

**CITY OF NEWARK
DELAWARE
COUNCIL MEETING MINUTES
June 22, 2015**

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
Planning & Development Planner Tom Fruehstorfer
Communications Affairs Officer Ricky Nietubicz
Public Works & Water Resources Deputy Director Tim Filasky

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

2. 1. **PUBLIC PRESENTATIONS**

A. **Resolution No. 15-__**: Recognizing July as Parks and Recreation Month

00:40

Ms. Sierer noted that the resolution recognized July as Parks and Recreation month.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THE MONTH OF JULY BE DESIGNATED AS PARKS AND RECREATION MONTH.

MOTION PASSED UNANIMOUSLY VOTE: 7 to 0

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

Nay: 0.

(RESOLUTION NO. 15-M)

3. 1-B. **PRESENTATION BY AETNA HOSE, HOOK AND LADDER ON AETNA 2014 OPERATIONAL OVERVIEW**

01:21

A. J. Schall, Jr., Department Chief of Aetna Hose, Hook and Ladder Station 7-8-9-10, Newark, reviewed a PowerPoint presentation of the 2014 operational overview of the department.

The department was composed of volunteer and paid personnel with ten full-time firefighters/EMTs, a full-time mechanic, 40 part-time EMTs and 30 active volunteer firefighters. The district was made up of approximately 40 square miles, including the City and the surrounding unincorporated New Castle County areas. The fleet consisted of 22 vehicles and four stations, three of which fall within City limits. The fourth was outside of Peoples Plaza. All administrative and command staff were volunteers. The department operated from three to five basic life support ambulances 24 hours a day, seven days a week. Advanced life support was provided by New Castle County paramedics. Volunteers staffing was provided three nights a week with full coverage from 6:00 p.m. to 6:00 a.m.

Mutual aid was depended on for various responses including the interstate, structure fires and special operations including water rescue, hazardous materials, road rescue and collapse teams, etc.

Chief Schall discussed call volume and pointed out as the district has grown and the public's demand for ambulance service has increased, so has the department's run volume. In 2014, they responded to just over 10,000 calls. Those calls included 20 working fires, 400 motor vehicle accidents (17 with entrapments) and 88 cardiac arrests. At the New Castle County Paramedic Survivor Reunion in February, 12 crew members were recognized for saving lives. There were 351 calls to University of Delaware buildings from fire alarms to several fires to emergency medical responses.

The response history graph showed the spike from the mid-nineties through today with the increase primarily in ambulance runs. Fire runs have stayed around the same mark anywhere from 1,900 to about 2,300 per year over the last ten years.

Chief Schall commented on the positive partnership built with the City over the last few years which included their support at numerous community events including Liberty Day, Community Day, Memorial Day and Halloween parades, a railroad public forum and disaster drills in conjunction with the Newark Police Department. The department just became a partner of National Night Out.

Regarding training, Chief Schall reported the time frame for a probationary member to be called a firefighter was about three or four years. Training was held weekly and on multiple weekends at Delaware State Fire School for basic and structural firefighting skills, hazardous materials awareness and vehicle rescue. EMT certification required a six-month class and continuing education of 75-100 hours every two years.

Chief Schall discussed Aetna's financial picture. The annual operating budget was approximately \$3.5 million and did not include any major capital purchases such as a \$600,000 fire engine, a \$1 million dollar ladder truck or an \$800,000 rescue truck. Aetna was dependent on many areas for funding. New Castle County provided funds for fire and BLS services as well as building fees, so when work order permits were issued for renovations or new construction, Aetna received a percentage of that amount. The State provided a few different types of revenue as well, the largest being the State insurance premium where 2.34% of homeowner's insurance was designated to the fire service.

Fundraisers were a large part of the volunteer service. That portion of the pie became smaller in the last ten years most likely because citizens do not realize Aetna is a volunteer fire department. The City provides some funds as well as other in kind to services, such as trash, water and electricity. EMS operations were about 65-70% of operational expenses, and that division ran a deficit last year.

In 2010 and 2011 the heavy rescue and 100 ft. ladder truck were replaced at a cost of about \$2 million. Last year an ambulance with 145,000 miles was replaced at a cost of \$200,000-\$250,000. One ambulance was replaced about every twelve to eighteen months, were in active service for five to six years and then used for special events. The newest fire engine was nine years old with 70,000 to 80,000 miles on it. Several engines were approaching 23-25 years old and needed to be cycled out within the next two to three years. Over the next six years three engines would need to be purchased at a cost ranging from \$500,000-\$600,000 per engine.

The two City stations on Academy Street and across from the Post Office were in dire need of major repairs to make them more operational and more efficient. That would involve a large fundraising campaign.

Chief Schall gave kudos to the City for being proactive with fire protection regulations and requiring sprinklers in residential construction. They were also pleased with the City's decision to hire a fire protection specialist.

Mr. Gifford referred to the funding sources slide and asked the total funding. Chief Schall replied it was approximately \$3.3 million. Mr. Gifford asked whether UD donated

to the fire service. Chief Schall said UD paid for services, for example, when an ambulance was sent to a football game or special event, that would be billed under EMS.

Mr. Morehead discussed the calls to University of Delaware buildings. Chief Schall explained University buildings were marked with a special grid number to easily sort and filter the buildings. Calls to rental properties that were predominately University students were not in this count.

Mr. Morehead asked what Aetna wanted Council to do for them. Chief Schall said whatever the City could do to increase their funding and put them on the top of the list for the 2016 budget year would be appreciated.

Ms. Houck reported the recruitment of volunteers was very important and was something that agencies across the country were struggling to maintain. Staff wanted to put together some type of an incentive package for City residents to become involved in the local fire department and make it more attractive to go through the training and participate in the department. It was very important to the community to keep the volunteer fire department viable and progressive like it has been.

Chief Schall added that volunteers in the fire service were dwindling quickly. For every ten members they bring in, at the 30-36 month span only two to three were still considered active.

Mr. Markham asked whether Aetna still had an agreement with UD ambulance service to cover calls when they were busy. Chief Schall replied they regularly relied on the University to assist them.

Mr. Markham offered to send information to his e-mail list about Aetna being a volunteer department if Chief Schall would provide the information to him.

Mr. Markham asked Chief Schall if he had any information about a CPR app that located people who know CPR. He thought it would provide useful information to the community.

Ms. Sierer said her understanding was that the University of Delaware paid a per head fee per student to assist with Aetna's revenue. Chief Schall said that all went through the EMS.

Ms. Sierer reported that Aetna was involved in National Nite-Out being held on Academy Street on August 4th from 6 to 9 pm. She encouraged everybody to attend this new family-friendly event which would showcase Newark Police Department, University of Delaware Police Department and Aetna Hose Hook & Ladder.

4. 1-C. PRESENTATION BY CATHERINE CZERWINSKI ON NEWARK BEAUTIFICATION PROJECT

37:00

Ms. Sierer introduced Catherine Czerwinski who reached out to her with ideas on creating more arts and culture in Newark through murals. She originally discussed ideas for the Casho Mill Road underpass which progressed to other locations as well. Ms. Czerwinski presented her ideas to the Downtown Newark Partnership Design Committee and was joined by Joe Charma from the Committee.

Mr. Charma said the Design Committee was pleased to come before Council with this City-wide beautification project. All the projects shown tonight would be funded privately and through fundraising efforts. The intent was to have more public art City-wide and the opportunity recently arose to collaborate with Ms. Czerwinski who was a muralist and a local artist.

Ms. Czerwinski said the motivation behind the project was to highlight all the beautiful things about Newark with mural arts located in different areas around the City. Ms. Czerwinski grew up in Newark and wanted to give back to her community. Arts and cultural activities drew crowds from within and around the community, increasing the

number of visitors, enhancing resident participation and helping build economic and social capital. Wonderland Records was the first location being considered, and her idea was to highlight the history of the Delaware music scene. Several high school students were assisting Ms. Czerwinski with her research.

Other areas being considered were the Casho Mill bridge location (a frequent graffiti target), the Community Garden and several alley ways on Main Street. Mr. Morehead noticed all the views on the Casho Mill Bridge were from one side and asked if it was possible to paint both sides. Ms. Czerwinski intended to do so. Ms. Hadden was excited about the Casho Mill Bridge as it was a gateway into town and needed a facelift. Mr. Markham asked whether DelDOT weighed in about the overpass since it was a State road. Ms. Czerwinski was awaiting their reply. Mr. Markham asked about the funding sources. Ms. Czerwinski said they were seeking private funding as well as fundraising if needed. Regarding long-term maintenance, Mr. Charma reported the Design Committee already established a fund for public art and maintenance and the proliferation of art downtown and Citywide. Any repairs would come from that funding. Mr. Chapman was looking forward to the project which he thought would be positive and uplifting.

Ms. Sierer reported that Hal Prettyman and Wonderland Records were contributing financially to the project which would be a community effort. The Newark Arts Alliance would be helping as well. She encouraged bringing any other ideas to her attention.

5. 2. ITEMS NOT ON PUBLISHED AGENDA

A. Public

54:05

John Morgan, District 1, said the Boards and Commissions Review Committee recently approved a motion recommending that the City use its website, e-mail lists or utility mailings to inform citizens about vacancies on the City's boards and commissions, and about the procedures for submitting applications to fill such vacancies. Mr. Morgan hoped to get an update on the University's presidential search; however, there were no University representatives present at the meeting. Mr. Morgan referred to the Data Center information on the City's website – the Court filing from August 2014 stating, "If the underlying appeal is not otherwise dismissed during the stay period or if no party seeks to reinstate the briefing schedule pursuant to Paragraph 2 above, the Parties shall provide the Court a joint status report no later than June 15, 2015. He asked if anybody had information about the joint status report. Mr. Herron reported that in the last week the stay was extended another six months.

