

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

July 28, 2014

Those present at 6:30 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
Deputy City Secretary Alice Van Veen
City Solicitor Bruce Herron
Community Affairs Officer Dana Johnston
Deputy City Manager Andrew Haines
Finance Director Lou Vitola
Planning & Development Director Maureen Feeney Roser
P & D Development Supervisor Mike Fortner
Public Works & Water Resources Director Tom Coleman

EXECUTIVE SESSIONS

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.* §10004 (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.

Council entered into Executive Session at 6:30 p.m. and returned to the table at 6:52 p.m.

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: 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 AND AS OUTLINED IN EXECUTIVE SESSION.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

06:35

Amy Roe, District 4, reported on her review of documents provided through FOIA by DEMEC and reviewed the contents of several of the e-mails and documents provided in the request. She believed the request was incomplete, however, there were a number of e-mails and documents exchanged from City staff that were not provided in earlier FOIA requests to the City. Ms. Roe noted DEMEC was the City's business partner in the electric utility and their lack of professionalism raised concerns. Ms. Roe was grateful for Mr. Markham's public acknowledgement that something went wrong here but is not sure the City learned lessons through this process.

John Morgan, District 1, distributed a handout resulting from Ms. Roe's FOIA request to DEMEC and reviewed the contents of several of the e-mails. E-mails from Mr. McCullar seemed not to be mentioned by Mr. Walton on page 2 of his memo of September 9 with a long list of documents on which he based his opinion. Mr. Morgan asked if these e-mails from Mr. McCullar to Ms. Houck were ever turned over to Max Walton. Mr. Morgan made an informal FOIA request asking if there was a document from City staff before January 17 addressing the question of whether the noise and air pollution from a power plant would have a negative impact on the citizens of Newark. Mr. Morehead asked Dr. Morgan to send that question to him and he would pass it on.

Jen Wallace, District 3, referenced Bill 14-20 on the Consent Agenda regarding definitions and noticing requirements of City Council meetings and requested it be pulled from the agenda for clarification. She recommended that all Council meetings be publicly noticed on the City's website. In the case of emergency meetings she suggested adding "As soon as the meeting is called it should be noticed to the public." She thought the second reading should be held after August 11 since a lot of people would be on vacation and would be unable to share their concerns.

Brett Zingarelli, District 4, addressed Bill 14-20 on the Consent Agenda. He was concerned about a decrease in transparency. Mr. Zingarelli referenced the Downtown Newark Partnership and believed the City was excluding businesses.

Jeff Lawrence, District 3, spoke regarding Bill 14-20. He believed agendas for every City meeting should be placed on the City's website and wanted the supporting information provided a week ahead which he said did not always happen. He noted with the proposed bill the only official required notification was for postings to be on the bulletin board which was located beyond the open part of the lobby. He suggested relocating it to the front of the lobby that was accessible to the public 24 hours a day.

Len Schwartz, District 3, commented on the recent actions regarding public sponsorship of TDC by the City. Mr. Schwartz believed the \$7.5 million offered by DEDO was still at risk and asked Council to resolve this matter by revoking the sponsorship. He also asked Council to give direction to Ms. Houck.

Catherine Ciferni, District 2, spoke about the New Night Downtown vendor restriction and the event in general. She objected to the use of City funds to pay for services that were restricted by the DNP to businesses on Main Street.

Linda Hager, a resident of the Oaklands, spoke on behalf of the neighborhood. She discussed speeding which was a major issue in their community and shared the gratitude of the residents for the way in which the problem was handled by the City and the Traffic Committee. Ms. Hager said immediate resolution procedures were offered to address the problem. The City also provided a supply of adhesive signs reading "Keep kids alive, drive 25" to be placed on rubbish containers.

Shirley Feeney, Sandy Jones, JR Dunlap and Doug Jones represented Independence Construction Materials, an Elk Mills, Maryland stone quarry. They sought relief for the 15 trucks that work for them trying to cross the Route 4 bypass and getting fined because of the nine ton speed limit (local deliveries were exempt). The drivers had to travel on Interstate 95 and through the Maryland toll booth to go back into Delaware to deliver their loads, 90% of which were in Delaware. Mr. Herron will review this matter with the Police Department. Mr. Markham added the reason to have the State involved is if that is a State road and if the City decides not to enforce, the State Police can.

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

4. **1-C. UNIVERSITY**
(1) Administration

53:23

Caitlin Olsen, University of Delaware Government Relations, reported the University completed 10 days at the State Fair. The second session of summer classes ends on August 14 and new student orientation begins August 23.

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

6. **1-D. LOBBYIST:** None

7. **1-E. CITY MANAGER:** None

8. **1-F. COUNCIL MEMBERS**

55:05

Mr. Ruckle

- Agreed the City should be transparent and the public notice board should be moved to the open area of the lobby.
- A misplaced sign in Brookside indicated that property where a gully created flooding problems belonged to the City. A survey confirmed that the property belonged to Brookside. However, a sinkhole discovered on adjacent City property might have contributed to the flooding, and the City planned to resolve that issue.

Mr. Morehead

- Regarding traffic enforcement in the Oaklands Mr. Morehead reminded people that stop signs mean stop and neighborhood speed limits were typically 25 mph.
- Mr. Morehead attended the Delaware Municipal Electric Corporation monthly meeting on July 15 and reviewed the items related to FOIA discussed by the group. He encouraged Council to take this seriously as their responsibility to make sure the City runs at least that well in regard to openness and transparency.
- Spoke about FOIA requests and public versus withheld items. Withheld documents were available to Council and he encouraged members to read the withheld documents regarding TDC because in culmination with the documents given to Ms. Roe by DEMEC and the documents Council has available to themselves to read, he thought Council would form a new understanding of what happened and how it happened and what changes needed to be made going forward.

