

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

September 8, 2014

Those present at 7:00 p.m.:

Presiding: Mayor Polly Sierer
District 1, Mark Morehead
District 2, Todd Ruckle
District 3, Rob Gifford
District 4, Margrit Hadden
District 5, Luke Chapman
District 6, A. Stuart Markham

Staff Members: City Manager Carol Houck
City Secretary Renee Bensley
City Solicitor Bruce Herron
Deputy City Manager Andrew Haines
Finance Director Lou Vitola
Planning & Development Director Maureen Feeney Roser
Code Enforcement Supervisor Steve Wilson
Development Supervisor Mike Fortner
Parking Administrator Marvin Howard
Planner/DNP Administrator Ricky Nietubicz

EXECUTIVE SESSION

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

Council entered into Executive Session at 6:30 p.m. and returned to the table at 6:51 p.m. Ms. Sierer announced that Council concluded its Executive Session and there was no action necessary at this time.

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

2. **UD STRATEGIC PLANNING INITIATIVE (DELAWARE WILL SHINE) PRESENTATION**

02:27

Rick Deadwyler, UD Government Relations, announced the launch of the University's new Strategic Planning Initiative which would include the Newark community, Newark Council and City government. Mr. Deadwyler introduced members of the Executive Committee including Dr. Ismat Shah from the Astronomy and Physics Department and Dr. Charles Riordan, chair of the Executive Committee of the Delaware Will Shine Strategic Planning Initiative. Dr. Riordan discussed the process that would be ongoing from the fall semester through the end of the calendar year with a goal of delivering a report to University leadership in January or February. Dr. Domenico Grasso, Provost, challenged the faculty, staff and students to help collectively envision what the future would look like for higher education. The University's focus and communications with the City would be about how the University could continue to prepare students not only to be productive, employed and employable members of society but also leaders to help create jobs. The University was committed to the impact that their research and scholarship would have.

Dr. Riordan invited participation in the process and referred to the University home page, www.udel.edu/shine where there was further information about the initiative and activities in the planning stages. A public lecture series was planned with Dr. Harker presenting the first lecture on September 29th at 5:00 p.m.

3. 1. **ITEMS NOT ON PUBLISHED AGENDA:**

A. Public

16:30

John Morgan, District 1, referred to Dr. Riordan's remarks and hoped the University would emphasize partnering with the City for the benefit of all residents in their strategic planning. Dr. Morgan read a prepared statement regarding suggested revisions for the lobbying request for proposals. (Comments attached.)

Tom Uffner, District 1, discussed the issue of weapons at Council meetings.

Martin Nicholson, greater Newark, discussed civil rights protection by the NRA.

Carl King, District 1, encouraged the City to become more walker friendly for the elderly especially from the east end of town toward the Newark Shopping Center and the downtown area. He noted the sidewalk was narrow in that area and the lighting posts made it difficult to maneuver.

Joe Charma, District 1, commented on texting between the public and Council members during meetings and asked that this practice be stopped. He felt it violated meeting protocol and disagreed with the practice as he believed it was not transparent.

Jeff Lawrence, District 3, discussed Council's vote to clear the parking meters upon a customer pulling away with time remaining. He was troubled by e-mails regarding the meter clearing and reminded Council members their purpose was to serve constituents.

Amy Roe, District 4 was concerned Council voted to clear the Smart parking meters without an ordinance. She believed meter clearing would cause the parking rate to vary based on how long a car occupied the space. She thought the process eroded confidence and was inconsistent with government transparency and accountability.

Brett Zingarelli, District 4, stated Council was provided incorrect information regarding the ability to refund money from the Smart parking meters for unused time.

Jen Wallace, District 3, asked Council to request clarification from the City Solicitor about whether the meter clearing decision required a Code change. In response to Ms. Hadden's request, Mr. Herron will provide a memo to Council with his opinion.

Anne Maring, District 1, requested that Council add agenda items to discuss a change to Newark's DEMEC representative and eliminating the possibility of a CHP facility on STAR campus. She thought that management staff should report to Council.

4. 1-B. **ELECTED OFFICIALS:**

Representative Baumbach was in attendance but had no comments to share.

5. 1-C. **UNIVERSITY**

(1) Administration – see item 2.

6. 1-C-2. **STUDENT BODY REPRESENTATIVE:**

45:47

Lauren Mick, Governmental Affairs Senator from the UD Student Government Association, announced that the tobacco-free campus initiative was implemented and that the Delaware Blue Hens won their football game on Sunday over Delaware State.

7. 1-D. **LOBBYIST:** None

8. 1-E. **CITY MANAGER**

46:43

Ms. Houck reported that construction work started on the service road at Cherry Hill Manor last week.

In response to an inquiry at the last Council meeting regarding improvements along Casho Mill Road, DelDOT had no other plans for widening the underpass at this time.

Installation of the panels started last week at McKees solar park. Completion was expected by month end and there was increased participation in supporting the project.

Smart parking meters were installed on Main Street with a positive reaction about the ability to use credit cards.

9. 1-F. COUNCIL MEMBERS

48:20

Ms. Hadden

- Attended the old Newark Labor Day Block Party, the Madison Drive annual picnic, and the annual fundraiser for the National Blood Clot Alliance at the Newark Country Club in memory of well-known local musician Alan Teal.