Linda Magner, District 3, said \$25,000 was needed to have the road paved at the Greene at Twin Lakes where the four year old building grade macadam was potholed and worn down. Lang Development had not put the final coat of macadam down because of construction that is supposed to be going on for the rest of the property around the condominiums. With this lower grade of macadam there were also water drainage problems. The water flowed down from one level to another and did not hit the storm drains because the macadam was lower than the height of the storm drains. There were potholes in front of the community club house and a huge dam of ice in the winter from water not going down the storm sewers which in turn worsened the condition of the macadam. She would like the community brought back to what it should look like as a 3-4 year old community.

Regina Wright, District 3, said she, Linda and other residents who would come forward with issues were members of the HOA Board of the Greene at Twin Lakes. She closed on her home in November 2011 and as of June 2015 many of the beautification items in the design of the neighborhood were never completed. For two years the HOA refused to take on the responsibility of the neighborhood. The playground was not up to Code and backed up to train tracks without adequate fencing or a barrier. The drainage was improper and landscaping around the club house virtually ceased. She was disappointed in the product she received and hoped the City would continue to work on behalf of the homeowners.

Leo and Patricia Escoto, District 3 and members of the Twin Lakes HOA, entered into a relationship in good faith with the builders, but the builders did not fulfill their part of

the bargain. They cited flooding conditions in their backyard making it unusable and property value issues given the state of the community. They were seeking assistance from the City in getting Lang Development to regrade the property and objected to any proposed developments by Lang until the issues within the community were resolved. Ms. Sierer asked Mr. Escoto to e-mail his video to her of the back yard flooding conditions. Mr. Gifford thanked the residents for sharing their concerns and would be glad to reach out to Mr. Lang to see what could be done to move the neighborhood along.

Helga Huntley, District 1, looked forward to the beautification of Newark through the mural project and was pleased the Downtown Newark Partnership was branching out beyond downtown. She asked for an update on the communications specialist position.

Jeff Lawrence, District 3, noted the final decision was made on the parking lot that the owner opted to sell to the City rather than do a land swap. He asked if the \$1.2 million cost was in the budget. Mr. Vitola reported it was part of the broader budget for the parking garage and the funds would come from the Parking Fund reserves. Mr. Lawrence thought everything related to the garage was pushed out to future years (2016 at the earliest) and was not budgeted for this year. Mr. Vitola said it was not part of the 2015 budget but due to the nature of the contract, the payment had to be made. It would come out of the Parking Fund reserves and not impact the 2015 budgeted surplus but would impact the cash balances. Mr. Lawrence asked how much the City was paying in rent for that parcel of land. Mr. Vitola would provide a response to Mr. Lawrence.

Chris Locke, General Counsel to Lang Development Group, thought it was important to respond to some of the statements that were made tonight. There were three parties at Twin Lakes: Iron Hill Properties LLC, the property owner; Cornell Homes, the builder of the townhomes in question, and Lang Development Company which is the management company for Iron Hill Properties. In regard to the curbs and the sidewalks, they cannot put final macadam on the road work until the curbs and sidewalks were done to the specifications of the City. Because it took a while to build out the development, due to snow and ice and salt some of the curbing deteriorated so they had to do the curbing and sidewalks. This was not the responsibility of Lang Development – it was the responsibility of Cornell Homes. Lang Development stepped in to do it on behalf of Cornell Homes who would eventually reimburse Lang. They were putting the money upfront because of their community involvement. It was important to understand Lang Development Group had nothing to do with this property. Iron Hill Properties was the property owner. They sold the lots to Cornell, and Cornell built the homes. In regard to the playground, it was built by Code with City inspectors from the Parks and Recreation Department. They maintain it and put new mulch down to enhance the park. There was a drainage issue between the two playgrounds and a landscaping company inspected the area – that work will be done as well. This was also the responsibility of Iron Hill Properties and not Lang Development Group. Landscaping was done and not much was planted because it was not in the budget. Regarding the list of 20 items from Stacey (e-mail of July 11, 2013), most of the items were addressed in a meeting with Public Works. If not addressed, the items were escrowed through a Letter of Credit put up by Iron Hill Properties or Cornell Homes. The drainage issue behind the 700 unit block was a Cornell issue and they posted an escrow to get that corrected. Mr. Locke said they were willing to meet with the Home Owners Association at any time. He wanted everybody to understand they were not leaving the community until it was done even though it was not their responsibility.

Ms. Sierer reported she drove through the community and had been in touch with Mr. Locke. Sidewalks and curbs were being replaced. The concrete pile was temporary until all the work was completed. There was also a schedule on the roads. Mr. Locke reported that they met in September with Public Works, came up with a plan and started the work in December. Unfortunately the weather did not cooperate. In March they went back and replaced some of the work done in December. They have been on site with Public Works about once every three weeks and were in e-mail contact almost daily.

Mr. Gifford said last fall the City put a lot effort into trying to make sure the schedule was going forward and it was good to hear that that schedule was still on for this year. It looked like there would be pavement sometime this year.

Mr. Locke said the plan was to get the sidewalks done by June 25th but the rain put that behind about 7 to 10 days. The road work was supposed to start last Monday, but the contractor was busy on other projects. Lang Development paid for the snow plowing of the roads for the area in question because the roads cannot be dedicated to the City for them to take that responsibility.

Mr. Gifford asked who was involved with Cornell Homes and Iron Hill Properties. Mr. Locke explained that Iron Hill Properties was an LLC of five partners of which Mr. Lang was a minority owner. This was not a Lang Development or Lang project. Mr. Locke reported that Cornell Homes was an organization formed by a group of people in Pennsylvania. They sold out to Ryland Homes who recently merged with a California company.

Mr. Markham commented this had been a problem development and had been before Council on many occasions. He asked Mr. Locke to make sure to get this done for the residents and for everybody. Mr. Locke acknowledged it had been a troubled project and responded that they were doing their best.

6. 2-B. ELECTED OFFICIALS:

01:17:32

State Representative Paul Baumbach referred to agenda item 6A, the roads project, a roughly million dollar project. Over half of that, \$505,000 is from areas in the 23rd District and over 50% of that was provided for and marked for the Community Transportation fund. That was approved by Senator Sokola and Mr. Baumbach. They worked in concert with Tom Coleman and the City on these projects and appreciated the partnership with the City with everyone pitching in and getting things done. That was on Meridan, Wilson, Hillside and Scotch Pine.

Mr. Baumbach announced the Joint Finance Committee was meeting now to discuss how to fill a hole in the State budget. Tough decisions were being reviewed. One of the items was to redirect some of property transfer tax from the counties and taking a bigger share for the State. One of Mr. Baumbach's proposals to the Joint Finance Committee would impact the school funding and the State match of local funds. This affected Christina School District with the two failed referendums.

Mr. Markham and Mr. Baumbach further discussed a change to the transfer tax which would clearly affect Newark's budget. Mr. Markham was concerned about whether this might become a permanent change. Mr. Baumbach concluded that he was doing everything he could within his limited abilities. Mr. Markham hoped he would remind the legislators where the work gets done.

7. 2-C. UNIVERSITY
(1) Administration - None

8. 1-C-2. STUDENT BODY REPRESENTATIVE: None

9. 2-D. LOBBYIST

01:21:59

Mr. Armitage said it was a busy two weeks in Dover. The budget continued to be a dysfunctional mess as the legislators try to reach a compromise about what they might do in taxes versus what spending. The last comments made by the Chairman of the Bond Committee the other day was that cuts would be made in the Community Transportation funds (funds the legislators get to help in their districts as well as what may happen in Municipal Street Aid). They do not know yet what the number would end up. The Governor suggested \$3 million. He could not guess where things were going to end up. The money is one of the real problems that the State is having trying to manage.

The Governor signed House Bill 39 decriminalizing less than one ounce of marijuana. House Bill 109 being watched on behalf of the City to limit employers' access to employees' social media passed the Senate but they added an amendment so it would go back to the House. He expected it would pass the House and that would move forward and become public policy to be signed by the Governor. House Bill 140 which was the

motor vehicle fee increase of about \$25 million was on the agenda in the Senate tomorrow. He expected it to fail which would continue to create some of the chaos around the budget. There would probably be no Republican votes to be able to pass that bill. That was the continuing conflict between the two parties to try and reach some sort of compromise about what they were going to do around spending. House Bill 145 which was the Democratic sponsored bill to maximize the threshold limits for prevailing wage projects still sits in committee. That may eventually be the bill that moves forward because it was being pushed more by the Democrats than the Republicans but still had to be part of that budget deal. House Bill 160 was on the House agenda tomorrow and allowed overpayments of unemployment benefits to be deducted from either Federal or State tax refunds. It may have some impact in recovery of unemployment fees paid but Mr. Armitage did not think it necessary for the City to take a position on it. House Bill 166 did not affect the City because they were self-insured and it did not impact Workman's Comp.

Substitute 2 for House Bill 171 was the third version of the copper tax. Essentially it would leave the City whole for a least another year in the \$69,500 received from Verizon. Verizon is the only telecommunications company paying that tax in the State. Long term they wanted to figure out a way to even that burden among all the companies providing cable services, not just phone service. They were trying to dismantle it but for the time being it will be left alone. He expected to see something again next year trying to reduce their burden because it really put them at a competitive disadvantage.

House Bill 177 required utilities to maintain third party notice of termination. Staff said this was not a problem for Newark to take any position on. House Bill 183 extended the water supply – staff advised there was no impact, so it was not something to watch.