Mr. Markham

- Enjoyed the Food & Brew event.
- Cleveland Heights was coming down in preparation for new housing.
- Delmarva Power charged for Smart Meters which the City did not plan to do.
- Regarding Bill 14-20, this item was drafted at Mr. Markham's request to the City Secretary and City Solicitor to clarify Council's meetings. Mr. Markham pointed out that first readings were not subject to discussion but rather introduced a bill prior to the second reading when it would be considered for adoption by the public body.
- The ballasts were nearly complete on the solar installation.
- Mr. Markham had requested that the meeting notification board be relocated to the outer lobby but the work order had not yet been completed.

Ms. Hadden

- Attended the Traffic Committee meeting, a ribbon cutting ceremony for Sovereign Air, and a meeting with Mr. Gifford and Ms. Sierer with the new owners of the Park and Shop on South Main Street.
- Participated in a breakfast provided by City administration for City employees who received WOW awards, a new recognition program and the Food & Brew event.

Mr. Gifford

- Asked if there was an update on when Mr. Maxwell's final report would be available – Ms. Houck would follow up.
- Requested that the DNP minutes be posted to the website – he appreciated the fact that the minutes and agendas were added.

- Noted Council meetings were listed on the City calendar into 2015 and asked if other committee and group meeting dates could be posted on the calendar further out.
- Questioned whether parking was free during the Food & Brew event since he observed people putting money in the meters. Ms. Feeney Roser did not believe the new meters were programmed yet to indicate free parking but the department would do a better job in the future to let people know when parking was free.
- Reviewed the minutes from the last meeting where Council discussed staff direction on clearing the parking meters. He felt the meter clearing function should be disabled and asked if Council could vote on this if he made a motion. Mr. Herron advised Council could not vote on this matter since it was not advertised but could provide direction to staff. Ms. Houck offered to provide Council more detailed information they could vote on. Mr. Gifford said Mr. Vitola already provided the numbers (4-6%). Mr. Morehead agreed with Mr. Gifford to give that direction now as well. Ms. Hadden, Ms. Sierer and Mr. Markham wanted this to come back on a future agenda.
- Mr. Gifford read the DEMEC FOIA material. The discussion about what the project was prior to the September 3 public meeting did not match some of the City's information. He encouraged Council to follow up on Mr. Morehead's request to read everything in the record and the redacted documents and to scan through the FOIA documents and review some of the material provided tonight by the community. He said it seemed there was more known before the public meeting. He noted that some of the DEMEC FOIA documents did not seem to be in the redacted documents for the City. He asked Mr. Herron if there was a way to see if there was a complete set of documents. Mr. Herron will discuss this with the City Secretary when she returns.
- Regarding Bill 14-20 from the Consent Agenda, it was now clearer to him since learning that Mr. Markham requested the bill. He wanted to make sure the City takes meeting postings seriously and he believed postings on the web made the most sense.

Mr. Chapman

- The City was in the process of reviewing the Comprehensive Plan for the City and Mr. Chapman wanted to organize a neighborhood meeting to collect comments and feedback from as many constituents as possible in District 5. He asked that anyone interested in helping or hosting a meeting in their home contact him.

Ms. Sierer

- Attended the Traffic Committee meeting, the Board of Adjustment meeting, the ribbon cuttings at Sovereign Air and Del Pez and the Food & Brew event.
- Suggested moving the second reading of item 9C, Bill 14-20 to September to allow more time for public feedback.

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

10. 3. **SPECIAL DEPARTMENTAL REPORTS:**

- A. Special Reports from Manager & Staff:
2013 Comprehensive Annual Financial Report – Finance Director
Presentation by Auditor CliftonLarsonAllen

01:24:41

Mr. Vitola introduced Bill Early, Principal, and Greg Bara, Senior Manager of the independent audit firm of CliftonLarsonAllen. Both served as lead independent auditors and their responsibility was to report the 2013 Financial Statement audit to Council.

Mr. Early explained they were required by audit standards and the AICPA to present required communications on an annual basis.

- Integrated Team
 - Financial Statement Auditors
 - IT Specialists
 - Compliance Specialist
- Approach – Risk Based, including risk assessment standard requirements
- Communication – Frequent, including both formal status updates, and informal communications
- Audit Results
- Auditors' Opinion on Financial Statements
 - Unmodified

- Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards
 - One issue noted:
 - Prior Period Adjustment
 - One deficiency noted:
 - Segregation of Duties
- Audit Results
- There was one corrected misstatement in FY 2013
 - The City was improperly recognizing the unearned property tax revenue on the entity-wide statements for governmental activities resulting in a prior period restatement in the amount of \$3,111,488. See note 16 of the financial statements for additional information.
- There was one unrecorded (passed) audit adjustment in FY 2013
 - Grant revenues that were received before year-end, and had not been spent were being recognized into income. These amounts totaling \$109,503 should be reported as unearned revenue on the Statement of Net Position for Governmental Activities. As a result, Net Position for Governmental Activities and the change in Net Position for Governmental Activities are overstated by \$109,503.
- Single Audit
- Single Audit Reports Issued
 - Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards
 - Report on Compliance with Requirements Applicable That Could Have a Direct and Material Effect on Each Major Federal Program, and on Internal Control Over Compliance in Accordance with OMB Circular A-133 - Unqualified
- Major Program
 - Homeland Security Grant Program
- Findings and Questioned Costs
 - There was one compliance finding in the current year where the City of Newark did not document the suspension and debarment status for a construction vendor.
 - Required Communications
- The American Institute of Certified Public Accountants' Statements on Auditing Standards require the independent public accountants to communicate certain matters to those who have responsibility for oversight of the financial reporting process. The following summarizes the results of the audit of the City for the year ended December 31, 2013 by addressing each of these required communications.
- Auditors' Responsibility Under Generally Accepted Auditing Standards
 - The financial statements are the responsibility of management. The audit was performed for the purpose of forming an opinion as to whether the financial statements have been prepared in accordance with GAAP.
- Significant Issues Discussed With Management Prior to Retention
 - There were no significant issues discussed with management prior to retention as the auditors.
- Consultations With Other Accountants
 - Management advised that they made no consultations on the application of GAAP and GAAS.
- Qualitative Aspects of Accounting Practices
 - Management is responsible for the selection and use of appropriate accounting policies. Significant accounting policies are disclosed in the Summary of Significant Accounting Policies in note 1 of the financial statements. There were new

- accounting standards implemented in the current year; GASB 65.
- The preparation of the financial statements requires that certain estimates and judgments be made by management. These judgments and estimates include:
 - ◇ Depreciation of capital assets
 - ◇ Pension benefit assumptions
 - ◇ Benefits other than pensions assumptions
 - ◇ Liability for injury and damage claims
 - ◇ Allowance for doubtful accounts
 - It was concluded that management had a reasonable basis for significant judgments and estimates that impact the financial statements.
 - There were no sensitive financial statement disclosures.
 - Difficulties Encountered in Performing the Audit
 - There were no significant difficulties encountered during the audit.
 - Corrected Misstatements
 - There was one audit adjustment (discussed previously).
 - Uncorrected Misstatements
 - There was one uncorrected (passed) adjustment (discussed previously).
 - Representations from Management
 - The representation letter was signed by management.
 - Disagreements with Management
 - There were no disagreements with management on financial accounting and reporting matters, auditing procedures, or other matters.
 - Other Significant Findings or Issues
 - A separate management letter was issued which addressed IT new user access, IT Logical Access Removal, and Change Management

Council Comments:

Mr. Markham asked to have titles added to documents in future audit reports. Mr. Markham asked for clarification about who the auditor met with as mentioned earlier in the presentation. Mr. Early confirmed they met with Ms. Houck and Ms. Sierer. Mr. Markham would like that expanded in the future. Mr. Markham noted the GASB 65 was new this year and asked if the City should have implemented it before the audit. Mr. Early reported the new standard was implemented by Finance. Mr. Markham asked for an overall grade. Mr. Early felt the City had a very technical Finance staff and said they prepare their own financial statement which is a value most do not have in the City's size. From an audit perspective they were well prepared.

Ms. Hadden asked when management addressed the concerns pointed out in the report whether Council received a copy of that document. Mr. Early said the responses were provided in the letter (small binder).

Mr. Morehead asked if implementation of the GASB 65 was on the Federal Government schedule rather than the City's schedule. Mr. Early replied that the Government Accounting Standards Board was not a Federal agency but rather set the standards for all government accounting. Mr. Morehead discussed the possibility of moving the fiscal year which Mr. Early said was abnormal in the industry and was rare when they were levied over two fiscal years.

Mr. Chapman referenced the use of the word reasonable under the bullet points of the accounting estimates. Each bullet point in the last sentence ended with the audit findings as being reasonable. He asked where that ranked in terms of how it could have been viewed. Mr. Early explained reasonable meant the auditors have done nothing out of the ordinary that would require an adjustment to those balances. They looked at historical data and did not find that anything needed to be changed. In the accounting industry if a change was not warranted the balance was deemed reasonable. Mr. Chapman said bullet point 2 in the accounting estimates related to the OPEB liability led

to another question. In note 8 regarding pensions, this seemed to be a confirmation of facts and assumptions but did not make a recommendation for funding or supporting staff's recommendation. Mr. Early said this was correct, they were looking at the actual reports (the facts and assumptions used to get to the liability numbers), and the funding status should be decided by staff and Council. Mr. Chapman referred to note 16, GASBY 6, and the \$3 million gap in the previous accounting. He asked whether there was an actual financial impact or error where anyone was overcharged or overpaid. Mr. Early said no, it was strictly how it was accrued over two fiscal periods. He stressed it was in the front of the statements at the governmental activities level which was typically not the level required by most government accounting standard boards. The ones typically used to govern were at the budgetary and at the fund level. Those were correct and there were no issues related to those – it was noticed when it was carried forward to the government-wide statement. Therefore an adjustment was made on the entity-wide statements. It was more of a timing issue on the financial reporting. Regarding Note 19 (litigation) Mr. Chapman asked how the determination was reached that there would not be a material adverse impact on the City's financial condition. Mr. Early said Mr. Herron provided the auditor with a letter detailing any pending cases. Cases below materiality thresholds (mathematical calculations) do not have to be disclosed in the financial statements. Mr. Herron stated the only pending suit in which the City was named was one in which the City's insurance carrier was involved.

Mr. Markham addressed staff regarding the technical access issues and emphasized this was an important issue that needed to be resolved.