Mr. Gifford

- Agreed the City should have a lobbyist who was focused on Newark.
- Said he was thinking about accessory use and how to address the issue, either by putting it on the Council agenda or through the Comprehensive Plan.
- Read a prepared statement regarding positive reasons he moved to Newark. With respect to his constituents he heard from residents with issues in their neighborhoods, specifically Twin Lakes, Devon and Silverbrook, and concerns about renters, graffiti, noise violations and the return of UD students to the community. Staff was helpful in resolving a number of issues. He also heard from disappointed constituents about the decision made at the last Council meeting to clear the parking meters to zero when a car vacated a spot because the City appeared to be squeezing money out of visitors to Main Street. Others shared anecdotes of not just finding time left on meters but of drivers who pointed out they were about to leave a space and specifically wanted to share the remaining time. He looked into the reaction in a few other cities that have employed the meter clearing feature. The practice of meter clearing was described as unfriendly and stingy and restricted the ability of people to do a small favor for another person. The new meters would likely be profitable in a short period of time even without the meter clearing income. Newark was in good financial health and he believed the goal should be making it convenient and safe to legally park downtown. He asked to schedule time with Ms. Houck to talk about some of the information shared with him for his constituents.

Mr. Chapman

- Has been reviewing the Comprehensive Plan and the budget information previously provided. His focus was on long term financial sustainability and felt the City was in a relatively strong financial position. He continued to be concerned about the City's sources of income and reliance on electric utility sales and the vulnerability it put the City in, especially with the expiration of the current agreement with UD. He invited anyone with insight or something worthy of sharing to reach out to him to discuss their ideas.

Mr. Markham

- McKees Solar Park was mentioned on financial decisions Council would have to make and Green Energy Fund payments were suspended until the park was paid for - when that was done there were several people waiting to be reimbursed. He thought that should be done first and then Council should decide whether to use those funds for any other projects that benefit the City. He assumed Mr. Vitola would advise Council when the break-even point was reached and funds could again be made available to residents.
- Asked everybody to take a moment to reflect on the anniversary of September 11.
- Reminded Council members when they have meetings with people who may or may not represent organizations, companies or political groups that may appear before Council that these should be informational sessions only and there should never be any commitment on how one planned to vote. Mr. Herron concurred with that comment.

Mr. Morehead

- Was awaiting a response to several questions he raised at the last meeting about Segways on public sidewalks and why the organization was soliciting without a license.
- Casho Mill and Barksdale paving was done as was the majority of the street painting. Timberline Drive was completed today.
- He was looking at accessory uses and several other items discussed in the past.

- Council meetings and workshops would be held on Monday nights until December.
- Read a prepared statement about having the lobbyist RFP move forward.
- In regard to the budget he would like thought to be given to the City's finances in 2015 and in 20 years. There was a request tonight from residents whose property was in the 100-year floodplain, and he felt it would be irresponsible not to offer assistance.

Mr. Ruckle

- Was assisting a resident who lives behind Bing's with complaints about garbage trucks doing pickups between 5:30 and 6:00 a.m.
- Enforcement was requested for Newark High School buses travelling on Tyre Avenue which was prohibited.
- There was an issue at the Washington House where bricks began falling off the front façade of the building. The original plan called for real brick but this was switched in the middle of the project, and four different contractors were involved. He felt the City should hold the contractors accountable to the original plan.
- Spoke about a recent experience with public parking in Baltimore and stated that parking was a contract between leaser and leasee and could not be given to a third party.

Ms. Sierer

- Clarified next Monday night's meeting in Council Chambers was a sound workshop beginning at 6:00 p.m.
- Encouraged Council members who have not submitted a nominee for the Boards & Commissions Review Committee to do so no later than Monday, September 15. In order for the committee to have a kick-off meeting in October, the committee must be established after the September 22 Council meeting.
- Announced that she was planning a Mayor's Masquerade 5K Run on Saturday, November 1 at 6:00 p.m. beginning near City Hall, going down Delaware Avenue, turning at Tyre Avenue, back up Main Street and down South Main Street. The planning committee included City staff, the University, several businesses and residents and was a fundraising event for the Parks and Recreation Department to purchase and install exercise stations on the Hall and/or Pomeroy Trail. This healthy initiative event was focused on community and family participation. Costumes were welcome.

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

11. 3. **SPECIAL DEPARTMENTAL REPORTS:**

A. Special Reports from Manager & Staff

1. Alternative Healthcare Option: Delaware Valley Health Trust Enrollment Proposal – Deputy City Manager

01:11:17

(Item 3-A-2 was discussed simultaneously.)

Mr. Haines shared a PowerPoint presentation regarding a new healthcare option available to the City. Each year approaching the budget season, the Employee Healthcare Committee looked at plan design, worked with Mercer (the City's broker) and current health insurance provider (Highmark Blue Cross) to review renewals and rates and balance the benefits, the costs and employees' preferences. To try to find the balance with healthcare and the employees, increases were added in employee contributions this year and also the ER co-pay was changed to try to balance the growth in the plan. The Employee Healthcare Committee was comprised of six votes – all three union employee sectors, the management employee group, the City Manager and the Finance Director.

