

**CITY OF NEWARK
DELAWARE
BOARDS AND COMMISSIONS REVIEW COMMITTEE
MEETING AGENDA**

**November 24, 2015 – 7:00 PM
Council Chamber**

1. Call to Order
2. Approval of the Minutes of the October 27, 2015 Boards and Commissions Review Committee Meeting
3. Approval of the October 27, 2015 Evaluation of the Election Board by the Boards and Commissions Review Committee
4. Board of Ethics Presentation
5. Discussion and Potential Action Regarding the Committee Review of the Board of Ethics
6. Public Comment
7. Introduction of New Business
8. Next Meeting Date – January 26, 2016
9. Adjournment

The above agenda is intended to be followed, but is subject to changes, deletions, additions, and modifications, as permitted under the Freedom of Information Act of the State of Delaware. The agenda is posted (7) seven days in advance of the scheduled meeting in compliance with 29 *Del. C.* Section 10004 (e)(2). Copies may be obtained at the City Secretary's Office, 220 South Main Street, or online at www.cityofnewarkde.us.

Agenda Posted – November 17, 2015

Attest:

Sworn by:

City Secretary

Notary Public

(Seal)

**CITY OF NEWARK
DELAWARE
BOARDS AND COMMISSIONS REVIEW COMMITTEE
MINUTES
OCTOBER 27, 2015**

Those present at 7:00 p.m.:

Members: Chairperson, Rebecca Powers, At Large
 John Morgan, District 1
 Jo Anne Barnes, District 2
 Roberta Sullivan, District 4
 Maria Aristigueta, District 5
 M. Howland Redding, District 6

Absent: Christopher Laird, District 3

Staff: Renee Bensley, City Secretary

1. **MEETING CALLED TO ORDER BY CHAIR REBECCA POWERS AT 7:02 P.M.**
2. **APPROVAL OF MINUTES OF THE SEPTEMBER 22, 2015 BOARDS AND COMMISSION REVIEW COMMITTEE**

Dr. Morgan requested his handout from the last meeting be added to the minutes.

MOTION BY MS. POWERS, SECONDED BY DR. MORGAN: TO APPROVE THE MINUTES AS AMENDED.

MOTION PASSED UNANIMOUSLY.
VOTE: 6 TO 0. (ABSENT: LAIRD)

3. **ELECTION BOARD REVIEW PRESENTATION**

Ms. Bensley stated the Election Board was being reviewed at this time so the review may be completed prior to the 2016 election season. Any recommendation from the Boards and Review Committee to the Council hopefully would be completed prior to year-end.

Governing Authority : Boards of Elections for municipalities are governed by Title 15, Chapter 75 of the Delaware State Code. The City of Newark Election Board is also governed by Article 10, of the City Charter and Chapter 10 of the City Code.

Qualifications: State Code provides that members shall be qualified electors in the municipality for which they are appointed. They shall not be an elected official or candidate or an immediate family member of elected official or candidate. City Code dictates they are to be citizens of the United States and shall reside within the geographical boundaries of

the City of Newark for one year proceeding their appointment. There are also provisions regarding the Mayor, members of Council, and family members, as well as City employees, not being permitted as members of the Board.

Orientation/Training: Since 2015, Board member specific training has been offered by the New Castle County Department of Elections. Ms. Bensley noted although the New Castle County Department of Elections is titled such, it is a state body. Additionally, trainings are offered for machine operators by the New Castle County Department of Elections, as well as poll worker training hosted by the Board at the City.

Rules of Procedure: The President of the Board is selected by a vote of the Board each year at their Organizational Meeting.

Activity Level: The activity level of the Board correlates with how many contested seats there are each year. In past years, most elections had one race for one open seat. However, in recent years there have been more contested races. The committee meets on an as needed basis. They have met 12 times in the last 5 years. This equates to 2 meetings for each election that was held. There is additional work behind the scenes as part of the mechanics of running the election. The busy season is January 1st through Election Day, which is the second Tuesday in April. Board members also certify candidate eligibility and update the voter registration rolls. Although the City uses the State of Delaware's voter registration rolls, the State does not code what district the voter lives in the City. The City's board members manually code each person that registers to vote in the City of Newark and eliminate voters that have a Newark address but are not within the City limits.