House Bill 192 eliminated open carry in municipal facilities that cities could opt into. That bill was heard in committee last Wednesday, came out of committee and was on the House agenda tomorrow. Mr. Armitage did not know whether the City wanted to take any position on the bill. If it became law, this created the option for Newark to decide whether or not to participate in that program. He thought it would probably pass and would become public policy. Mr. Armitage said the NRA would be neutral on this bill as would the State's Sportsman Association.

Mr. Markham asked Mr. Armitage to add grid lines to his spreadsheet.

Mr. Armitage requested guidance on House Bill 194 which was in committee tomorrow. Staff advised that they like the idea of the elimination of the regulations around wastewater projects. In addition, they would like it expanded into stormwater management projects because there were many other utilities with utility rights near the streams and creeks around the City. Mr. Armitage wanted to at least be able to comment at the committee hearing tomorrow that this is something that is probably good public policy but that it should be expanded to include the stormwater projects.

Mr. Filasky said this would allow public utilities such as Newark to maintain or to install new lines in riparian areas to be exempt from stormwater management and from erosion and sediment control practices. He would prefer to be exempt from the stormwater management regulations but not the erosion and sediment control. As far as a linear project goes, erosion and sediment control was easy as long everything was put back. If trees were cut down to put in a water line they obviously could not be put back. The stabilization, erosion and sediment control during the construction process was extremely important to Newark, especially since most City water comes from the creek that it would be next to. He felt it would be acceptable to allow the stormwater management regulations as long as it was put back in a sustainable manner.

Mr. Gifford asked what less than 25 ft. wide meant. Mr. Filasky said it was typically not for any given length, but the sediment stormwater regulations say that over 5,000 square feet you have to analyze the stormwater and most likely do some sort of mitigation for it. That water is going to the creek almost immediately. It is typically not an issue.

Mr. Markham suggested allowing Mr. Armitage to work with Mr. Filasky to help with the stormwater regulations.

Mr. Morehead said his only concern would be that we pushed really hard for the sediment control which was critically important to the City. Mr. Filasky said that was the reason they brought it up. In looking at the sediment stormwater regulations, erosion and sediment control were part of that. Staff wanted to ensure that if they exempt them from the sediment stormwater regulations that they do not actually exempt them from the entirety and that has to be looked at on a sediment control basis.

Council was in agreement that Mr. Filasky would provide some verbiage to Mr. Armitage for the committee meeting.

Ms. Houck thought that some of the language that Mr. Coleman weighed in on was a good starting point and said exactly what needed to be said.

Mr. Armitage said House Bill 200 may end up being a project for Mr. Herron and the Police Department. It was updating all around accessible parking to get consistency throughout the State and how it was administered. Mr. Armitage did not think it was necessary to take a position but wanted Council to be aware of the bill. Mr. Morehead wanted Council to consider giving a recommendation on this to support improving accessible parking. An example would be the current issues with the updated Newark Shopping Center. The design was exceptionally poor to get from a handicapped parking space to any of the stores. He asked Council to put Newark's position forward to promote accessibility.

Ms. Sierer asked if staff was comfortable with the updates. Mr. Armitage would provide a copy of the bill. The committee hearings were on Thursday. He felt it was unfortunate at this time of the year that so many bills were introduced at the same time and created a real crush.

Mr. Chapman was uncomfortable at this point working as a body to provide blanket support for this bill. In the example used by Mr. Morehead, Council unfortunately approved that plan and he would like Council to have as much opportunity for making the City's decisions wherever possible, especially since the City does a leadership job in terms of relations to other municipalities in the State with regard to handicapped accessibility.

Ms. Sierer asked Mr. Chapman if he would be comfortable with receiving a bullet point list of updates currently proposed in the bill and proceed with direction given the agreement by City staff. Mr. Chapman said staff's opinion would weigh heavily on his perspective of the bill. He reiterated past comments that until a bill was close to the final version he was not comfortable with the City pushing for support.

Ms. Hadden suggested that Council members look up HB 200 on the State website. She planned to do so and would then express her opinion to whoever should be receiving her comments.

Ms. Sierer asked if the bill received League support. Mr. Armitage said it did not show up on their watch list. The enactment date was July 1, 2016. If the City determined there were some concerns, the legislature would return in session before this goes into effect. At the same time, pre-planning for some of these things, projects that Council would be approving may be impacted one way or another.

A lengthy discussion ensued about a path forward on the bill. Ms. Sierer felt part of the hiccup was that the bill was not received from the League for review via e-mail. It was possible it would be received overnight.

Mr. Armitage referenced Senate substitute 1 for Senate Bill 68 and Senate substitute 1 for Senate Bill 83. Both passed the Senate and were moving to the House. The City had not taken a position, but he wanted Council to be aware of his lobbying activity on behalf of the NRA.

Senate Bill 106 was the prevailing wage. This was the Republican version of increasing the threshold limits. Mr. Armitage was watching and during any conversations

he had as they do the budget negotiations he would encourage those numbers to be as high as possible in the prevailing wage threshold limits.

Senate Bill 118 with Senate Amendment 1 were water metering requirements being changed in the landlord-tenant code. Staff said there was no impact. Mr. Ruckle asked for an explanation of the bill. Mr. Armitage explained this ensured that tenants had separate metering, if possible. If not, there was protection for tenants that any utility service charges for which the tenant was responsible be separately metered to assure that the tenant only paid for service they used.

Charges for sewer services assessed by Sussex County were not based upon consumption, but rather upon the property's front footage and the number of its equivalent dwelling units. This act clarified that the requirement of separate metering would not apply to utility service charges which are not assessed based on consumption and permits the actual charge for a utility service to be passed on to the tenant as part of the rental agreement. It was subject to other protections for tenants, such as the right to inspect buildings, and set in the landlord-tenant code.

Mr. Ruckle questioned the requirement for a duplex. Mr. Filasky said some of it was already in the City's Code. By Code a duplex had to have a second meter. It is not always enforced, because sometimes it is the landlord, and then the tenant next door. He did not know enough background to give a full answer but could look into it.

Mr. Ruckle thought this should be looked into to make sure it was the tenant's responsibility to pay for the second meter and would not come back on the City. Mr. Armitage would give this one to Tim.

This was assigned to the House Community Affairs Committee. He could not remember whether they were meeting this week or not. Not every House Committee had planned on working.

Senate Bill 130 was authorizing legislation for community enterprise districts. It was introduced in the Senate by Senator McDowell, the Committee Chair, but he had not announced there would be a committee hearing this week. Moving into the future, they may authorize this legislation.

Senate Bill 144 was assigned to the Senate Judiciary Committee. The hearing was scheduled for 6/24. Mr. Armitage asked for direction with the bill which expanded the background check requirements in place today to include volunteers (such as summer camp volunteers). In the past, volunteers were not included. The enactment date was six months from the time the bill was signed. Mr. Armitage suggested asking for an enactment date some time later than six months (either eight months or next May before summer camp season would start). His thought was to extend the enactment date and if there was a problem with the bill, it could be fixed when the legislators return in January. The timing delay would allow everyone the opportunity to figure out added costs to build into the fees for the next season.

It was Ms. Sierer's understanding the City already did the background checks. She had gone through the process to work as a volunteer at the Dickey Park Camp. Ms. Houck said Newark was, but the fee was currently being waived. She did not anticipate that would continue.

Mr. Armitage believed the background check being done was only through Health and Social Services. This would expand it to include a national background check. There would be some cost.

Mr. Gifford remarked that when background checks were expanded at the local schools, they lost volunteers. He asked if we were concerned about losing volunteers and if we had a problem with the way we do it today. Ms. Houck felt comfortable to some extent with what we were doing. Cost was the concern with expanding it. The City had great success with volunteer recruitment since putting a Parks and Recreation employee

in a position last year actively working that. The option presented allowed time to figure out the costs in preparation for next year's budget.

Mr. Markham said he spent time at the Department of Education, and while it sounded like background checks helped a lot, they would not solve every situation. It would not find the people prone to do this that have not been caught before. Mr. Armitage added the people were trying to create public policy that does the best that they can do.

Mr. Armitage suggested looking at the enactment date, and trying to extend that for some different period of time other than six months. If this was signed early in July, then it was not going into effect in January which probably had minimal impact on any camp activities.

Mr. Chapman asked for clarification from Ms. Houck that we were already doing this. Ms. Houck responded it was not to the full extent that would be required. Ms. Houck confirmed to Mr. Ruckle that the names were run against the sexual predator list. Ms. Sierer added what the current background checks for the City go to the state, not to the Federal level.

Mr. Chapman only had an issue if it was enacted immediately. He thought we were talking about overall public safety and a relatively small cost. He thought Newark was doing Federal background checks anyway.

Mr. Armitage relayed that the Senate by a concurrent resolution created a task force to look at organic waste and a way to try and keep it out of landfills. He assumed that was beyond what they were doing with green stuff. That would include meat products and other trash that can be somehow diverted out of the landfills.

Regarding Municipal Street Aid mentioned earlier by Mr. Armitage, he said discussions were still underway with people on the Bond Committee to try to restore that to the \$5 million number that was there last year. He would continue to have those conversations as the Bond Committee works but had not heard a firm date for them to return yet. Ms. Houck asked Mr. Armitage if there should be another burst of the letters that were already sent to reiterate concerns. Mr. Armitage thought a letter or phone call to Senator Sokola would suffice. Mr. Armitage had a recent conversation with Senator Sokola who said, "It's about the money. If we have the money, we can do it. If we don't have the money, we're not going to be able to."

Regarding the Clean Water Act it appeared there may be a task force again to look at that issue and look at trying to find a way to create a fund that will help everyone deal with the associated costs. This was informational rather than any request for direction.

Mr. Armitage stated if there was some real surprise in the interim he and Ms. Houck would get something out to Council. He did not have the sense of needing an emergency meeting. The big issue between now and the end was still going to be about the budget.