Mr. Haines presented an alternative for Council to consider – becoming a partial owner of a municipally owned pooled risk insurance company, the Delaware Valley Health Trust. Three members of DVHT were in attendance – Rick Lee, Executive Director, Steve Fallon, Director of Employee Benefits and Geoff Beauchamp, Legal Counsel. Also present were representatives from Highmark. Prior to the Council meeting, Mr. Haines had conversations with Mercer and Highmark. The Employee Healthcare Committee voted 6-0 for the DVHT option. They discussed the idea of predictable rate growth as well as the balance of not only expanded benefits but also wellness initiatives.

DVHT was created in 1999 as a non-profit tax exempt insured risk pool serving specifically municipalities. It was started in southeast Pennsylvania and insures over 17,000 individuals through 102 public entities. The concept of DVHT is taking the assets and pooling resources. Three trusts come under the Delaware Valley Municipal Management Association – liabilities, health and worker’s compensation. The economies of scale allow the Trust to specifically focus on the lives they serve. The discussion of “should we market, should we not market” through DVHT is reviewed by a group discussion of 102 entities. DVHT has been with Aetna for 15 years. Plan design is done based upon each municipality’s wants and Newark would design its plan through the committee. Approximately 220 individual plan designs were available.

DVHT defines success as rate stability, predictable growth and keeping a strong financial position by making sure they have surpluses. On the projected 1/1 renewal:

- A lot of the savings were plan to plan this year;
- The growth was 10.54%;
- As of Thursday, the projected renewal was 5.7% for 1/1;
- The 3.5 - 5% savings was on 2014 to 2014 numbers.

A DVHT side-by-side comparison showed what the City was paying today versus the exact same plan through them which was a \$626,000 difference in expense, primarily due to the administrative expense.

There was no additional cost above the 8.3% for the DVHT model for the wellness initiatives. Representatives will come on site, do healthy breakfasts and lunches and hire the nutritionist. The wellness option was an important feature for the Employee Healthcare Committee. This option was available through Mercer and Highmark at an additional cost.

In the rate stabilization fund DVHT invests the reserve fund to pay for the claims. In a good year, the Executive Committee might decide to return funds to the membership as a dividend which would be divided up through a performance based formula (on size) and be put in the rate stabilization fund escrow account. The municipality had the discretion of how to leverage those funds. They do not expire, but grow and remain in the escrow account until used by the municipality.

DVHT was exempt from the 2.4% excise tax (health insurer fee), a savings of \$106,000 for the City, because they were able to testify they are municipally owned and not for profit and the IRS determined that was accurate.

If Council approved enrollment the effective date of participation would be January 1, 2015 and there was a 24-month commitment. No entrance or exit fee was required as long as the 24 month obligation was met.

The Inter-Government Agreement was reviewed by DVHT and the City’s legal counsel and the City Charter will allow the Inter-Government Agreement.

Council Comments:

Mr. Morehead referred to page 6 of the enrollment proposal regarding outsourcing the benefits administration functions for small to midsized municipalities/entities. He asked if the City currently had staff to do the administrative work. Mr. Haines said he and Ms. Pacheco handle those responsibilities and this would help streamline operations. Mr. Morehead asked if the total difference of \$625,891 on page 9 in the Administrative Expense Comparison (DVHT vs. Current Commercial Plan), was against the past year. Mr. Haines replied it was for 2014.

Mr. Morehead asked what happened to the RSF if the City left the plan. Rick Lee, Executive Director of DVHT explained the Rate Stabilization Fund credits were only available to members so anything not used would remain with the Trust.

Mr. Markham asked if there were any other Delaware municipalities or counties considering participation at this time. According to Mr. Haines, Newark would be the first. Mr. Markham requested an explanation of “shock claims” (page 18). Steve Fallon, DVHT,

explained a shock claim was considered a large, catastrophic claim. The Trust (the pool option) provided the advantages of the self-funded program without the additional risk and accepted the risk for any large claims. Mr. Markham asked Mr. Haines to respond to the statement in Highmark's third bullet point that their review concluded it was more likely those costs could increase. Mr. Haines had personal experience with the plan in Pennsylvania for five years and this did not cause him any concern.

Mr. Chapman asked if there was any type of ratings or measurables against a like Trust. Mr. Lee pointed out the Trust's annual audit for 2013 could be made available. Since they were not a rated company or a commercial insurer, that type of information was contrary to this being an alternative to the commercial health insurance market. DVHT had annual meetings to present a detailed analysis about utilization information as to how the Trust was doing and initiatives to better control costs.

Ms. Hadden referenced the second bullet on page 2 of the Highmark letter which stated if Newark chose to self-fund they would be responsible for two of the three PPACA taxes. She asked whether this was taken into consideration. Mr. Haines confirmed that although the City was exempt from the excise tax, the PCORI reinsurance and transition fee were included as a part of the premium.

Mr. Gifford asked if there were other groups like this in Pennsylvania or Delaware where the City could obtain a competitive quote. Mr. Haines reported there was not a health Trust in Delaware and Mr. Lee confirmed there were no other member-owned health Trusts in the region.

Mr. Gifford referred to the first bullet on page 2 of the Highmark letter which stated they have higher network discounts than competitors. Steve Fallon, DVHT, understood this referred to Highmark's negotiated discounts from hospitals and providers vs. Aetna. Most member liability was fixed by a copay so it would not really impact the members. It was trying to raise doubt with respect to the long-term sustainability of the rates and the model. Aetna had competitive provider discounts and DVHT was comfortable the rates were sustainable and Newark's experience would be similar to that of the 100+ members.