The Election Board members recruit poll workers and machine operators for each district. Each committee member is responsible for staffing the polls in their district. They prepare polling place materials for Election Day and field any issues that arise on Election Day. They are responsible for considering challenges that may come up after the election.

There were currently 6 members on the committee with 1 vacancy in the at-large position. However, there was a nominee submitted by the Mayor and on the next Council agenda for consideration. (*Secretary's Note: The vacant position was filled at the 11/9/15 Council meeting.*) The board would have to elect a new President at the January organizational meeting. Members' terms are 3 years. City residency is a qualification for membership, so there are no members that are not City residents. The committee is compensated \$75 per Election Day worked and \$12/hour for any additional clerical work that has to be completed in advance of the election.

Reporting: The Board is required to keep minutes under the Freedom of Information Act, as well as submitting a certification of the election results to Council prior to new members of Council being sworn in at their organizational meeting in April. The minutes are up to date and kept by the City Secretary's Office staff. Election Board minutes have been posted on the City's website since 2014.

Stakeholder Viewpoints: Samuel Burns, former President provided his views. He felt the current structure of the committee was good for the functionality of the group. He thought 7 members was a good number as he had been on the Board since the Board had only 3 members and it was a lot of work for 3 members to do for a citywide election.

Mr. Burns did not find it necessary for additional meetings. He felt the 3 year term was adequate and felt that all members were contributing to the group. He felt very strongly the Board should remain non-partisan. He stated that meeting with County Board of Elections Department and the touring of County Election facility would be helpful training for new members. This has happened in the past, but would be good to reinstate on a more regular basis. More cross training for board members would be helpful. In addition, Mr. Burns felt that meeting with election boards in other cities and towns could be helpful.

Mr. Burns further stated most Board members tend to be retirees because it is a lot of daytime work. However, there is the consideration that as these individuals step back, the Board may lose institutional knowledge.

Ms. Bensley wished to say it is a lot of work to have a City election and without the Board she would be unable to do it without adding a significant workload to her department's staff. They serve an important function in that they provide a neutral administrator of the election. Having the Election Board as an intermediary for candidate matters is very important. There has been a concerted effort to cross train board members.

Necessity: Although the Election Board has a narrow scope of duties, it is very necessary and is not similar to other Council appointed boards and committees. It is required by State Code and the Board of Elections performs essential work for the City.

Staff's recommendation was the Boards and Commissions Review Committee submit a positive review to Council regarding the Election Board and did not recommend any Code changes for the Board at this time. However, staff recommended the Election Board be encouraged to continue ongoing cross-training efforts to take advantage of the training opportunities as provided by the County Department of Elections and to work to capture that institutional knowledge of the Board.

The Chair opened the floor to questions from the table.

Dr. Aristigueta confirmed they are 3 year terms with reappointment every 3 years.

Ms. Barnes asked who was responsible for certifying candidates. Ms. Bensley stated the Election Board and outlined the process for candidate nomination as follows: a candidate will get a nominating petition from the City Secretary's Office. The candidate is required to obtain a minimum of 10 signatures from registered voters in the district they are running. Once they have the signatures (it is recommended to get 15 in the event an individual is not a registered voter), they return the form to the City Secretary's Office. City

Secretary's Office contacts an Election Board member who comes into our office and verifies the addresses against the list of registered voters for the City. The board member signs off on the petition and then the candidate is officially on the ballot.

Ms. Barnes stated she was concerned there was not anything that verified the candidate's residency status. She recalled an issue in 2014 pertaining to this. Ms. Bensley stated the City is required to treat all candidates equally in regards to proving their residency. The particular candidate in question did have his driver's license in the district and was a registered voter in the district. Individuals that questioned this matter were informed if a formal complaint was filed then the City could investigate the matter. No formal complaint was filed by anyone. Ms. Bensley also added the City Solicitor was consulted by the Election Board on this matter.