Mr. Markham said while he knew that Newark was not included in PILOT funding, he asked if there was any discussion about cutting funding for that this year. Mr. Armitage did not know but would find out and let him know.

Mr. Markham referenced Senate Concurrent Resolution 28, the organic waste out of landfills and asked how that might impact the restaurants in the City. Mr. Armitage said that was the idea behind the task force to figure out if there was a solution (as they did with the green sites). He felt the green site was relatively convenient for Newark residents.

Mr. Markham wanted to know for his constituents the status of several bills being bandied around related to income taxes because he thought they would impact the residents of Newark. Mr. Armitage just knew there was some talk about individual taxpayers over \$125,000, couples over \$250,000, the marginal rates were going to increase. He did not know whether that would get a lot of traction. They talked about a statewide property tax. There was a revenue committee set up by the Legislature as part of the DEFAC group. This was to look at ways to stabilize the revenue streams that the

State really depends upon because the escheat money is not a stable thing to base a budget on. The same thing was true with the gambling revenues and the gambling had grown to more than 10% of the revenue that they were spending.

Mr. Armitage reported the DelTech property tax bill was on the agenda in the Senate. He did not know whether it was going to have the votes to pass. It was one of the things they pushed for to stabilize their funding.

Mr. Markham asked to be kept updated on these bills. Mr. Armitage would try to update the table as quickly as possible each day for Council.

Mr. Markham referred to the bill that passed on the decriminalization of one ounce of marijuana and asked if it became a \$100 civil fine. That was Mr. Armitage's recollection also. Mr. Markham asked Mr. Herron whether the Alderman's Court would process these civil violations so the Police Department could avoid going to Wilmington. Mr. Herron would look into that.

When Mr. Armitage updated the table, he would review his notes on the Revenue Committee's report about the more stable revenue sources for the State in the future. Ms. Sierer said it would be helpful to get daily reports instead of getting them from the League. Mr. Armitage said his sense was that the League was not paying attention to some of the things he showed Council.

10. 2-E. CITY MANAGER

02:07:32

Ms. Houck proposed a Special Meeting of Council on the refuse RFP. After discussion, the meeting was proposed for September 21st and the date will be confirmed at the next Council meeting.

11. 2-F. COUNCIL MEMBERS

02:12:50

Mr. Gifford: Had nothing to share.

Ms. Hadden

- Attended two meetings with constituents regarding neighborhood safety and revitalization for two neighborhoods.
- Attended the League of Local Governments' dinner meeting where they reviewed all the legislation in Dover that they are watching.
- Attended a well-received luncheon program kick-off at Dickey Park, where chefs from the Food Bank are feeding the kids that are participating in the camp program there.
- Attended the Becker Morgan ribbon cutting with Mr. Ruckle and Ms. Sierer.

Mr. Chapman

- Expressed frustration with the problem of drivers pulling onto the railroad tracks at the intersection near the Deer Park. He intended to follow up and have the conversation during budget time to get it fixed if CSX and DeIDOT were not prepared or willing to cover costs to get the problem resolved. Ms. Houck contacted Chief Tiernan today to set up another meeting. She said staff met with CSX and DeIDOT several years ago. At that time lighting was checked, signage changes were made and striping was increased along the area where people were turning onto the tracks. She agreed with that there should be a way to solve this problem. Mr. Markham noted that part of the problem was that CSX is federally-regulated but thought the reverse gate idea seemed like a good possibility. Ms. Houck added the reverse bars were discussed but did not seem feasible. Mr. Chapman suggested bringing this to State or Federal levels to make it happen. Ms. Sierer and Ms. Hadden supported Mr. Chapman's comments. Mr. Morehead wanted to be sure Council received prompt notifications of these types of accidents – Ms. Houck acknowledged there was a notification problem that would be corrected.

Mr. Morehead

- Attended Newark Night and was pleased with changes where vendors from outside the DNP geographic limits were included.
- In District 1 paving was completed on Old Oak and Dallam.

- On August 21st at 5 p.m., Newark Arts Alliance would holding a new event in conjunction with the Rolling Revolution, a group of high quality food trucks and trailers. Some members were now at the Newark Farmers' Market at the Co-Op on Sundays. The Rolling Revolution was putting together the food and beverages at the parking lot. This would be a family event, and community participation was encouraged.

Mr. Markham

- Thought Newark Night was a better mix and had a better turnout. There were a few smaller businesses on Cleveland Avenue that he thought should be included. Also, on hot nights a water bottle refill station should be available to the public.
- Acknowledged the News Journal's article on ash trees and insects. Hopefully, Newark would not have the problem.

Mr. Ruckle

- Thanked Newark Police Department officers who pulled the individual from his car seconds before it was hit by a train.
- Attended Newark Night which was a great event. He would like to see other Newark businesses there. He was concerned about the booth promoting pit bull adoption.
- Went to a realtor event at the State government offices in Dover. He was surprised that only nine members of the public were in attendance and thought seeing how State government works was something everyone should do.
- Attended the Becker-Morgan Group opening. They are an engineering-architectural company.
- Attended the Best of Delaware event at the Newark Country Club which had a good turnout.

Ms. Sierer

- Read two letters addressed to Mayor and Council complimenting City staff:

“I want to thank an unknown City of Newark employee who helped me on the 3rd of June of this year when my auto was broken down on Capitol Trail Highway around noon on that day. My auto quit running in the right lane on Capitol Trail Highway. I turned on my flashing emergency lights and then stayed in the car due to the danger of traffic. I was not able to move the auto off to the side of the road for fear of causing a major accident, and I left home without my cell phone, so there was no chance of my calling for help. But along came a City of Newark employee driving a pickup truck with the City emblem on the door panel. I was able to wave him down, and he came to stop in the same lane in front of me putting the truck flashers on to ward off traffic. He was able to safely direct traffic around my car as he guided my car to the side of the road. Then before leaving, he called 911 for me for further assistance from a Delaware police officer. I don't know who the City employee is but I wish to thank them and the City administrators for having a very courteous and helpful employee.”

Second letter:

“I wanted to express my thanks to the City of Newark for their quick response to our concern regarding a large hole that developed in the street by a sewer grate near our yard. We called last weekend about it, and someone from the City was there within the hour to place cones around it for safety. A crew arrived early on Monday morning to assess it and began repairs which were finished on Tuesday. It is this sort of quick response and attention to a situation, among many other reasons, that make us love to live in Newark. Hope you could pass these comments along to the appropriate department responsible for the repairs.”

12. 3. **ITEMS NOT FINISHED AT PREVIOUS MEETING:** None
13. 4. **APPOINTMENT TO BOARDS, COMMITTEES AND COMMISSIONS:**
 - A. Appointment of Kismet Hazelwood to the Conservation Advisory Commission to Fill the Vacant At-Large Term to Expire March 15, 2017

02:28:24

Ms. Sierer reported that Kismet Hazelwood resided in District 1 for 17 years and was interested in volunteering in the community and being on the Conservation Advisory Committee. She was involved with the University of Delaware Cooperative Extension and also the Master Gardener program.

Mr. Markham noted Ms. Hazelwood attended the last CAC meeting and he talked to her prior to the meeting. She seemed quite interested and excited to join the group.

Mr. Morehead also knew Ms. Hazelwood and said she was excited about doing this. He highly supported her and asked Council to support the nomination.

There was no public comment.

MOTION BY MS. SIERER, SECONDED BY MR. MOREHEAD: THAT KISMET HAZELWOOD BE APPOINTED TO THE CONSERVATION ADVISORY COMMISSION TO FILL THE VACANT AT-LARGE POSITION, TERM TO EXPIRE MARCH 15, 2017.

MOTION PASSED UNANIMOUSLY VOTE: 7 to 0

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

Nay: 0.

14. 4-B. APPOINTMENT OF MARY ROLAND TO THE PENSION COMMITTEE TO FILL THE AT-LARGE TWO YEAR TERM TO EXPIRE JUNE 22, 2017

02:30:12

Ms. Sierer nominated Mary Roland for the Pension Committee. Ms. Roland resided in District 3 and lived in the City for six years. She was an employee of the City for 27 1/2 years and retired in 2006.

Mr. Gifford asked how many members of the public Council agreed to have on the Pension Committee – Ms. Sierer verified there would be one. Mr. Gifford commented that after reviewing Ms. Roland's information, he thought she had the skills to go through the Pension Committee documentation and provide Council with good analysis.

Ms. Roland said as a former employee of the City, she was pleased to be selected for the Committee and looked forward serving on it.

There were no public comments.

MOTION BY MS. SIERER, SECONDED BY MR. GIFFORD: THAT MARY ROLAND BE APPOINTED TO THE PENSION COMMITTEE TO FILL THE AT-LARGE TWO-YEAR TERM, TERM TO EXPIRE JUNE 22, 2017.

MOTION PASSED UNANIMOUSLY VOTE: 7 to 0

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

Nay: 0.

15. 4-C. REAPPOINTMENT OF HORACIO LEWIS TO THE COMMUNITY DEVELOPMENT AND REVENUE SHARING ADVISORY COMMITTEE TO COMPLETE THE DISTRICT 2 THREE-YEAR TERM TO EXPIRE MARCH 15, 2017

02:32:49

Mr. Ruckle stated that Mr. Lewis served on this committee for many years and was an outstanding public servant. He enjoyed working with this committee, and was doing an outstanding job for District 2.

There were no public comments.

MOTION BY MR. RUCKLE, SECONDED BY MR. MOREHEAD: THAT HORACIO LEWIS BE REAPPOINTED TO THE COMMUNITY DEVELOPMENT AND

REVENUE SHARING ADVISORY COMMITTEE TO COMPLETE THE DISTRICT 2 THREE-YEAR TERM TO EXPIRE MARCH 15, 2017.