- To Lou – page 91 lists the estimated actual value of taxable property – at the very bottom between 2012 and 2013 our commercial property value dropped \$50 million and our tax exempt property dropped \$57 million – are those numbers correct? Mr. Vitola confirmed they were and would get Council details.
- To Lou – page 104 states police calls for service in 2012 were 44,000 and in 2013 was 4,000? Check on that for correction.
- For Council – on page 103 it talks about the City's staffing. It is interesting it goes for the past ten years, 2004 its 237, 2013 its 237 but rose to 249 and then dropped again as the City found ways to be more efficient.

There was no public comment.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT THE 2013 COMPREHENSIVE ANNUAL FINANCIAL REPORT BE ACCEPTED AS PRESENTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

11. 3A2. FIRST QUARTER 2014 PENSION REVIEW – DEPUTY CITY MANAGER

02:02:02

Mr. Haines presented the First Quarter review of the pension and OPEB. The funded status was not yet available but hoped it would be by the next Council meeting.

The first quarter for the Pension Plan showed positive gains of \$920,000. It was five basis points off the benchmark. International real estate was the best performing fund, so the diversification helped sustain a positive growth. Overall growth continued at just over \$52 million as of the first quarter of 2014. The plan asset allocation remained stable where it was targeted and as previously mentioned, recommendations were requested from Russell. Mr. Haines noted that attached to the quarterly investment review was an investment policy recommendation from Russell. A financial workshop was slated for September or October to discuss Russell's recommendations and Mr. Vitola was considering whether to go out to an RFQ or assess how overall assets were being handled. From the first quarter overall Mr. Haines felt confident about what Russell was providing to the City. He wanted everyone to have the opportunity to review the document and recommendations and provide feedback in preparation for a dialogue about pension funds at the workshop meeting.

Consistent with the pension documents the OPEB performed well at a couple basis points below the overall pension fund. It returned 1.6% and beat its benchmark. The global real estate market is what helped with the positive return. Over the next review period staff will work with the actuary. There is a finality to OPEB because post-retirement health was removed for any future hires and now would be the time to assess and project out the number needed. Current assets were over \$6 million in the OPEB trusts – Mr. Haines asked whether the annual retired contribution could be adjusted down to reflect what was now needed to smooth out over the next 15-20 years to meet those retirement goals and funding needs.

Council Comments:

Mr. Markham was disappointed not to have the funding status. He did not recall the first quarter being that bad and thought there would have been a better return.

Mr. Morehead asked if the City had an investment committee. Mr. Haines said there was an annual meeting to review the performances where the union groups and management team met with the City's representative – they met in February to review the end of year report. Mr. Morehead thought it might be wise to consider including Council members in the investment committee since they were the plan's trustees. Mr. Markham agreed since Council members were the trustees for the plan, they should be part of the committee and participate in meetings. Mr. Morehead added in that case, training and expert input was desirable.

Mr. Chapman believed with Council making decisions, informed understanding and input was an absolute must. He felt this should be done at a separate workshop or meeting with some prior training on what the numbers mean. Mr. Chapman would be looking for follow up in regard to the investment policy recommendation but he urged Russell to be there with perhaps a third-party advisor to act on behalf of the trustees.

Mr. Morehead stated that by accepting the report (which Council planned to do) he wanted to clarify that Council would not be accepting the recommendations as they stood because the recommendations were not explained. Mr. Haines made clear that staff had asked Russell to provide recommendations and that was what they provided. He confirmed the recommendations were strictly for conversation at a future workshop.

Mr. Morehead pointed out the recommendations on pages 4 and 5 of the second circle chart were not technically correct which he would discuss later with Mr. Haines.

In response to Mr. Morehead's question, Mr. Haines said he would provide Milliman's report by the next Council meeting or sooner.

There were no public comments.

MOTION BY MR. MOREHEAD, SECONDED BY MR. RUCKLE: THAT THE FIRST QUARTER PENSION PLAN AND OPEB TRUST INVESTMENT REPORT BE ACCEPTED (EXCLUDING INVESTMENT POLICY RECOMMENDATIONS BY RUSSELL).

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

12. 3A3. GENERAL FUND TRANSFER REQUEST – DEPUTY CITY MANAGER

02:16:49

Mr. Haines explained the request to transfer funds from the insurance fund to the general fund. A safety risk was brought to his attention regarding the lack of Automated External Defibrillator (AED) units in City facilities including City Hall, the maintenance yard, the water plant, the George Wilson Center, the parking office and the train station. Ten AED units were recommended and would include a wall mounted casing. The combined units were \$1,950.44 for a total cost of \$19,504.40. The contractor and the prices were on the State contract. From a funding standpoint, the insurance fund had \$95,000 available in the liability line item. He believed there was a natural nexus between the AED units and potential liability exposure for lacking the units throughout

City operations and thus an appropriate reason to transfer the money from the insurance fund to the general fund to make this purchase. Staff recommended approval of the transfer of \$20,000 from the insurance fund to the general fund.

Council Comments:

Mr. Ruckle asked if this purchase would lower the City's insurance premium. Mr. Haines said it would have no impact and was no different than the driving safety courses. Training would be provided by Sgt. Rubin from the NPD and other highly trained staff members.

Ms. Hadden clarified the units would not be in a locked cabinet.

Mr. Morehead asked when the units would be available for use. Mr. Haines would notify him after the order was placed and the delivery was scheduled.