Dr. Morgan asked the Election Board would be involved in any future referendums. Ms. Bensley stated the Board would assist in the same manner as a regular City election.

Dr. Morgan raised concerns regarding the number of voter signatures needed to run for Council versus running for Mayor and asked if the number was defined in State or City Code. Ms. Bensley stated this was in City Code, but did not feel the matter was applicable to the Election Board's review.

Dr. Morgan stated it was obvious the Election Board does a lot of work on a short time scale and asked how many hours the Election Board members worked on Election Day. Ms. Bensley stated polls opened at 7 AM and closed at 8 PM and that Election Board members were present on site for at least one hour before and one hour after. Dr. Morgan stated it was his opinion the rate of pay was too low and they should be compensated more in line with the essential service they provided. Dr. Morgan believed the Boards and Commission Review Committee should consider recommending Council that the members of the Election Board be compensated at a more appropriate rate.

Dr. Aristigueta suggested reviewing best practices and other places before making the recommendation. Also, it was her opinion that perhaps people choose to work the elections and participate on the Board because they value participating and are not concerned with the pay rate.

Mr. Gordon Hendry, Election Board member, stated the individuals on the board believed it was their civic duty. His concern was that the Board was comprised mostly of older individuals. He stated he has participated in elections for over 30 years. His only suggestion would be to consider paying the same rate that the State of Delaware pays for polling place workers. He stated the State of Delaware pays \$255 to be an inspector. Mr. Hendry suggested leaving the City Election Board pay scale as is.

Ms. Bensley wished to clarify that amount specified by Mr. Hendry was for the poll workers in the polling place on Election Day, not for State Board members. Machine

operators for City elections make \$155 and for poll workers that do the clerical work are paid \$135 for the day.

Ms. Barnes asked Mr. Hendry if the City offered a higher wage for elections would that incentivize younger people to come forward to participate in the election process. Mr. Hendry stated he did not believe it would.

Ms. Powers suggested creating a procedures manual.

After discussion the following changes were made to the evaluation form:

Governing Authority: Comment section: change the word approved to reviewed and the remainder of the sentence to read: by the Board.

Qualifications: Areas of strength: the section should read: Qualifications exclude anyone who might have significant vested interest in the outcome of elections. Areas for Improvement: the section should read: Recruitment process is not clear. Also, only specifics are "U.S. Citizen" and resident of Newark. Comments: the section should read: Clarify appointment in City Code.

Orientation/Training: Areas of strength: the section should read: All members trained. Comments section: the section should read: Training included in manual. Remove the notation in the Areas for Improvement.

Ms. Barnes asked Mr. Hendry if he felt that new members were given adequate training and preparation in their first year on the Board. He stated he was the newest member and there was not any required training. He stated everyone on the Board when he joined was well versed on the state law and how it ran. There were only a few things that were different (from State to the City of Newark). He concurs that things should be written down.

Rules of Procedure: No questions/comments

Activity Level: No questions/comments

Ms. Bensley stated each Board member is responsible for their district during Election Day activities. However, with work that precedes the election, the responsibility is shared by all Board members.

Ms. Sullivan confirmed with Ms. Bensley that the certification is done in City Hall.

Reporting: Compliance with existing reporting requirements. Areas of strength: the section should read: Certification of election results made in a timely and effective manner. Appeal process for decisions of the body: the section should read: None outside the City

and State Codes. Ms. Bensley wished to add that individuals may file with the State Election Commissioner to overturn the results. This is found in the State Codes. There is however, an appeals process to the City Board of Elections in the City Code for perceived misconduct. The following wording should be added in this section: Appeals process for decisions is available in State Code.

Dr. Morgan stated it was his opinion there was more to reporting than just taking minutes. The Board is also required to report the results of elections.

Ms. Barnes wanted clarification of the timing of the Election Board's meeting. They had been meeting the night of the election and it had been changed two days after.