MOTION PASSED UNANIMOUSLY VOTE: 7 to 0

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

16. 4-D. REAPPOINTMENT OF WILLARD HURD TO THE PLANNING COMMISSION TO THE DISTRICT 2 THREE-YEAR TERM TO EXPIRE SEPTEMBER 15, 2018

02:33:46

Mr. Ruckle received feedback that Mr. Hurd was doing an outstanding job and that he should continue serving as the District 2 representative on the Planning Commission.

There were no public comments.

MOTION MR. RUCKLE, SECONDED BY MR. MARKHAM: THAT WILLARD HURD BE REAPPOINTED TO THE PLANNING COMMISSION TO THE DISTRICT 2 THREE-YEAR TERM TO EXPIRE SEPTEMBER 15, 2018.

MOTION PASSED UNANIMOUSLY VOTE: 7 to 0

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

17. 4-E. REAPPOINTMENT OF BILL DEWBERRY TO THE BUSINESS LICENSE REVIEW BOARD TO COMPLETE THE AT-LARGE THREE-YEAR TERM TO EXPIRE JULY 15, 2017

02:34:24

According to Ms. Sierer Mr. Dewberry was a 45 year resident and served for some time on the Business License Review Board. He was in District 5 and was interested in being reappointed. Mr. Gifford clarified that this committee had only two members and was supposed to have five and it was important that he continue.

The Chair opened the discussion to the public.

Helga Huntley, District 1, had never heard of this board and researched it when she saw it on the agenda. She noticed that it was severely understaffed. Since the board served a quasi-judicial function like the Board of Adjustment she thought that could be a problem for the City. She was not sure whether any decisions reached by a two-member presence of a five-member board carried any judicial weight. The City had two other such boards – one dealing with sidewalk appeals and one dealing with property maintenance appeals. Property maintenance appeals was also short of members. Several members had expired terms as well. Even though all these boards only meet rarely, she thought it was important to keep them fully staffed and consider whether they could be combined.

Ms. Sierer explained that this and the two other boards Ms. Huntley mentioned would have nominations on the July 27th agenda. Also, that was part of the mission of the Boards and Review Commission to take a look at these smaller ones and reassess whether they all needed to be individual boards.

MOTION BY MS. SIERER, SECONDED BY MR. RUCKLE: THAT BILL DEWBERRY BE REAPPOINTED TO THE BUSINESS LICENSE REVIEW BOARD TO COMPLETE THE AT-LARGE THREE-YEAR TERM TO EXPIRE JULY 15, 2017.

MOTION PASSED UNANIMOUSLY VOTE: 7 to 0

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

18. 5. **SPECIAL DEPARTMENTAL REPORTS:**

A. Special Reports from Manager & Staff:

1. First Quarter 2015 Pension Report – Deputy City Manager/Finance Director

02:37:50

Mr. Haines presented the First Quarter 2015 Pension Report. The pension fund ended a return just shy of 2.5% which outpaced its benchmark (finished at 2.34%). Gains for the quarter were \$1.3 million.

Now that Ms. Roland was on board, the Pension Committee would be discussing the status of the investments, whether to look at more managed accounts and going out to bid for an advisor.

The fund experienced a good return compared to the market with the international market representing the highest performing fund. A good diversified portfolio was helping out the investments.

The Retirement Fund (OPEB fund) had a positive performance but did not meet its benchmark. The return was 2.3 versus a 2.8 benchmark. There was a positive return of \$153,000, and the international fund represented the best benchmark for that quarter. As noted in the memo this is why two years ago a better diversification of the portfolio was discussed.

In looking at the notes in that review of the quarter, Russell did not break them out exactly the same, so some are net of fees and some are gross of fees. They have been consistent so the reports would be able to line up. Comingling those funds was discussed and having a greater pool of money to be able to resource would be talked about with the Pension Committee in order to better leverage the City's investments.

Now that Ms. Roland was on the Committee, the unions would provide their representatives and a first meeting of the Committee would be scheduled. At that point the educational piece would be brought forward for Council and the Committee.

The valuation for 2015 would be on the next agenda. Mercer was working on that and on the runout of the OPEB fund. In comparison, last year's funded status was at 66.7% and the new funded status was 71.2 or a 4.5% increase. That was a great year-over-year return. The positive returns of the previous year helped with the funded status as of 1/01/15.

Mr. Chapman indicated he was concerned about market timing, and urged moving forward quickly with the Pension Committee.

Mr. Morehead addressed funded status – employees were moved from defined benefit to defined contributions and asked if that meant that as long as the markets do not tank and we lose our investments that this funded status should continue to improve?

Mr. Haines explained it was a mix of the liabilities that we have encumbered by those that are in it. We have the cost of retirees today. If we had everybody who is retired now, we have to pay those liabilities. Those are our normal costs to pay. Then we have the unfunded status, which is that number we are chasing, which is the liabilities they are assuming in the future. That is where we are trying to have that investment get us fully funded and then we would just have a pay-as-you-go philosophy with a defined contribution, because we would be able to have a map to say what is our percent contribution knowing what our payroll would be in the future years. One day, as we said- this is 10 years from now- the administrators are going to be very thankful that we will have a plan that is going to shift that we have three out of four sectors that are in defined contribution plans. All the post-retirement health is now closed. Those will have benefits in the future for us and this number will continue to shrink, but even if no one was in it, moving forward, the actuaries are going to say you still have to fund the future liabilities.

If the successful gains continued, it would get to the point 10 years from now where the arc would be much smaller which was the ultimate goal. Mr. Morehead said it would first off be a defined number rather than now where it was an actuarially defined number.

Mr. Haines said because the valuation is lagging, our number of defined contribution membership has grown in 2015, but that assessment does not come until next year. A lot of those realized pieces will be coming in the future years.

Mr. Markham asked if Mr. Vitola was ready to give him the number yet. Mr. Vitola replied it was about \$24 million underfunded.

There were no public comments.

19. 6. RECOMMENDATIONS ON CONTRACTS & BIDS:

A. Recommendation on Contract 15-06 – 2015 Street Improvement Program

02:46:45

Mr. Filasky presented the recommendation for Contract 15-06, the 2015 Street Improvement Program which covered a combination of curb replacement, catch basin repair, curb ramp installation, hot mix patching and hot mix resurfacing on 14 locations throughout the city. The locations were chosen by a combination of a computer program, and human input.

Six bids were received and one would cover both Option 1 and 2. The low bidder was Grassbusters Landscaping Co., Inc. They have performed work for DeIDOT, the Air National Guard, the City of Wilmington and Newark in past years.

The basic bid option including Options 1 and 2 is \$971,170, lower than the original CIP budget of \$1 million. The Municipal Street Aid award amount would not be known until the first or second week in July. Of the amount being funded, the worst case scenario (should Municipal Street Aid be cut completely), would be a \$204,000 shortfall. In this case both Options 1 and 2 would need to be cut along with several other streets.

Mr. Filasky pointed out that State Senator Sokola and Representative Baumbach awarded some of their CTF money. Some of it was guaranteed because it was awarded in the 2015 fiscal year.

Mr. Chapman asked Mr. Filasky about whether the company that was approved for the work last year was on the list. Mr. Filasky believed Fontana and Diamond were the vendors, and they were on the list. He knew that Fontana did the concrete work associated with it and believed that Diamond did some of the work. Mr. Chapman said it seemed the vendor used last year was not as organized and the paving done in his district and immediately adjacent was extremely delayed. He did not know for a fact if that was the fault of the vendor. Mr. Filasky report it was not entirely on the vendor. When the departments were merged, they attempted to get on the same schedule of doing some water main replacement and then coming back in the next year and doing the paving so it saved some money on both ends. In trying to get those in step with one another, there was some overlap, especially on Corbit Street. Mr. Chapman asked if there was confidence in the vendor having the resources and ability to complete the work. Mr. Filasky was confident with Grassbusters following thorough reference checking.

Mr. Markham asked if the order of the locations was the priority order as he noticed the last two options were #13 and #14. Mr. Filasky said if the City lost the Municipal Street Aid, he did believe we would just go for #12 and #11.

Mr. Markham questioned #9 - Hillside Road. While he agreed it needed work he asked if it was a City street on University property. Mr. Filasky needed to check on this.

After doing an online search Mr. Ruckle was concerned that Grassbusters only did landscaping and thought there should be some research on the concrete work they do. Mr. Filasky said they went to all the sites they listed for us and got from DeIDOT. There

was a lot of streetscape work, which included concrete work. Mr. Filasky was completely satisfied from the work they saw and the equipment they had.

Ms. Sierer asked if they were subbing any of it out. Mr. Filasky replied they were subbing out the milling to George and Lynch.

Mr. Morehead questioned the completion date. Mr. Filasky said the municipal street aid was still unconfirmed, but funding was available to start on the contract. He expected to be finished this year.

There was no public comment.

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: THAT CONTRACT NO. 15-06, 2015 STREET IMPROVEMENT PROGRAM INCLUDING OPTIONS 1 AND 2, BE AWARDED TO GRASSBUSTERS LANDSCAPING CO., INC. IN THE TOTAL AMOUNT OF \$971,170.00.

Mr. Markham noted there was still a question on who owned Hillside Road and asked how that fit into approving the contract if the University should pay for it. Mr. Gifford said Council could come back and amend it. Mr. Filasky added there may be a possibility to amend it with the state money.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay: 0.

Absent: Ruckle.