Mr. Gifford asked about the benefits of using the State contract. According to Mr. Haines a comparison showed the unit cost around \$2,200 - \$2,300 and the State contract would realize a savings of approximately \$400 per unit.

Public Comments:

Brett Zingarelli, District 4, used the AED's since becoming an EMT in 1996 and said they work well but have to be implemented within four minutes to be effective. Thus, having them available on site was important. He suggested talking to Aetna who would be happy to volunteer time to provide certification at no cost. The Good Samaritan law protected from liability those who used the equipment in good faith without willingly trying to hurt someone.

Mr. Chapman and Mr. Markham asked staff to review the maintenance process have a plan in place to get units back in service after use.

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: TO APPROVE THE GENERAL FUND TRANSFER OF \$20,000 FROM THE INSURANCE FUND TO THE GENERAL FUND FOR THE PURCHASE OF AED'S.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

13. 4. **ORDINANCES FOR SECOND READING & PUBLIC HEARING:** None

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

A. Request of 15 Elkton Road Associates for a Revision to the Construction Improvements Plan for the Development Known as One South Main in Order to Move the Bio Retention Pond to an Adjacent Parcel

02:28:32

Mr. Morehead recused himself from the discussion and left the Council Chamber.

Ms. Feeney Roser reported the One South Main major subdivision was recently approved. During the review of the Construction Improvement Plan, Lang Development indicated to the Planning Department it would be better to move their storm water management facility from the parcel on which the building was located to a parcel to the north belonging to the University of Delaware. The proposed change was reviewed by the Subdivision Advisory Committee. There were no issues for service delivery, and the Public Works and Water Resources Department believed the new location, layout and outfall from the facility was preferred over the original. The Planning & Development Department commented that moving the pond made for better pedestrian connections to the building. They also noted it did not substantially conform to the plan originally approved by Council and in that case subdivision regulations called for the plan to be revisited to determine whether the changes were acceptable.

Mr. Markham asked if there was an approval letter from the University. According to Ms. Feeney Roser Lang Development had an easement from the University.

Jeff Lang, Lang Development, said the University became the major tenant of the project and part of their interest in working with Lang Development on the relocation of the retention basin was that one of their main entrances to the building would be at the back of the site where the basin was located. Mr. Herron and Ms. Feeney Roser reviewed the easement agreement and Lang Development had the right to do drainage and access with the University on their adjacent parcels.

Mr. Markham asked Mr. Herron if everything was in order should the property be sold to protect the rights to the storm water management system. Mr. Herron and Chris Locke, Lang Development, confirmed the easement agreement dated January 16, 2014 (paragraph 1B - Permanent Easement), cited the relevant language.

Mr. Chapman noticed at the back exit there was a significant addition of walkways and asked if their inclusion was in response to earlier concerns about access to the parking garage. Mr. Lang replied yes, the University was concerned the garage would be used significantly later in the day by graduate students.

Ms. Hadden asked if there was an enclosure around the bio-retention pond. Mr. Lang said it was not a safety issue as the pond was not very large, was a foot or two deep, planted with a lot of vegetation and did not appear to be a storm water facility.

Mr. Gifford clarified the location and the size of the bio-retention pond.

There was no public comment.

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: TO APPROVE THE REVISION TO THE CONSTRUCTION IMPROVEMENT PLAN FOR ONE SOUTH MAIN.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Recuse – Morehead.

15. 5B. REQUEST FROM THE BAINBRIDGE COMPANIES FOR APPROVAL OF THE CONSTRUCTION IMPROVEMENTS PLAN WHICH CONTAINS REVISION TO THE ARCHITECTURAL DESIGN OF THE RESIDENTIAL BUILDING COMPONENT OF THE NEWARK SHOPPING CENTER SUBDIVISION PLAN

02:42:03

Mr. Morehead recused himself from the discussion and left the Council Chamber.

Ms. Feeney Roser reported the Newark Shopping Center redevelopment plan was approved in 2013 to include two separate parcels. The first was the commercial portion of it and the second was a residential portion in the rear. Since the approval Atlantic Realty Companies reached an agreement with the Bainbridge Companies to purchase the residential section and they have been working with staff to review their construction improvement plans in order to begin construction. In a meeting with Mr. Josh Wooldridge of the Bainbridge Companies and his team to review potential plan changes they decided to make changes to the architectural façade of the residential building. When staff reviewed the conceptals they felt it was substantially different and that they should come back to have Council review the new design.

Richard Forsten, attorney for the Bainbridge Companies, provided background for the project. The plan would include a six story, 220 unit apartment building with a 455 space parking garage including the handicapped spaces in the front of the building. The building completion was anticipated for April 2016.

According to Mr. Forsten, the initial rendering showed big, blank facades with monotone color and not a lot of architectural detail. Bainbridge added more detail and color and did a rendering based on the final construction drawings on the same scale. On the revised rendering they updated the color scheme to match the original approval.

Mr. Forsten pointed out when they first became involved in the project it was stated in the plan that all drawings were for conceptual purposes only and were subject to change at the final design stage. In the original rendering the building does not match the final footprint line of the building actually approved on the plan. According to the architect, during the subdivision process that led up to plan approval the building footprint line changed but the rendering attached to the plan was never changed.

Council Comments:

Mr. Markham asked if real brick was being used. Mr. Forsten reported there was brick on the first floor and on floors two through five energy efficient concrete fiber panels infused with color.