Ms. Bensley stated initially the Board of Elections were meeting within 48 hours of the election. There had been a question from a citizen regarding whether the election results should be certified on the night of the evening so there would be a full 7 days between certification and the swearing in of candidates. This practice was done one year. The City was advised by the County Election Board they would recommend the City not continue same election night certification because the Election Day is a very long day and when counting ballots, "fresh eyes" and "fresh minds" are necessary. There is also an appeals period where someone can contest the unofficial results. They are able to do so within 2 business days of the close of the election. Therefore, the County Election Board recommended the City return to the 48 hour timing after the election. Ms. Barnes stated the candidates know of the outcome the night of the election. Ms. Bensley stated "unofficial" results are announced election night with certification happening within 48 hours.

Stakeholders Viewpoints: Mr. Hendry stated the procedures should be documented but would not offer any other changes.

Ms. Barnes asked if Mr. Hendry felt it necessary to increase the Board's membership. He replied he did not.

Necessity: Scope of duties. Areas of strengths: the section should read: Clearly documented in State and City Codes what is required of Election Board members. In the comment section add: Required by State Code.

Dr. Aristigueta asked if the City ever does citizen surveys. Ms. Bensley replied that a resident survey is done every five years. They do not ask questions about every board or committee but there is a section for comments. The survey is directed more to services rather than a referendum on particular candidates, etc.

Activity Level: The Board of Election is required to meet annually and as needed. Additionally, in the past five years the Board has met 12 times and the last two meetings were January 6, 2015 and April 16, 2015. The minutes are complete and up-to-date and are maintained by the City. There are 7 members on the Board of Election. There is one

vacancy, but that is expected to be filled very soon. The terms are for 3 years. The committee chair's term is for 1 year. The chair is elected by the committee.

Mr. Redding asked if the terms were staggered. Ms. Bensley stated they were staggered with renewal in January of each year.

After further discussion on compensation by the commission, it was decided that the Commission would like the compensation to be reviewed. Ms. Bensley stated she will survey other Election Boards in the state and report back.

After discussion, the recommendation was made to amend Section 10-1 of the City Code to state as follows:

THERE IS HEREBY CREATED AN ELECTION BOARD THAT SHALL BE COMPOSED OF 7 MEMBERS WITH ONE MEMBER BEING NOMINATED FROM EACH OF THE 6 DISTRICTS INTO WHICH THE CITY HAS BEEN DIVIDED FOR ELECTION PURPOSES BY THE RESPECTIVE COUNCIL MEMBER AND ONE MEMBER BEING NOMINATED ON AN AT-LARGE BASIS BY THE MAYOR, WITH ALL MEMBERS BEING APPROVED BY MAJORITY OF COUNCIL.

MOTION PASSED. VOTE: 6 TO 0.

**YES: ARISTIGUETA, BARNES, MORGAN, POWERS, REDDING, SULLIVAN
ABSENT: LAIRD.**

This Ordinance would go for first reading and when the second reading of the ordinance occurs that, the Committee's evaluation will be included. Ms. Bensley recommended making the wording conditional on the approval of the City Solicitor as to the legality and the Committee agreed to this suggestion.

The final overall recommendation of the Committee is as follows:

The committee appears to be well organized and well-functioning under current leadership. The loss of a leader with so many years of experience will make the documentation of procedures and training very important. In addition, the City and State codes specify a wide variety of responsibilities before, during and after elections. These activities also involve a wide range of other people involved in the process. The creation of a manual for both the Election Board members and for poll workers would codify the requirements and provide an excellent resource. It is recommended such a manual be prepared prior to the next major election and reviewed by the Board. It would also be useful to clarify the appointment process and qualifications for membership on the Election Board.

4. PUBLIC COMMENT

There was no one present from the public that wished to speak.