20. 6-B. RECOMMENDATION ON CONTRACT 15-08 – WATER MAIN REPLACEMENT – FY2015

02:59:40

Mr. Filasky presented the recommendation for Contract 15-08, the water main replacement (referred to in the Capital Budget as water main rehabilitation and replacement). This year would be all replacement after a financial analysis on the benefits of rehabilitation.

The water distribution system was evaluated annually and there were different categories on how water mains were replaced. Either there was a history of main breaks on the same main, there was a known size issue with a water main in a certain area, or there were complaints on water quality. This contract covered a portion of all of those.

There were ten firms at the pre-bid meeting, only four of which submitted bids. The rest of the contractors were contacted – either they had other work that came up or they were awarded a contract that would not allow them to finish some of the work the City required to be finished because of students moving back in at the end of August.

The areas targeted this year were North Street, Wilbur Street and Prospect Avenue in area one. Area two was Courtney Street; area three was Darwin Drive. The numbers came back from Mumford & Miller under our engineer's estimate, but very close. Complete funding was not available to fund all \$934,214. Thus, the recommendation would be to do areas one and two and re-evaluate options for area three going into 2016.

The City's engineering consultant and in-house staff reviewed all the projects that Mumford & Miller completed recently. DeIDOT was contacted for references based on the large volume of work they did for DeIDOT as well as neighboring municipalities who had several projects done by Mumford Miller including water main replacement, heavy construction, bridge work and street paving.

Staff recommended awarding the water main replacement for areas one and two to Mumford & Miller, Concrete Contractors, in the amount of \$698,436.50.

Mr. Morehead asked about the timing of the engineer's estimate versus the budget versus the quoting process. Mr. Filasky explained because the fiscal year matched with the calendar year, they tried to finish one project and then start on the next. Staff was now getting roads together for the 2016 budget. In going through the engineering work, they come up with a list of areas needing work and pick out as many linear feet of water line that can be done to maximize the budget.

Some engineering funds were used to get the plans up to speed in an attempt to get better pricing. This year instead of just showing the water mains that will be relined in the Capital budget, the engineering budget for the next year will also be included. By waiting for the 2016 budget to start on the design and construction, it would be another month out before getting anything in the ground.

Mr. Morehead noted in the Capital budget, approximately two-thirds of the original plan was funded and he asked how that happened. Mr. Filasky said they adjusted the current resources to match what they planned to spend. There were additional current resources and Mr. Vitola could speak to that. In the actual budget, the current resources were closer to \$850,000 and what was shown here probably should not have been labeled total funding. It should have been total funding applicable to this contract.

Mr. Morehead was looking at an engineering estimate of a little over a million dollars and was looking at the City's funding of \$700,000. Mr. Filasky said the funding should actually be closer to \$900,000 because the current resources were adjusted down to match the bid received. So they are not actually taking out of current resources and burdening those funds, so that they are not moved over. Mr. Vitola said from what he understood, the original budget had contemplated a million dollars available. There was some amount of reserves and \$151,000 in current resources. Actual reserves were \$37,631. He thought because the engineer's estimate was higher than the \$1 million, then Tim and team automatically reduced the scope to areas one and two. There is additional funding available in the budget, but only \$698,000 is being used pursuant to this bid.

Mr. Morehead expressed concern about putting off infrastructure maintenance. It appeared this was funded almost appropriately, about \$100,000 short. He encouraged staff to get the engineer's estimates for next year so we do not have to choose only some of the projects. Mr. Filasky said the way they were looking at that, you would see a line item for engineering estimates so the money left over would be used toward the preparation of plans and resources for next year.

Mr. Markham asked the approximate age of the water mains being replaced. Mr. Filasky said it varied. They were in the midst of the Drinking Water Planning Grant to accurately map all the water mains and hopefully get an age on them. There are some on Main Street over 100 years old. That was not always where we had our problems as there are problems with some 30 year old pipes. Pipe material was a big factor. A lot of thought went into the selection including under-sizing and water quality.

Mr. Markham was concerned about location three which was outside the City. He hoped it would be at the top of the list for next year. Mr. Filasky said that was the plan and there was already an estimate, so there was a high degree of confidence that the pricing would be the same.

Ms. Hadden asked if the Courtney Street portion of this job was in any way related to the University's construction on Academy Street. Mr. Filasky replied it was not – they actually did a portion for the City (about the first 20 to 30 feet of Courtney Street). They had to put some conduit over, so they lowered the water main in that location and hung a valve, so we could tie right into the valve and head on down Courtney Street.

The Chair opened the discussion to the public.

Helga Huntley, District 1 was confused about the funding because when she looked at the budget it was for \$1 million, so it seemed if the lowest responsible bidder asked for \$934,000, there was enough money for all three parts of the project. Now she heard we were about \$200,000 short. There was also a comment that the amount in the

budget was reduced to meet the bid. Her opinion was that the City should not put off the infrastructure replacement if the funding was available. Mr. Vitola responded that when the budget was formulated in late fall approaching the end of the existing fiscal year it was not known what reserves would be available once we finish the year and do spending. The original project cited that just over \$148,000 would be available in reserves for this project, but more than anticipated was completed and spent during 2014. The current resources amount in the 2015 budget was still available, but we did reflect a lower amount of current resources being used on this recommendation because after taking out area three (because there was not enough available for all areas), then we did not need as much of the current resources as required by the low responsible bid. Mr. Vitola thought closer to \$890,000 was available headed into 2015, not the full \$1 million as anticipated in the budget. That was the reason the numbers were different. There were some current resources available over and above the \$660,805. Ms. Huntley thought that meant we were only short \$40,000, not \$200,000. She encouraged Council to see whether they could find the \$40,000 somewhere.

Mr. Morehead stressed the importance of funding infrastructure maintenance routinely and encouraged Council to direct staff to look for \$40,000 to fund this project.

Mr. Markham agreed and said this would buy a lot of goodwill with people outside the city and with our State legislators that represent these people. His recommendation was to direct staff to take the money from the \$27.5 million in reserves. Mr. Vitola asked Council to give specific direction to use Water Fund reserves of \$45,061 for the balance of the project to complete all areas. Mr. Markham asked how much was currently in the Water Fund reserves. Mr. Vitola would have to get back to Council on that but said it was in the millions of dollars. Mr. Filasky cautioned that left no room for contingencies and no money for the beginning planning stages of 2016. He thought it would be safe to go up to \$100,000 rather than \$45,000.

AMENDMENT BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: THAT CONTRACT NO. 15-08, WATER MAIN REPLACEMENT, BE AMENDED TO INCLUDE AN ADDITIONAL \$100,000 FROM THE WATER RESERVES.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0

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

Mr. Chapman pointed out that the motion did not specify expansion of the recommendation to include the third zone. Ms. Sierer said Council still needed to approve the recommendation.

AMENDMENT BY MR. MOREHEAD, SECONDED BY MR. RUCKLE: THAT CONTRACT NO. 15-08, WATER MAIN REPLACEMENT, BE AMENDED TO INCLUDE ALL THREE AREAS.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0

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

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: THAT CONTRACT NO. 15-08, WATER MAIN REPLACEMENT, BE AWARDED AS AMENDED TO MUMFORD AND MILLER CONCRETE CONTRACTORS, MIDDLETOWN, DE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0

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

21. 7. **FINANCIAL STATEMENT:** None

22. 8. **ORDINANCES FOR SECOND READING & PUBLIC HEARING**
A. **Bill 15-15** – An Ordinance Amending the Zoning Map of the City of Newark, Delaware By Rezoning from BL (Limited Business) to BB (Central Business District) 0.36 Acres Located at 52 North Chapel Street

03:22:53

Ms. Bensley read Bill No. 15-15 by title only.

(Secretary's Note: Items 9-A, Major Subdivision, and 9-B, Special Use Permit, were also discussed at this time.)

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

Jeff Lang, 29 West Park Place, presented the application on behalf of Tom and Patti Hall, property owners of 52 North Chapel Street and owners of Cardio Kinetics. It is hoped the redevelopment of the property will lead to a rejuvenation of Chapel Street.

Mr. Lang reported that Hal Prettyman recently purchased the building next door and was looking at the potential reuse of the property. There is a joint easement for access for the two properties onto Chapel Street which is a real positive to the site. The site size was similar to two other recent projects – 132 East Delaware Avenue and 201 East Delaware Avenue. Both buildings on those sites were similar to the proposed building with three stories, commercial space on the first floor, additional parking down below and 12 upper floor apartments, six each on the second and third floors.

Mr. Lang thought this would be a logical reuse of the property since the Halls modified the scope of their business and were no longer in need of 6,000 square feet. The building was designed around their use of the first floor and to try to blend it into the residential component that exists on part of the street. The first floor would still have the commercial feel and typical storefront appearance of a business use. The building's exterior blended a number of different masonry elements with brick and stucco.

Mr. Ruckle asked whether the units would have their own water meters. Mr. Lang replied that the City required all residential units in new construction to have their own meters. Further, full brick would be used.

Mr. Markham questioned how the height on the building compared to Main Street and other buildings on the street. Mr. Lang said the building met Code for BB (35 feet to the top of the roof structure). Mr. Markham asked if there was anything functional above the third floor. Mr. Lang said no, this was just overbuild for architectural appearance.

Mr. Markham discussed the depth of the sidewalks. Since there was a lot of pedestrian traffic on Chapel Street he felt things should be made better when there was a chance to do so. Mr. Lang explained the sidewalk was not part of the property which started at the back of the sidewalk. They had a certain amount of distance behind the sidewalk before the building started, so it was not a typical Main Street application where the sidewalk morphed into their sidewalk – they would have access points off of the existing sidewalk. The first sidewalk area was State right of way (DeIDOT). Mr. Markham asked how much they would be stepping back from the State right of way. Mr. Lang replied under BB zoning they were allowed to build right on the property line but have stepped the building back about 7 or 8 feet. The existing building was back about 10 or 11 feet, so they were moving the building up several feet. Mr. Lang said it was not requested by staff to expand the size of the sidewalk but a foot or two could easily be added to the sidewalk width in the front of the property.