Mr. Gifford referred to the fourth bullet on page 1 – the fully insured vs. the self-insured risk pool and asked whether DVHT could back as much for massive claims as Highmark. Mr. Lee explained DVHT was a self-insured risk pool but each member received a fully-insured equivalent rate that was guaranteed for 12 months, so there was no self-funding or purchasing stop loss directly or funding different levels of claims every month. He was confident there was a significant administrative fee difference including all expenses that were not care and treatment.

There being no public comment, the discussion was returned to the table.

Mr. Morehead said he talked to employees who were excited about the plan and pointed out that UD offered their employees a choice of either Highmark or Aetna. He asked if each member had a Trustee. Mr. Haines reported there was an executive board of each Trust which met monthly and those Trustee members were voted among the whole. Those who were not Trustees would attend the annual meeting and would receive information on the Trust throughout the year. Mr. Morehead asked whether Council had considered who they wanted to nominate to be the City's Trustee. Mr. Morehead said he favored the plan because those whose health care would be impacted supported the plan and it made sense financially.

Mr. Markham mentioned that the University of Delaware and State of Delaware used Aetna as their provider.

Mr. Chapman referred to page 9 of the Trust Agreement, 3.02 Approval of Participants (a), All applicants must pay an application fee as determined by the Executive Committee. Mr. Beauchamp advised this was put in the legal documents in case at some point the membership wanted to levy an application fee, but there was no desire on the part of the membership to do so.

Mr. Chapman suggested taking more time to consider this plan rather than rushing ahead. Mr. Haines pointed out the lead time was two months to implement the plan, so a targeted January 1 renewal did not leave much flexibility. Mr. Chapman wanted to review the annual report prior to authorizing moving forward. Mr. Morehead said postponing would allow time to read Highmark's letter in order to make an informed decision.

MOTION BY MR. CHAPMAN, SECONDED BY MR. MOREHEAD: TO POSTPONE ITEM 3A2 TO THE 9/22/14 COUNCIL MEETING.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

12. **3-A-2. RESOLUTION NO. 14-__ : A RESOLUTION AUTHORIZING THE CITY OF NEWARK TO ENTER INTO AN INTERGOVERNMENTAL COOPERATION AGREEMENT AND AUTHORIZING PARTICIPATION IN THE DELAWARE VALLEY HEALTH TRUST**

(See item 3-A-1)

13. **4. ORDINANCES FOR SECOND READING & PUBLIC HEARING:**
A. 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

02:05:25

Ms. Bensley read Bill 14-20 by title only.

MOTION BY MR. RUCKLE, SECONDED MR. MOREHEAD: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 14-20.

Ms. Bensley explained the bill originated from a request by Mr. Markham since currently there were no written definitions for workshops, and the only meetings available to Council were either regular meetings or special meetings. The purpose was to create a definition and codify regular, workshop, special and emergency Council meetings as well as notification requirements. This was originally on for first reading on July 28 when discussion began which traditionally does not happen with first readings as they are meant to be a notification to the public that a bill was coming forward. Concern has been raised about notification requirements contained in this bill. Ms. Bensley felt that amending the bill in its existing structure may produce a poor piece of legislation. She asked that Council consider the bill in its current form to get workshops added as a codified type of meeting for Council and then have additional discussion at a later point in time regarding a bill that would incorporate the public concerns about notification.

Council Comments:

Mr. Markham felt it was important to codify the workshops and better define special meetings vs. emergency meetings.

Mr. Morehead was not comfortable passing the bill in its current form and preferred the second bill that Ms. Bensley prepared even though it is not the one on the agenda. He understood the current law required "conspicuously marked" on the City's website and the loss of that verbiage in the current bill presented for a vote tonight was a concern. Ms. Bensley replied that term was a highly subjective phrase and noted that getting objective words into the Code was important.

Mr. Morehead was uncomfortable with the special meetings – for meetings that are called within seven days rather than doing it as soon as possible (which was vague) to go to a limit of only 24 hours before and wanted a more concrete timetable.

Mr. Gifford clarified the public wanted more notice. Ms. Bensley said in the 8/4/14 memo there were five specific concerns raised by the public during the first reading that

she attempted to address. Other concerns since then were forwarded to Council. He did not think it was important to get the workshop piece right if anything else in the current ordinance would be lost.

Mr. Markham asked if anything other than “conspicuously marked” would be lost, were the notification requirements the same for the meetings as in the current Code. Ms. Bensley explained the only additions to that would be the notice requirements for special meetings, one of the requirements in the current Code was to send a press release to the media – that for special meetings was added not only a press release but also a legal advertisement in the newspaper if there was adequate time. The only other change was an emergency meeting – not only should it be posted on the City’s website but also all social media accounts maintained by the City and sent to the media e-mail list in the form of a press release.

Public Comments:

Amy Roe, District 4, thought the bill was problematic since agendas for regular meetings and workshops would not have to be posted on the City’s website and wanted the bill be rewritten.

Helga Huntley, District 1, proposed changes which she had e-mailed to Council.

Jen Wallace, District 3, asked Council to vote against the proposal. She did not believe there was an urgency to deal with the workshop issue and thought it should all be addressed at one time.

Brett Zingarelli, District 4, wanted to wait to take action until the bill was rewritten.