5. DISCUSSION OF TRAINING FOR NEW MEMBERS OF BOARDS AND COMMISSIONS

Dr. Morgan reported he had attended several meetings of the Board of Adjustment and the Planning Commission. He expressed concern that some members, if not most members of the Planning Commission were not fully aware of what was permissible under Robert's Rules of Order and what the precedence was for what the commission had done in the past, specifically, the issue of tabling proposals that originated with developers or Council. Dr. Morgan stated there seems to be some confusion on what is allowed or is not allowed by Robert's Rules of Order. In his opinion there should be some basic training in what Robert's Rules of Order allows.

Ms. Bensley stated it was her opinion this may be more appropriate in the evaluation of the particular committee (Planning Commission) since there is a specific training section in the evaluation. She additionally stated there has been training provided for Robert's Rules of Order for Council as well as all Boards & Commissions that were available to attend. However, there are some new members and she would be happy to redistribute the training materials. The commission concurred.

6. INTRODUCTION OF NEW BUSINESS

Ms. Sullivan stated she had prepared the evaluation form for this evening's meeting and asked if this was a precedent this Board wished to continue and asked if the members should rotate the preparation of the form. Dr. Aristigueta found it useful. Ms. Powers stated she was not entirely comfortable with one of the commission members doing this. She thought more discussion may ensue if not just one individual was responsible for doing it. Dr. Morgan stated he thought the meeting ran more efficiently using the form. He thought it would make sense if a commission member had a familiarity with a particular board or commission that they may take the lead in preparing a draft of the comments. Ms. Barnes stated she felt the template was helpful. She stated she was uncomfortable as well with just one commission member doing the evaluation form and would like each member to have the form and complete to the best of their knowledge and bring to each meeting.

Ms. Bensley stated the next board to be evaluation would be the Board of Ethics. Ms. Powers stated she would do the Board of Ethics.

7. NEXT MEETING DATE

The next meeting is scheduled for Tuesday, November 24, 2015 at 7:00 p.m.

8. THE MEETING WAS ADJOURNED AT 8:35 P.M.

Renee K. Bensley
City Secretary

/tas



BOARDS AND COMMISSIONS REVIEW COMMITTEE REPORT

Name of Board/Commission/Committee: Election Board

Representatives Present For Review: Gordon Hendry (District 6), Renee Bensley (Staff support)

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Governing Authority	City Code and/or resolutions governing the body	Title 15, Chapter 75 of Delaware State Code and Article X of City Charter and Chapter 10 of City Code are very detailed and specific concerning activities required from the members of Election Board,	There were references within the background information provided to a potential manual of election preparation and conduct procedures referenced, but none available to date.	The procedures manual including the election preparation, conduct and follow up should be progressed, completed, and reviewed by the Election Board.
Qualifications	Are the required qualifications appropriate for the body?	Qualifications exclude anyone who might have significant vested interest in the outcome of elections.	Recruitment process is not clear. Also, only specifics are "U.S. Citizen" and resident of Newark.	Clarify appointment process in Section 10-1 of the City Code.

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Orientation/ Training	Existing orientation and/or training for the body	Training via the NCC Department of Elections is available for Board members. Machine operator and poll worker training is also available through NCC as well.		Training procedures should be included in manual.
	Level of participation by members of the body in the above training	All members appointed as of review have completed training.		
Rules of Procedure	Selection of chair and other officers	Clear time and method for selection of leadership is provided and adhered to.		
	Meeting procedures	Clear agenda and timing of meetings provided and adhered to.		
Activity Level	Amount of active participation by members	Minutes provided indicate good strong level of meeting participation by all districts. All members participate in some sort of outside activity requirements.		Continued cross training of members on all aspects of election work recommended.