Mr. Markham asked how hard it would be to connect into the drive in Pomeroy Station and make that the exit to eliminate people exiting on Chapel. Mr. Lang said it would not happen across this property, it would happen across Mr. Prettyman's property. Originally it was thought the easement went all the way to the back of the property but it only goes to the parking spaces. There was 18 feet that was not encumbered by the easement which they were not allowed to take because it was not their property. There were preliminary conversations with Mr. Prettyman about when he looks at developing

his property, the easement could be extended all the way back to Pomeroy, and in theory create a joint access point for these parcels. When Mr. Lang was looking at developing that parcel they were talking about eliminating the access at Chapel and having everybody enter from the back. Mr. Markham wanted to encourage getting as much traffic off of Chapel as possible. Mr. Lang agreed that was a logical long-term solution.

Mr. Gifford asked which balconies were functional. Mr. Lang said all of them were.

The Chair opened the discussion to the public.

Helga Huntley, District 1, wanted Council to consider that the main plan was to add 12 apartments above the existing office space, but the recent housing study determined that the City's rental market was already saturated. Moreover, the plan currently was to permit 54 unrelated individuals to live at this address, alongside the business, and it was supposed to be served by a total of 36 parking spaces. In her opinion this would lead to predictable parking problems in this area. The number meets the zoning requirement, which is based on an assumption of two cars per dwelling unit, but she thought this kind of requirement did not make sense for an apartment housing five unrelated folks. She encouraged Council to avoid redevelopment on Chapel Street between Main Street and Cleveland Avenue that would increase traffic. The congestion on this block on weekday evenings was terrible, sometimes requiring over 20 minutes to travel that short distance.

Next, the Comprehensive Development Plan currently called for office use at this location, accompanied by "housing rehabilitation and affordable housing redevelopment" in the area. She did not see how this plan fulfilled either of those purposes.

Her last point was to encourage Council to consider the size of the building relative to the other buildings currently on Chapel Street, especially on the same side of the road.

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

Mr. Markham would support the rezoning from BL to BB since the property was directly accessible to the BB zone behind it, it was close to Main Street, it would be a detriment to the area and it did not conflict with the development pattern in the area.

Mr. Morehead believed this was in direct conflict with the Comprehensive Development Plan as it currently stands, and as we are proposing to the next plan, so he would not be supporting this.

Mr. Chapman would support the approval of rezoning from BL to BB for 52 North Chapel. To reiterate the comments made by Mr. Markham, he looked forward to the pre-existing business maintaining the business-level use of the property.

Ms. Hadden agreed with the comments of Messrs. Markham and Chapman, and felt this would not have a negative impact on adjacent and nearby properties and did not feel it conflicted with Comprehensive Plan IV, so she would be supporting this.

Mr. Gifford would be supporting this proposal and agreed it did not conflict with the development pattern in the area, especially with the additional restrictions on the use of the property.

Mr. Ruckle would be supporting the zoning change as he believed it would bring a lot of positive things to the area, and would have a positive impact on the community.

Ms. Sierer would also be supporting the zoning change as she believed it did not conflict with Comprehensive Plan IV and would be an improvement to Chapel Street.

Question on the Motion was called.

MOTION PASSED. VOTE: 6 to 1

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

Nay: Morehead.

(ORDINANCE NO. 15-14)

- 23. 9. RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT**
- A.** Request of Lang Development Group, LLC for the Major Subdivision of 0.36 Acres Located at 52 North Chapel Street In Order to Demolish the Existing Building on the Site and Construct One Three-Story Mixed Use Building Consisting of Twelve Upper Floor Apartments and 3,382 Square Feet of Office Space and Parking on the First Floor **(See Items 8-A & 9-B) (Agreement and Resolution Attached)**

Mr. Markham wanted to ensure that the staff restrictions were applied to this property. Ms. Bensley believed there was a difference between the staff recommendations and the Planning Commission recommendations. Ms. Feeney Roser said there was a minor change. The Planning Department originally requested that all retail and specialty stores, retail specialty food, restaurants of any type, financial institutions and banks, loan companies, motels, hotels, and commercial indoor recreation and theaters be restricted. When the Commission debated it, they decided to remove some of those restrictions. The ones that they approved are in the agreement.

Mr. Markham asked which restrictions were removed from the staff recommendation. Ms. Feeney Roser said it was a difference of restaurant went to takeout food only. She explained in the Planning and Development report which is in the packet had the restrictions suggested by staff. The agreement contained what the Planning Commission recommended to Council. Mr. Markham asked which items were removed.

Ms. Bensley reported on page 9 of the Planning and Development report, the retail and specialty stores item was removed, the retail food stores item was removed, restaurants of any type was changed to takeout food restaurants only and then the finance institutions, banks and loan companies, motels and hotels, and commercial indoor recreation and indoor theaters were included as part of the Planning Commission recommendation.

Ms. Feeney Roser said the recommendations were based on DeIDOT's comments about traffic (even though a traffic impact study was not needed) that anything generating traffic would be limited. She believed that was what the Commission felt would generate the most traffic and was why it was still in there. The other idea was to limit commercial encroachment upon what was primarily a residential area. She believed there were some restrictions that the developer may want to speak about on how they get financing based on the restrictions placed on them. Mr. Markham did not want a drive-through. Ms. Feeney Roser said that would require a special use permit

Mr. Lang reported they discussed the need to get a parking waiver because if a use would increase the need for parking they would have to come back through the process for a waiver. That was why they agreed to pull the deed restriction for a number of the items which were parking sensitive. Ms. Feeney Roser added that was part of the conversation.

Mr. Markham pointed out that it seemed easier to get a special use permit than to change zoning.

AMENDMENT BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: TO AMEND ITEM 6 OF THE AGREEMENT AND ITEM B OF THE RESOLUTION TO VOLUNTARILY DEED RESTRICT THE PROPERTY TO PROHIBIT DRIVE-THROUGH RESTAURANTS.

AMENDMENT PASSED. VOTE: 5 to 2

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

Nay: Chapman, Gifford.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THE AGREEMENT AND RESOLUTION BE APPROVED AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0

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

(RESOLUTION NO. 15-N)

24. 9-B. REQUEST OF LANG DEVELOPMENT GROUP, LLC FOR A SPECIAL USE PERMIT FOR 12 APARTMENTS IN THE BB ZONE AT THE PROPERTY LOCATED AT 52 NORTH CHAPEL STREET

MOTION BY MR. CHAPMAN, SECONDED BY MR. RUCKLE: THAT THE SPECIAL USE PERMIT FOR 12 APARTMENTS BE APPROVED AS REQUESTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0

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

25. 9-C. REQUEST OF ST. THOMAS' EPISCOPAL CHURCH FOR AN AMENDMENT TO THE MINOR SUBDIVISION AGREEMENT FOR A PORTION OF THE PROPERTY LOCATED AT 276 SOUTH COLLEGE AVENUE AND 15 INDIAN ROAD TO ADJUST THE TERMS REGARDING THE RENTAL PERMIT FOR THE 15 INDIAN ROAD PROPERTY

03:53:02

Ms. Feeney Roser reported that St. Thomas Episcopal Church was requesting an amendment to the minor subdivision agreement which separated the church property on South College Avenue from a residential property at 15 Indian Road. The properties were joined together as part of an administrative subdivision approved in the 1980s to allow a church-run daycare on a portion of the property on Indian Road.

The daycare was no longer operating, so the church wanted to strike the line back in between the church and the residential property. That was done by the minor subdivision, which was approved nearly two years ago. The accompanying subdivision agreement which was approved by Council and signed by the church allowed the church to continue the rental permit at 15 Indian Road. Now that the church was interested in marketing the residential property for sale, the question of the rental permit arose. Staff pointed to the signed agreement which clearly stated that the rental permit was for three unrelated individuals, only two of which could be students.

The church indicated the information was incorrect, because the rental permit on 15 Indian Road at the time of the subdivision was actually for three unrelated individuals without reference to student status. The church contended that the City, through the subdivision agreement, had changed the parameters of the permit without the church's understanding that or realizing it.

After researching that claim staff found out that indeed the rental permit on the property at the time of the subdivision was for three unrelated people without reference to student status. Therefore, the language in the Planning Department report, the information presented to the Planning Commission and Council and subsequently contained in the agreement describing the rental permit currently held on the property was incorrect. That mistake was then further compounded by the church not correcting it when it was presented and signing the document which changed their rental permit.

These actions diminished the value of the then-existing permit, because it would not be issued today for this property. City ordinances limit permitted locations for student homes in that there is a distance requirement between them in single-family residential districts. The property cannot meet those distance requirements. In other words, if none

of this had happened, and someone were to come in and apply for a rental permit for 15 Indian Road today, that permit would be limited to three unrelated individuals, only two of which could be students, which is exactly what the agreement states.

When they recognized what happened, the church then asked for the permit to revert back to its original parameters which can only be done by Council action amending the agreement. That is why they were before Council this evening. Staff made a mistake by describing the existing permit incorrectly, and the church made a mistake by not calling the status of the permit into question during the process and then signing the agreement.

Mr. Markham asked what the rental permit issued since the subdivision agreement specified. Ms. Feeney Roser assumed it was for three unrelated without student status but it never came up because there was a family in there now. Mr. Markham's question was if we had been issuing a permit in violation of the subdivision agreement. Ms. Feeney Roser would imagine so but would have to go back. One of her concerns was when she asked about the current rental status, she was given the status that is in the agreement. Her assumption was that was the permit that was on the property which would continue, so she did not go back and check that it had been changed. That was a mistake by her department, and they were working to correct that so it would not happen again.