Mr. Markham asked Ms. Feeney Roser to confirm that the buyers were aware that the renovations at the shopping center needed to be substantially completed before they could obtain a certificate of occupancy. She and Mr. Forsten confirmed they were aware of this requirement which was in the agreement. Mr. Markham was informed Bainbridge's closest projects were in D.C and Virginia and their web address was thebainbridgecompanies.com. Mr. Markham requested Ms. Feeney Roser state the residency restrictions. She reported the restriction in the agreement was no more than two unrelated individuals per unit.

Mr. Ruckle requested clarification on the location of the shopping center and asked whether the parking garage would be available for public use. Mr. Forsten explained it would be restricted to apartment residents. The entrance was behind the building and would have secured access.

Ms. Hadden would have preferred the use of more brick to match the recent designs going up on Main Street. In response to her question about the awnings, she was informed they were outside the lobby which housed the onsite management office, amenities including a fitness center and rooms for residents to congregate.

Mr. Gifford verified that the buildings shown in front on the rendering were part of the shopping center.

Mr. Ruckle asked if the apartment complex would be open to everyone or to students only. Mr. Forsten replied there would be a range of occupants that would include students as well as professionals and retirees. Mr. Ruckle asked for the rental rates and Mr. Wooldridge reported the units would rent for \$1,800 per month.

Ms. Sierer said typically these plans go to the Design Committee for approval and asked if this plan had been reviewed. It was Mr. Forsten's understanding that because they were not visible from Main Street or from any road and because the Design Committee did not offer any comments on the original rendering, he thought staff felt the developer could come directly to Council.

Mr. Chapman asked about the Design Committee. Ms. Feeney Roser said the package went to the Design Committee but they did not make any detailed comments at all about the apartment building. They commented on the commercial section and the connections to the Pomeroy Trail but did not mention the apartment building. Going to the Design Committee is voluntary and staff did not feel it fair to send a design to them that they had not commented on the first time around. Ms. Sierer was concerned that all the other developers go to the Design Committee. Ms. Feeney Roser said this went to the Design Committee – the detail in the original was in the package they saw but did not comment on. Mr. Chapman said that was not the only committee referenced in the recommendation memo, also the Subdivision Advisory Committee was mentioned. Just tonight Council received new final construction renderings that were only produced about a week ago, so what was in front of the Subdivision Advisory Committee and the

Design Committee? Ms. Feeney Roser said it was what was originally in Council's packet. Mr. Chapman said the design materials were markedly different – had Ms. Feeney Roser or the Advisory Committee seen what was presented tonight and what the final was a week ago, did she think her recommendation would have still been that it was substantial. Ms. Feeney Roser thought it was and Council would want to review it.

Mr. Chapman referred to the difference in layout internally – was there a reason Council was not getting those plans. Mr. Forsten explained an architectural floor plan and building design is not completed until the footprint is approved. Therefore, there was no floor plan to bring to Council in 2013 and that is why the plan says all drawings were for conceptual purposes only and were subject to change at final design stage. They thought the original plan was very plain with blank walls and tried to add some architectural detail and make it look more interesting and would lead to a better product.

Mr. Chapman asked for a description of the tenant Bainbridge hoped to attract and the amenities. Mr. Wooldridge said their renters were mostly young professionals which had to do with the size of the units, multi-family, the locations, and they specialize in their projects being walkable to either transit or to retail. The age range tends to be 25-40 professionals. There will be a fully-appointed fitness center included in the rent, yoga and spinning studios, amenity laden projects. They have an onsite management company with 24 hour maintenance. There are large social spaces which promote interaction. They take their cues from hotels, from Starbucks with WIFI throughout the building. There is secured access to the building and the parking garage.

Mr. Ruckle questioned the mention of a pub and asked if there would be a bar on the lower level. Mr. Wooldridge said no, they just call it a pub room with brick on the walls similar in design to what would be seen at a Starbucks. Mr. Ruckle said there was a business opportunity here for corporate, temporary housing as there was a huge need for it in the Newark area. Mr. Wooldridge said that was a major part of their business, although they had percentage limits on how much they can do.

Mr. Markham said all we are doing tonight is approving the changes in the façade and not changes to the actual plan.

Mr. Gifford asked if the footprint changed at all and Mr. Forsten confirmed the footprint on the plan was not changing.

Public Comments:

Carol McKelvey, District 4, asked the motivation as she felt the first rendering was more attractive. Mr. Forsten said the initial concept design followed a footprint that no longer exists so changes had to be made to reflect the fact that what was approved last year technically could not be built. They tried to vary it and add architectural details to make it more interesting. In response to a question about the footprint changing, Mr. Forsten said the footprint on the plan was not changing; the problem is the drawing that was passed does not follow that footprint exactly. The new drawing follows the plan.

Marilyn Minster, Minster's Jewelers, Newark Shopping Center, was concerned this development would not have the quality presented by Atlantic Realty, was not impressed with the new design and would like to go back to the original design. Some of the businesses Bainbridge talked about bringing into the apartment complex were going to be against downtown merchants. She did not want them to be in exact competition. Before any approval she wanted to know what the construction plan was, what the layouts of the apartments were because older people who want to move downtown to be part of the community without having a car were also interested. She thought the concept got away from the original concept.

Brett Zingarelli, District 4, said the look of the building was what was on trial. If amenities were going to compete with what was on Main Street, he felt capitalism and competition drove excellence.

The discussion was returned to the table.

Mr. Chapman said if Council was to approve material and design change then his concern was that the renderings which are not guaranteed from the remainder of the shopping center would then be downgraded in his opinion to some of these other materials since this has been the leading project for the rest of the updates.