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Reporting	Existing reporting requirements	Minutes clear, complete and available.		
	Compliance with existing reporting requirements	Certification of election results made in a timely and effective manner.		
	Appeal process for decisions of the body	Appeals process for decisions is available in State code.		
Stakeholder Viewpoints	Views of members of the body being evaluated	Members feel things are going well as currently functioning.	Follow up on Mr. Burns' suggestions as to future training for new members. (see page 3 of background document) Documentation of procedures is recommended.	Loss of Mr. Burns' experience will be significant.
	Views of department heads who work with the body	Effective organization.	Continued cross training would be helpful. Need to capture institutional knowledge of existing board members.	Follow up on cross training and documentation recommendations provided by the City Secretary.
	Views of the public who interact with the body	Well regarded by other government agencies.		No comments from members of the public provided in document. The Committee believes it would have heard from the active Newark public if there was an issue.

CATEGORY	ASPECTS	AREAS OF STRENGTH	AREAS FOR IMPROVEMENT	COMMENTS
Necessity	Scope of duties	Clearly documented in State and City Codes what is required of Election Board members.	Training and documentation of this wide scope of responsibilities is critical.	Board is required by State Code.
	Similarity to other bodies			Not similar to any other bodies that we are aware of.

Activity Level

1. When is this board or commission required to meet? Monthly Quarterly Annually As Needed Other (Explain) _____
2. In the past five years, this board or commission has met 12 times. Its last two meetings were on 1/6/15 and 4/16/15.
3. Do the minutes of this board or commission maintained by the City appear to be complete and up-to-date? Yes No
If no, identify any apparent deficiencies: _____
4. How many members are on this committee? 7
5. How many vacancies are currently on this committee (number and percentage)? 1 at time of review (filled at 11/9/15 Council meeting)

Board Membership

6. How long is a committee member's term on this committee? 1 year 2 years 3 years Other (Explain) _____
7. Is City residency a qualification for membership on this committee? Yes No
8. If City residency is not a requirement, does this committee have any members who are not City residents? Yes No

9. How long is the committee chair's term on this committee? 1 year 2 years 3 years Other (Explain) _____

10. How is the Chair selected for this committee? Volunteer Elected by Committee Appointed by Mayor

Compensation

11. How much is the compensation for this committee? Minimal – varies with their level of activity - \$75 on election day and \$12/hour for clerical work provided.

Final overall recommendations of the Boards and Commissions Review Committee:

The committee appears to be well organized and well-functioning under current leadership. The loss of a leader with so many years of experience will make the documentation of procedures and training very important. In addition, the City and State codes specify a wide variety of responsibilities before, during and after elections. These activities also involve a wide range of other people involved in the process. The creation of a procedures manual for both the Election Board members and for poll workers would memorialize the requirements and provide an excellent resource. It is recommended such a manual be prepared prior to the next major election and reviewed by the Election Board. It would also be useful to clarify the appointment process and qualifications for membership on the Election Board. The Committee recommends amending Section 10-1 of the City Code to clarify that members of the Election Board are nominated by the Council member of the respective district they represent with the at-large member being nominated by the Mayor. All members would still be appointed pending final Council approval. Additionally, the Committee recommends that Council review the appropriateness of the existing compensation of the Board, review average compensation for other Election Boards in the State and consider increasing compensation.

Approved by the Boards and Commissions Review Committee on _____, 2015.

Vote: __ to __.

Attest:

City Secretary

Chairperson
Boards & Commissions Review Committee

For Office Use Only:

Date Submitted to Council: _____, 2015

Action Taken by Council:

**CITY OF NEWARK
DELAWARE**

November 17, 2015

TO: Boards & Commission Review Committee Members
FROM: Renee Bensley, City Secretary *RUB*
VIA: Carol Houck, City Manager
CC: Mayor and Council
SUBJECT: Board of Ethics Review Information and Staff Recommendation

Governing Authority

Boards of Ethics for municipalities are empowered by Title 29, Chapter 58, Subsection §5802(4) of the Delaware State Code (attached). The Board of Ethics for the City of Newark is also governed by Sections 2-97, 2-97.1, 2-97.2, 2-97.3, 2-97.3.1, 2-97.4 and 2-97.19 of the City Code (attached).

Qualifications

City Code provides that members shall be residents of the City (Sec. 2-97).

Orientation/Training

Currently, no training for board members is provided.