Tom Uffner, District 1, thought the bill should be rejected and rewritten.

Anne Maring, District 1, was concerned about inclusiveness and making people feel welcome. She asked Ms. Bensley to share the major concerns about notification which were:

- Adding requirements for Council regular and workshop meeting agendas to be posted on the website.
- Adding requirements for notification of special meetings as soon as the meeting is called.
- Adding requirements to have packet items posted to the City’s website 7 days in advance of the meeting.
- Adding requirements to place all Council meetings on the City’s calendar.
- Concern regarding the proposed removal of the words “conspicuously marked” from the special and emergency meeting notification requirements.

Jeff Lawrence, District 3, asked the difference between a regular meeting and a workshop. Mr. Gifford replied it was the ability to vote or not vote. Ms. Bensley explained traditionally Council had held meetings and workshops on a regular basis with the understanding that workshops were not meant as a decision-making forum but as an information gathering forum. Mr. Markham added workshops were typically a broad topic, a way for Council to have a public conversation. His problem with calling it a special meeting was that Council was in session and could make a decision at a special meeting. Ms. Bensley said the current system worked on tradition and custom and was trying to get things written down and codified so there were clear rules for everyone to follow and clear expectations for everyone to meet.

There being no further comments, the discussion was returned to the table.

MOTION BY MS. HADDEN, SECONDED BY MR. GIFFORD: TO INDEFINITELY POSTPONE BILL 14-20 AND HAVE STAFF RESUBMIT THE BILL WITH THE PROPOSED AMENDMENTS AND SUGGESTIONS FROM COUNCIL.

Mr. Morehead commented that Council is the legislative body and staff is the administrative body and it was appropriate for Council to rewrite the bill. Ms. Hadden thought the Director of Legislative Services should work with the direction of Council.

Ms. Houck clarified that next week's workshop could be held. Mr. Herron stated it was a meeting that was noticed and that it could be held.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Ms. Bensley requested Council members to e-mail her any specific amendments they would like incorporated in order to have a first reading at the next meeting.

14. 5. **RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:**
- A. Request of Norman and Cheryl Davis For a Special Use Permit For an Expansion of Their Existing Driveway Using Permeable Surfaces in the Open Floodway District (OFD) at the Residence Located at 714 Brook Drive

02:43:40

Mr. Fortner presented the request and reported the Zoning Code defined the OFD as areas declared by the Federal Emergency Management Agency as land subject to inundation by floods having a 1% chance of being equal or exceeded in any given year. This included the regulatory floodway which were the channels of the Christina River and the surrounding lands that were reserved to provide the discharge for the 100-year flood plain. They regulate the flood plain, Article 26, Special Provisions for Floodplain and Land Adjoining Floodplains. They use two principles – they want to permit certain uses which are appropriately located in the floodplain which will not impede the flow of floodwaters or otherwise cause danger to life and property at or above or below the locations along the floodplain and to permit only those uses in the floodplain compatible with natural conditions which are conducive to maintenance of constant rates of water flow through the year by withholding rapid water run off contributing to downstream flooding and providing areas for groundwater absorption for maintenance of the surface water supply. Newark has strict regulations on new construction building in the floodplain. Zoning Code Section 32-96(a) lists conditional uses needing a special use permit and item d allowed roads, driveways or parking areas, both private and public, with permeable surfaces.

Public Works and Water Resources indicated that the surface use for the driveway expansion should be permeable to allow rain and storm water to pass through it and should be constructed at grade with no net fill. Total maximum lot coverage allowed should be less than 50%. The proposed improvement would take the lot coverage to 25%. The Planning & Development and PW&WR Departments indicate the use will not impede the flow of floodwaters or otherwise cause danger to life or property at or above or below the locations along the floodway. It was the recommendation of the Planning and Development Department that Council approve the special use permit for expansion of the existing driveway at 714 Brook Drive with the departmental conditions.

Council Comments:

Mr. Morehead questioned the side setback on the driveway in an RD zone. Mr. Fortner replied there was no setback.

Mr. Ruckle asked how the request came about. Mr. Fortner reported Mr. and Mrs. Davis applied for a building permit for concrete and there was a total maximum of 50% for lot coverage in the RD zone.

Ms. Hadden asked about the absorption rate of permeable surfaces in the event of a heavy rain when using the stones in a flood zone. Mr. Fortner said the material should absorb the water similar to the ground and it was at-grade so the water could run.

Mr. Markham asked how close the property was to wetlands. Mr. Fortner responded the property was in the 100-year floodplain and was not in the floodway where the creek would go.

Mr. Ruckle asked if a certain amount of stone would be required underneath the material. Mr. Fortner said it was required but he did not have the specific guidelines.

Mr. Morehead said from the OFD map it looked as if the corner of the property as shown on the mortgage survey plan was the center of the stream and goes back to the question about riparian boundaries. Brook Drive appeared to be 122 feet from the center of the stream according to the mortgage survey so the frame shed was probably not in the stream but was right there. The bottom line was whether the wetlands were appropriately addressed. Mr. Fortner reported that Mr. Coleman would be checking for wetlands and he saw this plan.

Public Comments:

Brett Zingarelli, District 4, encouraged support of the special use permit since in his experience permeable materials seemed to absorb water better than the ground itself.

There being no further public comments, the discussion was returned to the table.