Mr. Markham said the only way he could think to ensure quality at the apartment project was to have the Design Committee review it and specify materials. Ms. Feeney Roser said going to the Design Committee was voluntary. Ms. Sierer said there was time for the Design Committee to review it and they could give Council feedback on the design – she thought it was important for them to look at it. Mr. Markham said delaying two weeks was better than not having approval.

Mr. Forsten said they are going to do brick which was not initially required for the first floor and the heavy duty solid concrete infused with color, very energy efficient good quality material – not vinyl siding. He said time was money and they were supposed to close on the project this week. He said nobody imposed quality material standards at all because they could have reviewed them before they got this far down the road. It was a more expensive façade than the original proposal. He asked for Council’s approval tonight. Mr. Markham said there were instances in the past where things were not up to what was expected.

Mr. Chapman asked if Council approved the different design, would that open up or provide assumed approval to Atlantic for modifying or changing what was originally approved for the façade update for the shopping center. Ms. Feeney Roser did not believe it would influence Atlantic Realty, but changes would come back for Council approval. Mr. Chapman said in the initial concept drawing these were red and white bricks with a larger concrete siding on the first floor. In the final construction drawing there were concrete panels replacing the red bricks in the initial drawing and multi-colored vinyl siding replacing where the white bricks were on the initial drawing. Mr. Forsten said it was not vinyl siding, but large concrete and fiber panels that were precast and put in place. There was no stucco being used.

Mr. Wooldridge encouraged Council to look at their website to see the quality of the projects they build.

MOTION BY MR. GIFFORD, SECONDED BY MR. RUCKLE: TO APPROVE THE DESIGN AS SUBMITTED.

MOTION FAILED. VOTE: 2 to 4.

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

Mr. Chapman suggested to the applicants that the project go to the Design Committee for consideration and an agreed upon material list that can come back in front of Council.

16. 6. ITEMS SUBMITTED FOR PUBLISHED AGENDA:
A. Council Members: None

17. 6-B. OTHERS: None

18. 7. RECOMMENDATIONS ON CONTRACTS & BIDS:
A. Recommendation on Contract No. 14-06 – Cherry Hill Manor Service Road Reconstruction

03:39:46

Mr. Coleman presented the recommendation in staff’s memo dated July 2, 2014 on Contract 14-06 in accordance with Resolution 13-K where Council agreed to reconstruct the service roads and some curbs and sidewalks within Cherry Hill Manor and assess the property owners 50% of the value of the contract over five years through a tax assessment.

Eight bids were received with a low bid of \$219,080 from A-Del Construction which was significantly under the original estimate of \$350,000. A-Del Construction was a reputable firm who did a lot of work in the area. Reviewing the bid tabulations there was only one questionable item but everything else looked spot on, it was all unit pricing and they were locked in to the unit cost.

Each home owner would be assessed \$254 per year for the next five years to cover the 50% cost.

Council Comments:

Ms. Hadden asked if the reconstruction included going all the way down to the road bed. Mr. Coleman said they were excavating out a foot down the whole way, putting in all new sub-base, all new hot mix. The roads were in such bad shape they had to start over from scratch. There were a lot of utility conflicts in the road bed that would require hand digging (mostly Verizon) so the agreement was for Verizon to work just ahead of the excavation crew to do a soft dig on all their utilities.

Secretary's note: The audio from the microphone at the podium stopped working at this time, thus, the transcript may be incomplete.

Ms. Hadden asked whether a certain type of truck would be used for trash collection to go in the alleys so the damage was not perpetuated. Mr. Coleman said yes, they originally wanted to make the road slightly wider to keep the tires off the edge of the roadway. They were able to do that on the perimeter road most of the way around.

Ms. Sierer asked when the project would begin. Mr. Coleman expected work to commence around late August.

Mr. Morehead noted this started when Cherry Hill was part of District 1 and he was concerned at the time about drainage in the two back-to-back alleys. He asked how that was being addressed. Mr. Coleman said they completed surveys and there were no storm sewers there. Mr. Morehead asked if the land was filled since many areas used to be swamps. Mr. Coleman knows a lot of that area was marshy. Mr. Morehead asked if excavating a foot down was appropriate for that type of soil that is so soft for a road that has service trucks. Mr. Coleman said more than likely they would just be excavating out. Mr. Morehead asked what was meant by the comment that the project was a Public Works project and not considered an investment. Mr. Coleman said it would not be included in roads projects going forward as this was a one-time assessment.

Mr. Markham asked why did it took a year for the contract to be let because Council signed the resolution in April 2013. Mr. Coleman said it took a lot of coordination with Verizon to come up with a path forward that would be agreeable to all parties. Mr. Markham asked if anyone checked to make sure A-Del Construction was not on that list. Mr. Vitola asked how recent the bid was put out because Ms. Wright started to add that language on all the contracts. Mr. Vitola clarified that Eastern States was not on the suspension or debarment list – it was just that the City did not check to make sure they were not. Eastern States was a large, reputable regional firm. Mr. Vitola reported since all City funds would be used, it was not necessary to check. Mr. Markham said it should be done in general.

There were no public comments.