Rules of Procedure

The chair and secretary are to be selected annually from among the Board members (Sec. 2-97.1). In practice, since the Board has not met annually, this has not taken place. The rules of procedure for a hearing of the Board are outlined in Sec. 2-97.3.1 of the City Code.

Activity Level

The activity level of the Board of Ethics has historically correlated with the number of ethics complaints filed. This committee meets on an as needed basis. The committee has met 2 times in the last five years, once in 2012 to hold a hearing for a complaint filed and once in 2015 to provide an advisory opinion requested. There are currently four members on the Board with one vacancy. Members are appointed for five year terms. As mentioned earlier, members are required to be residents of the City. There is no compensation for this committee.

Reporting

Currently, the committee is required to keep minutes under the State of Delaware Freedom of Information Act and Section 2-97.2 of the City Code. Additionally, Section 2-97.3.1(n) of the City Code states that "[t]he written decision on a particular complaint shall

constitute the minutes of the board of ethics with respect to the matter.” The committee has up-to-date minutes which are kept by the City Secretary’s Office staff and the hearing officer for the Board, which traditionally has been either the City Solicitor or Deputy City Solicitor. Board of Ethics decisions have been posted on the City’s website since 2015.

Stakeholder Viewpoints

All Board members were contacted by mail to solicit comments for the review, however, none submitted any suggested changes.

Renee Bensley is the City Secretary/Director of Legislative Services for the City, acts as staff for the Board of Ethics. She noted that she has had very limited experience with the Board as they have only had to meet one time during her tenure with the City. Based on that experience, she noted that Board members were very conscientious in their efforts regarding determining an advisory opinion, which was the first on record for the Board. Training by the City Solicitor on the Newark Code of Ethics would be beneficial and should be implemented, especially for new members. Ms. Bensley felt the Board could be more active, specifically if a standard were set for the Board to regularly review the City’s Ethics Code, perhaps on a biennial basis every two years, to ensure that it has been updated to adhere to State standards as it has not been amended since 1997.

Necessity

The Board of Ethics has a narrow scope of duties in that it is only responsible for the duties outlined in Section 2-97.3 to aid in the implementation of the Code of Ethics for public officers and employees. It is not similar to other Council-appointed boards and commissions, however, it is required as part of the Code of Ethics for the City, which cannot be amended without approval from the State Public Integrity Commission and performs essential work to provide a fair and impartial arbiter for the implementation of the City’s Code of Ethics.

Recommendations

Staff recommends that the Boards and Commissions Review Committee submit a recommendation to Council to update Section 2-97.2 to reflect that the Board of Ethics shall meet at least biennially to provide Council with recommendations regarding the updating and maintenance of the City Code of Ethics. Additionally, staff recommends that training be instituted for members of the Board of Ethics in the form of a meeting with the City Solicitor for new members.

Thank you for your consideration and please contact me if you have any questions.

/rkb

**Part V
Public Officers and Employees
Chapter 58**

LAWS REGULATING THE CONDUCT OF OFFICERS AND EMPLOYEES OF THE STATE

Subchapter I

State Employees', Officers' and Officials' Code of Conduct

§ 5801 Short title.

This subchapter shall be known and may be cited as the "State Employees', Officers' and Officials' Code of Conduct."
(67 Del. Laws, c. 417, § 1.)

§ 5802 Legislative findings and statement of policy.

The General Assembly finds and declares:

(1) In our democratic form of government, the conduct of officers and employees of the State must hold the respect and confidence of the people. They must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

(2) To ensure propriety and to preserve public confidence, officers and employees of the State must have the benefit of specific standards to guide their conduct and of some disciplinary mechanisms to guarantee uniform maintenance of those standards. Some standards of this type are so vital to government that violation thereof should subject the violator to criminal penalties.

(3) In our democratic form of government, it is both necessary and desirable that all citizens should be encouraged to assume public office and employment, and that, therefore, the activities of officers and employees of the State should not be unduly circumscribed.