MOTION BY MR. GIFFORD, SECONDED BY MR. RUCKLE: TO APPROVE THE SPECIAL USE PERMIT AS REQUESTED FOR 714 BROOK DRIVE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay: 0.

15. **5-B. REQUEST OF AGWAY PROPERTY ASSOCIATES, LLC FOR THE MINOR RESUBDIVISION OF 1.84 ACRES TO CONSTRUCT FOUR THREE-BEDROOM TOWNHOUSE STYLE APARTMENT WITH PARKING BELOW TO ADD TO THE EXISTING POMEROY STATION SUBDIVISION AT THE PROPERTY LOCATED AT 218 EAST MAIN STREET (RESOLUTION AND AGREEMENT) (SEE 5-C)**

03:02:00

(Note: The public hearing for the minor resubdivision [5-B] and special use permit [5-C] were held simultaneously.)

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT THE MINOR RESUBDIVISION AND THE RESOLUTION BE APPROVED.

Jeff Lang, Newark resident and property owner, presented the resubdivision request. The property was approximately 12 years old and was adjacent to the Newark Shopping Center which would be undergoing redevelopment. The site was 1.8 acres. There was additional parking on the site and the density was low compared to others in the City. The plan was reviewed by the Design Review Committee where they asked that the same materials be used throughout the entire project. The current project contains 15 units with about 15,000 square feet of commercial space and two, three and four bedroom units. The proposal was to add four three-bedroom units to the end of the existing building.

Council Comments:

Mr. Morehead questioned whether all parking spaces were eight feet wide like the handicapped spaces. Mr. Lang explained the two handicapped spaces had an eight foot loading area in between which was recommended for Code compliance. All the other spaces were nine feet. Mr. Lang clarified there would be more impervious surface. Mr. Morehead asked if the new building was required to meet the new storm water requirements, which Mr. Lang confirmed that compliance was required since the project was over 5,000 square feet. A discussion ensued between Mr. Morehead and Mr. Lang about whether plans for the project included interior rooms. Mr. Lang said the plan proposed three bedroom units and pointed out that floor plans were not supplied at this point in the process. Mr. Morehead recognized that Council did not have the authority to request floor plans but would consider proposing a change in the future.

Ms. Hadden questioned a recommendation by the Planning Commission about the design of the building with convertibility of the lower space (currently parking). Mr. Lang reported it would have floor-to-floor for the balance of the building and if parking became available in a municipal lot and there was not as much of a demand for parking by residents or other businesses, the lower space under the new apartments could be

converted to commercial. Mr. Lang explained in a BB district, residential was not permitted on the first floor. The building was designed to allow for additional expansion of the commercial uses on the first floor. Typical parking heights would be 8-10 feet and this was 14.5 feet floor to floor to permit the expansion of the commercial demand. Ms. Hadden asked if real bricks were being used and Mr. Lang responded they were.

Mr. Ruckle questioned the stair access to the units. Mr. Lang replied each apartment was its own two-story unit like a townhouse. Mr. Ruckle asked if they had access to the garage. Mr. Lang said they did not have direct access as it was open parking similar to the back of 132 E. Delaware Avenue.

Mr. Markham asked if the developer agreed to accept the request by the Public Works/Water Resources Department for up to \$6,000 to repair any interference with the Smart Meter system. Ms. Bensley and Mr. Locke confirmed this was resolved. Mr. Markham asked if any parking spots would be lost with the new addition. Mr. Lang said new spaces would be added so there would be a net plus overall. Mr. Markham requested Mr. Lang to respond to his Planning Commissioner's concerns regarding occupancy. Mr. Lang said this was an older project that had no problems regarding occupancy and credited the fact that there was no common space in the building. Mr. Lang said the Commissioner's request was to restrict a portion of the project which he thought was not a feasible deed restriction and would be difficult to explain to a lender.

Ms. Hadden observed the plan reconfigured the existing parking area and relocated the existing trash dumpster to accommodate the expansion. She asked where that dumpster would be located. Mr. Lang stated the project shared a recycling dumpster with Bike Line at the front and believed the other dumpster would be relocated further toward the other end of the site.

Public Comments:

Carol McKelvey, District 4, was concerned the apartments would not be deed restricted for occupancy. She thought Mr. Lang could easily explain that to a lender.

There being no further comments, the discussion was returned to the table.

Mr. Morehead noted in the Subdivision Advisory Committee comments Public Works stated that storm water quantity and quality evaluations would be necessary prior to review by Council. Ms. Feeney Roser reported that was done.

Mr. Ruckle said going forward he would like to see a dimensional size of the brick and thought the materials should be better defined in Code to eliminate possible issues.

Ms. Bensley reported a technical amendment was needed to paragraph 1 of the Resolution which referred to an application from *Elkton Road Associates, LLC*. The application was from *Agway Properties Associates, LLC*.