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: THAT CONTRACT NO. 14-06, CHERRY HILL MANOR SERVICE ROAD CONTRACT RECONSTRUCTION, BE AWARDED TO A-DEL CONSTRUCTION CO., INC. OF NEWARK, DE IN THE TOTAL AMOUNT OF \$219,080.00.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

19. 7B. RECOMMENDATION ON THE PURCHASE OF REPLACEMENT POLICE VEHICLES FROM STATE OF DELAWARE CONTRACT

03:52:16

Chief Tiernan presented the recommendation outlined in his memo dated July 8, 2014 for the replacement of two police pursuit vehicles from a State awarded contract. The Maintenance Division of Public Works evaluated the fleet and made this recommendation. Vehicle #900, a 2006 Dodge Charger and #906, a 2008 Ford Crown Victoria were recommended to be replaced with Chevrolet Tahoes. Funds were available from the 2014 Capital Programs Equipment Replacement Fund and Capital Program Funds remaining from 2013.

Mr. Markham asked about getting four-wheel drive vehicles in light of recent snow storms. Chief Tiernan said four wheel drives were more expensive so they did not recommend them for this year plus the four wheel drives for 2015 were not pursuit rated

Mr. Ruckle thought the Tahoe was the best option because of space requirements for all the police equipment needed by the officers.

Ms. Hadden reported the passenger compartment for the Tahoe was 121.8 in a volume index vs. 112 in a Caprice. There was a 35% fuel economy gain during idling and a government agency with 100 vehicles would save taxpayers \$153,300 per year at \$4 a gallon for gasoline. She thought the Tahoe was the safer vehicle by far for the police officers with room for all their gear and it was easier to put a suspect in the back.

Mr. Gifford asked if there were other vehicles offered beside the Caprice. Chief Tiernan explained the Caprice was the roomiest of all the sedans and thus was used for comparison. Mr. Gifford asked if there was a difference in the pursuit rating with the Tahoe. Chief Tiernan said it was enough, it was pursuit rated, and because Newark was a high density city, the department did not often get in pursuits.

Mr. Morehead asked when a vehicle was replaced, was it assigned to one officer or was it passed around in the department. Chief Tiernan clarified new vehicles in the fleet (the marked cars) were not assigned to one specific person. Mr. Morehead mentioned the Caprice was made in Australia where GM was closing their operations so there would be problems obtaining replacement parts for these cars. He felt when the Tahoe became a PPV rated four-wheel drive vehicle it would be a good investment.

Mr. Gifford suggested looking into purchasing snow tires to save money on four-wheel drive vehicles especially with vehicles having posi-traction or traction control.

Jerry Clifton, 1000 Fountainview Circle, thought this was a wise move by the City and noted the Tahoe provided officers with higher seating and greater visibility.

MOTION BY MR. RUCKLE, SECONDED BY MS. HADDEN: THAT THE CITY MANAGER BE AUTHORIZED TO PURCHASE TWO CHEVROLET TAHOES FROM MALL CHEVROLET OF CHERRY HILL, NJ, A STATE CONTRACTED VENDOR, AT THE TOTAL COST OF \$58,430.50 IN ACCORDANCE WITH STATE OF DELAWARE CONTRACT NO. GSS13013A.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

20. 8. FINANCIAL STATEMENT: None

21. 9. APPROVAL OF CONSENT AGENDA:

04:01:32

- A.** Approval of Council Meeting Minutes – July 14, 2014
- B.** Receipt of Alderman’s Report – July 10, 2014
- D.** **First Reading Bill 14-21** – An Ordinance Amending Chapter 20, Motor Vehicles, Code of the City of Newark, Delaware, By Designating Portions

of Ritter Lane as “No Parking Anytime” (**Second Reading August 11, 2014**)

MOTION BY MR. MOREHEAD, SECONDED BY MR. RUCKLE: TO REMOVE ITEM 9C, FIRST READING BILL 14-20, AN ORDINANCE AMENDING CHAPTER 2, ADMINISTRATION, CODE OF THE CITY OF NEWARK, DELAWARE, BY ESTABLISHING DEFINITIONS FOR WORKSHOPS, SPECIAL MEETINGS AND EMERGENCY MEETINGS AND PROVIDING NOTIFICATION REQUIREMENTS FROM THE CONSENT AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Ms. Van Veen read the Consent Agenda as revised.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: TO APPROVE THE CONSENT AGENDA AS REVISED.

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

22. 9-C. FIRST READING BILL 14-20 – AN ORDINANCE AMENDING CHAPTER 2, ADMINISTRATION, CODE OF THE CITY OF NEWARK, DELAWARE, BY ESTABLISHING DEFINITIONS FOR WORKSHOPS, SPECIAL MEETINGS AND EMERGENCY MEETINGS AND PROVIDING NOTIFICATION REQUIREMENTS

Ms. Van Veen read Bill 14-20.

Mr. Herron believed since Bill 14-20 was removed from the Consent Agenda that it should come back to Council for another first reading and if Council wanted a second reading in September they should direct the City Secretary to schedule it then. Mr. Gifford stated according to the Rules of Procedure items for first reading could not be pulled from the Consent Agenda. Mr. Markham remarked that Council could not discuss this item since it was a first reading. Ms. Sierer clarified that the discussion was limited to changing the date of the second reading. Mr. Herron advised that Council should set the date for the second reading at this time.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THIS BE THE FIRST READING OF BILL 14-20.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

MOTION BY MR. MOREHEAD, SECONDED BY MR. RUCKLE: THAT BILL 14-20 BE SCHEDULED FOR SECOND READING ON SEPTEMBER 8, 2014.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

23. Meeting adjourned at 10:57 p.m.

Alice Van Veen
Deputy City Secretary