All the ramps constructed by Fontana held up well with no problems. The other contractor was required to repair their ramps.

Mr. Markham asked why there was only one response the first time around. One contractor missed the mandatory pre-bid meeting and the others stated at the time they did not want to over-extend themselves and were concerned they would not have adequate labor to complete the work.

Public Comments:

Brett Zingarelli, District 4, questioned the road paving and repaving at Barksdale Road. Mr. Coleman reported the original plan was to do a full repaving last year. They did not have the funding necessary, so temporary patching was done and a new top coat was scheduled this summer.

Catherine Ciferni, District 2, reported problems with the curb at the corner of Academy and Main (walking towards GrassRoots). The bumpy tile surface for the visually impaired was completely loose and needed to be checked.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT CONTRACT 14-03R – 2014 ADA HANDICAP RAMP INSTALLATION PROGRAM, BE AWARDED TO FONTANA CONCRETE CONTRACTORS FOR THE TOTAL AMOUNT OF \$102,300.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

31. 7-B. RECOMMENDATION TO AWARD RFP NO. 13-02 – CREDIT/DEBIT CARD ENABLED SINGLE-SPACE PARKING METERS

(Postponed to the 6/23/14 meeting)

32. 7-C. RECOMMENDATION TO WAIVE BIDDING TO IMPLEMENT A VOIP PHONE SYSTEM WITH A STATE OF DELAWARE CONTRACT

05:41:41

Mr. Brechbuehl reported the Voice Over IP system was a phone system replacement for all City-owned buildings. Newark was faced with challenges – one was maintaining the Police Department's ability to provide around-the-clock uninterrupted service to residents. Due to the networking and security constraints of the Police Department the City had to be creative with its design and implementation of a new organization-wide phone system.

Five phone solutions were investigated ranging from standard PBX to Lync Enterprise Voice to Cloud based solutions. Due to State requirements for the Police Department network along with the City's desire to move towards a more redundant, scalable and disaster ready phone system, a Cloud based solution was chosen. The VOIP phone system would utilize the City's existing network infrastructure including the network cabling (approved tonight) as well as new recently upgraded network switches. This would result in the City having a single phone system for all of its offices and buildings including the Police Department. To achieve the Cloud-based solution the City was ready to implement a Mitel VOIP solution called Cloud9 that would be installed by VOIP Networks, a Mitel authorized reseller. Mitel was on the State of Delaware contract list, and a bid waiver was needed to implement the new phone system. The waiver was due to the inability of other vendors on the State contract to offer the same Cloud solution for VOIP that Mitel offered.

For Police Department requirements it would keep the networks from being tied together. The Police network would go out through their Internet connection to a hosted Cloud based phone system and not need a connection to the municipal phone system.

Council Comments:

Mr. Morehead remarked on the need for power at all times in the Police Department since they had to get out to an Internet connection. Mr. Brechbuehl reported there was triple redundant power, two battery back-up systems and a diesel generator.

Ms. Hadden referenced the additional \$4,600 monthly charge for the 60-month term and asked whether the City would have to renegotiate the rate after that time. Mr. Brechbuehl explained the City would pay \$73,000 less with the high up-front cost over the five-year term combined with the subscription service. The up-front money would pay for the phones and for technology to implement the actual hardware into the building. The subscription charges of \$4,470 per month covered the minutes used, long-distance charges, etc. New features would be available including the ability for multi-line conferencing and video capabilities.

Mr. Gifford asked if there would be any issues with call recording. Ms. Houck reported Customer Service currently had that feature and there was a requirement to notify people when they were being recorded. Mr. Gifford asked for an explanation about waiving the bid. Mr. Brechbuehl said the City had a specific need with the Police

Department and this was the only company on the State contract offering the solution. It was also preferable to be on the State contract, particularly when entering a subscription-based service. Typically the State contract had more resources if there were issues with the contract.

There was no public comment.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH VOIP NETWORKS FOR A MITEL VOIP PHONE SYSTEM (CLOUD9) AT A COST OF \$93,085.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

33. 8. FINANCIAL STATEMENT: None

34. APPROVAL OF CONSENT AGENDA

04:54:51

- A. Approval of Council Meeting Minutes – April 28, 2014
- B. Approval of Council Meeting Minutes – May 12, 2014
- C. Receipt of Alderman’s Report – May 27, 2014
- D. Receipt of Planning Commission Minutes – May 6, 2014
- E. Appointment of Bruce Harvey, Meghan George, and John McNutt to the Rental Housing Needs Assessment Steering Committee
- F. **First Reading – Bill 14-18 – An Ordinance Amending Chapter 11, Electricity, Code of the City of Newark, Delaware, To Delete Budget Billing – Second Reading – June 23, 2014**
- G. **First Reading – Bill 14-19 – An Ordinance Amending Chapter 13, Finance, Revenue and Taxation, Code of the City of Newark, Delaware, By Creating a Budget Billing Program For All City Administered Utilities – Second Reading – June 23, 2014**

Ms. Bensley read the Consent Agenda in its entirety.

Items 9-B and 9-E were removed from the Consent Agenda.

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: THAT THE CONSENT AGENDA BE APPROVED AS READ.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

35. 9-B. APPROVAL OF COUNCIL MEETING MINUTES – MAY 12, 2014

05:55:39

Mr. Markham raised a question on page 6 which stated the motion was made by him. He asked Ms. Bensley to check that information since he chaired the meeting and the chair would not normally make motions.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: TO POSTPONE ITEM 9-B to the 6/23/14 MEETING.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

36. 9-E. APPOINTMENT OF BRUCE HARVEY, MEGHAN GEORGE, AND JOHN MCNUTT TO THE RENTAL HOUSING NEEDS ASSESSMENT STEERING COMMITTEE

05:57:14

Mr. Morehead noted Council had in front of them two resumes and a biography for a committee appointment. He was not comfortable with the qualifications of the

individual who submitted the biography. Ms. Sierer recommended Meghan George and thought she would be an asset to the committee. As a housing manager with the Newark Housing Authority she was involved with clients and the community in which those clients were served and could be helpful in collecting and compiling the data for Phase 1 of the project. Ms. Sierer did not think it was appropriate to appoint someone from the Board of Directors of the Housing Authority. She thought it was important to have a staff member of which there are two – the Executive Director and Meghan George.

Mr. Markham said he pushed for a member of the Housing Authority, and Ms. George was recommended by the Executive Director. He is comfortable with the appointment.

Mr. Chapman was also comfortable with the appointments.

MOTION BY MR. MARKHAM, SECONDED BY MR. CHAPMAN: THAT ITEM 9-E BE APPROVED AS SUBMITTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

37. Meeting adjourned at 12:50 a.m.

Renee K. Bensley
Director of Legislative Services
City Secretary