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: TO AMEND PARAGRAPH 1 OF THE RESOLUTION TO REFLECT THE MAJOR RESUBDIVISION APPLICATION WAS MADE BY AGWAY PROPERTIES ASSOCIATES, LLC.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: THAT THE MINOR RESUBDIVISION BE APPROVED AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(RESOLUTION NO. 14-W)

16. **5-C. REQUEST OF AGWAY PROPERTY ASSOCIATES, LLC FOR A SPECIAL USE PERMIT FOR FOUR ADDITIONAL APARTMENTS AS PART OF THE PROPOSED MINOR RESUBDIVISION AT THE PROPERTY LOCATED AT 218 EAST MAIN STREET (SEE 5-B)**
-

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

17. **5-D. REQUEST OF ELKTON ROAD ASSOCIATES, LLC FOR THE MAJOR RESUBDIVISION OF 1.43 ACRES TO CONVERT EXISTING OFFICE SPACE IN THE MIXED-USE BUILDING CURRENTLY ON THE SITE TO FOUR THREE-BEDROOM APARTMENT UNITS AND TO CONSTRUCT SIX ADDITIONAL FOUR-BEDROOM APARTMENTS IN THE REAR OF THE EXISTING BUILDING WITH GROUND FLOOR PARKING AND TWO FLOORS OF LIVING SPACE ABOVE FOR A TOTAL OF TEN NEW APARTMENTS TO ADD TO THE EXISTING MADELINE CROSSING SUBDIVISION AT THE PROPERTY LOCATED AT 162 SOUTH MAIN STREET (RESOLUTION AND AGREEMENT) (SEE 5-E)**
-

03:27:36

(Note: The public hearing for the major resubdivision [5-D] and special use permit [5-E] were held simultaneously.)

Mr. Lang reviewed plans to add ten new apartment units to the existing subdivision at 162 South Main Street.

Council Comments:

Mr. Lang clarified to Mr. Morehead there was no change of use requested.

Mr. Ruckle asked why stucco was proposed in light of the mold issues with the material. Mr. Lang felt stucco was a better product than the thin brick product. Mr. Ruckle wanted to be sure correct measures were taken to eliminate any future problems. Mr. Lang agreed and said they were very happy with their contractor's work.

Mr. Gifford discussed the proximity of the project to the railroad which was 65-70 feet from the track. He asked what the developer thought about the safety issue in proximity to the building. Mr. Lang said when the project was built they were aware of the railroad location but because this property was up from the railroad and the railroad was sunk 15 to 18 feet below the parking lot in the back of the site, they were buffered from it. Mr. Gifford's concern was about some sort of accident and expanding getting closer to the tracks given the cargo now changing over time. Mr. Lang noted it was recessed there and thought if anything happened in that location it would not impact the site at all.

Public Comments:

Amy Roe, District 4, expressed concern about the placement of apartments in close proximity to the railroad tracks where hazardous materials were transported.

John Morgan, District 1, asked the speed limit for the oil trains coming through Newark and urged the City to address this issue. Mr. Ruckle stated the speed was restricted to 25 mph and he requested the Police Department monitor the speed.

Ms. Hadden respected Mr. Hegedus, her Planning Commission representative, who struggled with the proposed project.

Mr. Ruckle asked the distance to the railroad tracks. Mr. Lang said it was in the 70 foot range and Mr. Gifford confirmed according to the Google ruler it was about 68 feet.

Mr. Markham referred to the 15 foot rear yard building restriction line and asked how that was determined. Ms. Feeney Roser confirmed that was the BB district rear yard.

Mr. Morehead pointed out there were a lot of Newark properties next to the railroad and he agreed with Dr. Morgan it would make more sense to prevent the train accidents.

MOTION BY MR. CHAPMAN, SECONDED BY MR. RUCKLE: THAT THE MINOR RESUBDIVISION AND THE RESOLUTION BE APPROVED AS REQUESTED.

MOTION PASSED. VOTE: 5 to 2.

Aye: Chapman, Markham, Morehead, Ruckle, Sierer.

Nay: Gifford, Hadden.

(RESOLUTION NO. 14-X)

18. 5-E. REQUEST OF ELKTON ROAD ASSOCIATES, LLC FOR A SPECIAL USE PERMIT FOR TEN ADDITIONAL APARTMENTS AS PART OF THE PROPOSED MAJOR RESUBDIVISION AT THE PROPERTY LOCATED AT 162 SOUTH MAIN STREET

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

MOTION PASSED. VOTE: 5 to 2.

Aye: Chapman, Markham, Morehead, Ruckle, Sierer.

Nay: Gifford, Hadden.

19. 6. ITEMS SUBMITTED FOR PUBLISHED AGENDA:

A. Council Members

1. Council Discussion and Consideration of Requiring First and Second Review For Agenda Items Requiring Decisions By Council – Councilman Morehead

03:50:06

Mr. Morehead stated that ordinances required first and second readings to enhance public involvement. He suggested a discussion around things Council does with a single notice such as issues of municipal policy, expenditures, appointments and other items requiring a decision by Council. He proposed that Council have the opportunity to delay agenda items for constructive reasons and felt this would only back up items that were done off the cuff.

Mr. Chapman thought Mr. Morehead's recommendation made sense and offered to work with Mr. Morehead to draft legislation for Council's consideration in the future.

Ms. Bensley pointed out that first readings are not open to discussion and asked if the proposed change was to open both first and second readings to discussion. Mr. Chapman explained that his intention would not be to replicate first and second readings.

Mr. Gifford said a lot of information was provided to Council for the first reading to prepare for discussion at the second reading.

Mr. Markham noted that a suggestion from a previous City Manager was that there be one Council meeting each month and one workshop each month where items be discussed to have them out in the public and decide which way to go.