Tom Fairchild represented St. Thomas Parish and had the permits with him for the last four years. They were all the same for three unrelated persons without change.

Mr. Gifford asked Ms. Feeney Roser about what concerns were raised by the neighboring residents about this. Ms. Feeney Roser believed the realtor was misinformed about what he could do with the property to begin with, so it became an issue of "I can put as many students in here as I want." The neighbors heard that from the realtor, so that was when they went back and pulled the agreement, and said that could not happen.

Ms. Hadden said this was her district and the property was currently rented to a young family. Aside from 15 Indian Road, there were no other rentals fronting or occupying Indian Road. Ms. Hadden was not in favor of amending the current agreement because she felt the permit owners should have looked at what they were signing. She was concerned the permit may end up being sold, possibly to a landlord, who would put students in the property and that was not a good fit for the surrounding community. Because she knew the property was listed for sale, she had a feeling that the argument today was not about the current owner and their use of the permit, but their ability to sell the amended permit with the property to increase the value of their property which should not be a concern of Council. Her district had a lot of rental issues and she was hesitant to add the possibility of another student rental into the mix. As Ms. Feeney Roser said, if the owner were to apply for a three unrelated permit today it would be denied because of the other rentals within the 700-foot radius per the current rental ordinance. While she thought it was unfortunate that both sides made mistakes in this, the fact that the property was being sold and the permit was like a caveat for a landlord really upset her. She requested Council to consider the overall well-being of the community and deny the amendment request.

Mr. Markham was on Council during the time when a big issue with Council was rental properties, student housing and pulling students out of the neighborhoods into other areas. Even though this was technically a mistake on staff's part, he was not sure Council would have viewed the erasing of the subdivision line the same way – he thought it would have been an issue in the conversation because the applicant was asking for Council to do something and thought it would have come up if they had known it was an unrestricted rental permit. He was not sure Council's intentions would have been to keep it at that point in time. Ms. Feeney Roser agreed that Council did not have the correct information to be able to consider whether or not they wanted that permit to continue. Mr. Markham said their actions may not have occurred – they may not have erased that lot line. One of his concerns was about after the fact things coming back, especially after a couple years.

Mr. Gifford asked Mr. Herron if a permit was granted allowing three unrelated students at the property, where did that leave the City. Was that an administrative error that we gave them the wrong permit based on our information, or technically did they

have a permit? Mr. Herron advised they had the permit in the sense that it was renewed, but he thought what mattered was the language in the agreement and what a court would look at is what the agreement said. There was clearly a conflict in the agreement, so you had to look at what controls – in this case without being amended, the specific reference would control the general reference to the renewal of the license. There was a specific reference to occupancy by three unrelated, only two of which could be students.

Mr. Gifford asked if anyone reviewed the minutes of the 5/28/13 meeting when Council did this work. Mr. Chapman was reading them right now. Short of listening to the minutes, and hearing exact conversations, there was nothing even referring to a rental permit in that item. The synopsis was just removal of the lot line and there was a mention that it was no longer used as a daycare and the church sought to reestablish the property line and sell 15 Indian Road.

Mr. Chapman asked Mr. Herron to repeat the response he gave to Mr. Gifford. Mr. Herron said his response was there was a conflict in the agreement, so a court would look at what is the most reasonable interpretation. A principle they would apply is the specific controls the general. The specific reference here to three unrelated, only two of which can be students he believed is what controls absent a Council amendment.

Mr. Gifford asked if anybody lived in the home when the property was used as a daycare. Mr. Fairchild replied they had an active daycare, a preschool as well as church use of part of the building and then a rental in the front of the building for a while. Ms. Feeney Roser explained that was why it had that kind of permit because it was previous to the law being changed for the student home ordinance.

Mr. Ruckle asked who drew up the subdivision agreement and whether the church had an attorney review it. Ms. Feeney Roser said the subdivision agreement was drafted by the City Secretary based on the Planning Department report and then reviewed by the Solicitor before going to Council. Mr. Fairchild said they did and yes, they overlooked this change. As Councilman Chapman mentioned, there was no discussion about the rental permit two years ago as the focus was on putting the lot line back in place. Had that parenthetical mistake not been inserted, they would have the same permit with the 3 unrelated parties. They were sensitive to issue of rentals in the City and want to be a good neighbor. At the same time they have to be good stewards of their property. When they found the mistake, and talked about it with Ms. Feeney Roser they recognized they had to come back to Council. All they were asking for was to have what they would have had if there had not been a mistake.

Mr. Chapman asked Ms. Feeney Roser for clarification whether the issuance of an unrestricted, unrelated individual's rental permit had been an error the entire time. Ms. Feeney Roser said it was not an error, it was legal before Council passed the student home ordinance (somewhere in the 90's), which set the distances. Because it was done by zoning, those with more beneficial permits got to keep them provided they were not abandoned for a period of more than a year. There were rental permits out there for five or six people and sometimes more than that because they continue to use the property in that way and keep their rental permits valid. That is what happened in this case which is why they have a permit more beneficial to them than they would have if they applied today. Ms. Feeney Roser said the permit should not have been issued after this agreement because the agreement changed the status of the rental permit.

Mr. Chapman thought Mr. Markham's comments were spot on regarding where the conversation would have gone if this was discussed at the 5/28/13 meeting. It sounded like there were a series of clerical errors to be rectified and brought back to what the legal agreements would mandate.

Mr. Ruckle pointed out there was an error of omission by the church's attorney as their client should have been fully versed in what the contract was supposed to be. He asked who was renting this property at the time when all this came up. Mr. Fairchild said there was a different tenant two years ago, possibly undergraduate or graduate students. The property was originally meant to be a church rectory and when the Rector did not

want to live there, they began to rent it. Mr. Ruckle asked if there were ever three students unrelated living there. Mr. Fairchild did not have this information.

Mr. Morehead's memory of this discussion was that Council did not discuss the permit. He thought if Council had been told, "We are going to give them this and we are going to get that," it would have been a much different conversation than what we had. This was a simple lot line with the expectation that there was no other change. He felt based on that, the original owner of the property deserves the original deal since it was not his intent to change the deal. He knew it was a slightly different interpretation of the same facts that have been stated here.

Mr. Gifford asked for clarification from Mr. Herron regarding his statement about a contradiction. Mr. Herron explained there was a conflict within the agreement itself in paragraph five (explaining the current agreement but explained it incorrectly). Mr. Gifford added it also conflicted with the resolution.

The Chair opened the discussion to the public.

Jeff Lawrence, District 3, cautioned about discriminating against students. He felt it was the church's property and they should be able to do what they wanted with it. He did not feel there was a problem with students in this town but rather there was a problem with unruly residents, be they students or other adults.

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

Mr. Fairchild apologized for not seeing this until now and bringing this back in front of Council. He sensed there was some question that maybe they were trading the permit for the lot line and that was never part of the transaction. The lot line was the lot line. The permit had nothing to do with the whole transaction. The whole thing was meant to be unchanged as the resolution said. That was an essential part of this. Also, all they were asking for was what they had and everybody expected they still had until recently when this issue was found.

Mr. Morehead was thinking of the interpretation of State law that said in questions of conflict, the decision falls to the land owner to their benefit.

Ms. Hadden reiterated that if the owner of the property were to come forward today to get a three unrelated, no qualifications permit at that location, it would be denied. She was sorry that both mistakes happened but because the property was being sold, she could not back an amendment that would allow the current owner to walk away from the responsibility of having students because they have done a good job and the community could end up with something that would not be a good fit.

Mr. Gifford said in going back and forth with the City Solicitor on this, it looked like the City provided an agreement that had its own conflict in it that we created. His feeling was that all the documentation the City put together during that time always had the language about three unrelated, only two of which could be students. Since it appeared the City made the first mistake he was willing to give them back what they already had in the interest of goodwill. Regarding student rental of the property, he had a student home on his street which was never a problem. He did not think it would make a difference since it was just three people.

MOTION BY MR. MOREHEAD, SECONDED BY MR. GIFFORD: TO AMEND THE MINOR SUBDIVISION AGREEMENT AND RESOLUTION AS REQUESTED.

MOTION PASSED. VOTE: 4 to 3.

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

(RESOLUTION NO. 15-O)

26. 10. **ITEMS SUBMITTED FOR PUBLISHED AGENDA**

A. **Council Members:** None

27. 10-B. **OTHERS:** None

28. 11. **APPROVAL OF CONSENT AGENDA**

04:29:30

- A. Approval of Council Meeting Minutes – June 8, 2015
- B. Receipt of Alderman’s Report – June 15, 2015
- C. ***First Reading – Bill 15-17*** – An Ordinance Amending Chapter 20, Motor Vehicles, Schedule IV, Code of the City of Newark, Delaware, By Requiring a Stop Sign on Odessa Way at the Intersection of Ashland Way – ***Second Reading – July 27, 2015***
- D. ***First Reading – Bill 15-18*** – An Ordinance Amending Chapter 20, Motor Vehicles, Schedule VI, Code of the City of Newark, Delaware, By Designating a Portion of the Service Road Parallel to Elkton Road as “No Parking Anytime” – ***Second Reading – July 27, 2015***
- E. ***First Reading – Bill 15-19*** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Deleting the Position of Code Enforcement Manager and Adding the Position of Deputy Director of Planning & Development – ***Second Reading – July 27, 2015***

Ms. Bensley read the Consent Agenda in its entirety.

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

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

28. **Meeting adjourned at 11:26 p.m.**

Renee K. Bensley
Director of Legislative Services
City Secretary