Public Comments:

John Morgan, District 1, endorsed Mr. Morehead's comments. He said Council should closely consider what items should be included on the Consent Agenda since many warranted open discussion. Ms. Sierer pointed out that Council could pull any item from the Consent Agenda if they wanted to discuss it. Mr. Morgan was concerned that such an action by a Council member could be regarded as a hostile act.

Tom Uffner, District 1, believed every item requiring a vote of Council should have a first and second reading or discussion beforehand. In the event of an actual emergency the rules could be suspended and a vote taken.

Jen Wallace, District 3, supported adding more time for deliberation before items were passed. She thought the first and second readings were a good mechanism to make it clear on the agenda when a vote would be taken.

Jeff Lawrence, District 3, wanted to see a shift in the balance of power to Council taking control. He felt with Council writing the bills and driving the direction there should be less confusion as to legislative intent. He said supporting information for agenda items should be made available as soon as possible but if insufficient information was provided or not distributed in a timely manner, Council should vote no.

Brett Zingarelli, District 4, did not think having more time for due diligence would create a problem and would be to everyone's advantage. He felt that was evident with the parking meter clearing decision.

Amy Roe, District 4, pointed out the City Manager's memo for agenda item 6A1 was not on the website and copies were not provided for the public. She supported Mr. Morehead's idea for first and second readings and stressed the importance of the City making decisions based on facts.

There was no further discussion and no action was taken.

20. **6-B. Others:** None

21. **7. RECOMMENDATIONS ON CONTRACTS & BIDS:** None

22. **8. FINANCIAL STATEMENT:** None

23. **9. APPROVAL OF CONSENT AGENDA**

- A. Approval of Council Meeting Minutes – August 25, 2014
- B. Receipt of Alderman's Report – August 26, 2014
- C. Receipt of the Planning Commission Minutes – July 1, 2014
- D. Receipt of the Planning Commission Minutes – August 5, 2014
- E. Reappointment of Alan Silverman to the Planning Commission for the District 5 Position for a Three-Year Term to Expire September 15, 2017
- F. Appointment of Christopher Laird to the Boards and Commissions Review Committee for the District 3 Position

04:12:32

Ms. Bensley read the Consent Agenda in its entirety.

Mr. Gifford asked if there were any questions about his appointment of Christopher Laird (item 9F). There were no comments from Council.

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

MOTION PASSED. VOTE: 6 to 1.

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

Nay: Morehead.

24. **Meeting adjourned at 11:04 p.m.**

Renee K. Bensley
Director of Legislative Services
City Secretary

Public Comments by John Morgan (District 1) at the Newark City Council Meeting on September 8, 2014

This evening I would like to begin by expressing my appreciation to the members of Council for recognizing at their last meeting that neither of the two responses to the City's Request for Proposals for a lobbyist was really satisfactory, and to Mr. Robert Byrd for his frank comments and advice at that meeting, especially his statement that his practice has long been to make his highest priorities the clients who have been with him the longest, and his advice that our City seek a lobbyist who doesn't already have a long list of other clients. I would now like to express my own thoughts on some of the key features which should be in a revised Request for Proposals for a lobbyist.

One of the essential requirements for a lobbyist should be that he will make lobbying for the City of Newark his #1 priority on any issue which affects our City and its citizens. If on some controversial issues our City's lobbyist will actually be lobbying not for but against the interests of our City and its citizens, or maybe just sitting on the sidelines without actively lobbying at all because of conflicts of interest, then there's no point in having such a person as our City's lobbyist. Hence a revised Request for Proposals should include a provision that our City's lobbyist will not take on other clients, besides any that are already known to us at the time of his application, without the consent of the City.

A consequence of this observation is that if our City wants to have a lobbyist who will make lobbying for our City his #1 priority, our City should be prepared to be his #1 paymaster. Hence I recommend that a revised Request for Proposals not include an upper limit on what it might be willing to pay for lobbying services, since such a limit might deter an experienced lobbyist who is prepared to make lobbying for our City his #1 priority.

Another important requirement should be that our City's lobbyist be familiar with and indeed sympathetic to the major issues confronting our City. Ideally our City's lobbyist would be someone who has lived in the City of Newark for many years, or if not within our City's limits, at least in the general vicinity of Newark, within at most half an hour's drive. This geographical consideration should also be important if our City's lobbyist will be expected to attend Council meetings at least once per month.

Yet another important requirement should be that our City's lobbyist have a proven track record of successful lobbying in Dover, preferably for some other public and/or non-profit organization(s) based in Delaware, rather than for large profit-making corporations based in Delaware or other states.

I also believe that the proposed duration of a contract for our City's next lobbyist should be not 4 years, but probably 2 years, the length of a legislative session in Dover, with a provision that the contract can be extended repeatedly by mutual agreement.

At the last Council meeting, when the idea was briefly mentioned of combining the position of Community Affairs Officer with that of a lobbyist, Councilman Markham expressed some concerns because the Community Affairs Officer reports to the City Manager and the lobbyist would report to Council. I believe this concern is valid, and I would add that the skills required to be an effective Community Affairs Officer (mainly writing press releases and answering questions from newspaper reporters) are quite different from the skills required to be an effective lobbyist for our City in Dover. If it's important that our City have a lobbyist, finding the best possible lobbyist for our City should be our #1 priority.

I hope you find these remarks helpful. Thank you.