(4) It is the desire of the General Assembly that all counties, municipalities and towns adopt code of conduct legislation at least as stringent as this act to apply to their employees and elected and appointed officials. This subchapter shall apply to any county, municipality or town and the employees and elected and appointed officials thereof which has not enacted such legislation by January 23, 1993. No code of conduct legislation shall be deemed sufficient to exempt any county, municipality or town from the purview of this subchapter unless the code of conduct has been submitted to the State Ethics Commission and determined by a majority vote thereof to be at least as stringent as this subchapter. Any change to an approved code of conduct must similarly be approved by the State Ethics Commission to continue the exemption from this subchapter.

(67 Del. Laws, c. 417, §§ 1, 2; 68 Del. Laws, c. 433, § 1.)

§ 5803 Construction.

This subchapter shall be construed to promote high standards of ethical conduct in state government.
(59 Del. Laws, c. 575, § 1; 67 Del. Laws, c. 417, § 1.)

§ 5804 Definitions.

For the purposes of this subchapter:

(1) "Close relative" means a person's parents, spouse, children (natural or adopted) and siblings of the whole and half-blood.

(2) "Commission" means the State Public Integrity Commission established by this chapter.

(3) "Commission Counsel" means the legal counsel appointed by the Commission pursuant to this chapter.

(4) "Compensation" means any money, thing of value or any other economic benefit of any kind or nature whatsoever conferred on or received by any person in return for services rendered or to be rendered by oneself or another.

(5) A person has a "financial interest" in a private enterprise if:

a. The person has a legal or equitable ownership interest in the enterprise of more than 10% (1% or more in the case of a corporation whose stock is regularly traded on an established securities market);

b. The person is associated with the enterprise and received from the enterprise during the last calendar year or might reasonably be expected to receive from the enterprise during the current or the next calendar year income in excess of \$5,000 for services as an employee, officer, director, trustee or independent contractor; or

c. The person is a creditor of a private enterprise in an amount equal to 10% or more of the debt of that enterprise (1% or more in the case of a corporation whose securities are regularly traded on an established securities market).

(6) "Honorary state official" means a person who serves as an appointed member, trustee, director or the like of any state agency and who receives or reasonably expects to receive not more than \$5,000 in compensation for such service in a calendar year (not including any reimbursement for expenses).

Sec. 2-97. - Board of ethics creation; composition; terms of office; vacancies.

There shall be a Newark Board of Ethics which shall consist of five members appointed by the council from among the residents of the city. The term of each member of the board shall be five years. Each member shall serve until his successor is appointed. Vacancies shall be filled by the council for the unexpired term.

(Ord. No. 88-37, Amend. No. 2, 12-12-88)

Sec. 2-97.1. - Selection of chairman and secretary of the board of ethics.

The board shall select a chairman and secretary annually from among its members.

(Ord. No. 88-37, Amend. No. 2, 12-12-88)

Sec. 2-97.2. - Meetings of board of ethics—Frequency; quorum; minutes.

The board shall meet at its own call or at the request of the city council or the city manager. Three members shall constitute a quorum. Complete minutes shall be kept of the proceedings.

(Ord. No. 88-37, Amend. No. 2, 12-12-88)

Sec. 2-97.3. - Duties of board of ethics.

It shall be the function of the board to implement the code of ethics adopted by the council for public officers and employees. The duties of the board shall be:

- (a) To receive and initiate complaints of violations of the code of ethics;
- (b) To hear and investigate complaints of these violations and transmit the findings to the city council or the city manager;
- (c) To render advisory opinions or interpretations with respect to the application of the code of ethics, either on request or on its own initiative; and
- (d) To propose revisions of the code of ethics to assure its continuing pertinence and effectiveness.

(Ord. No. 88-37, Amend. No. 2, 12-12-88; Ord. No. 97-29, Amend. No. 1, 11-24-97)

Sec. 2-97.3.1. - Rules of procedure.

- (a) Complaints as to violations of the code of ethics shall file in the office of the city secretary. After receipt of a complaint, the city secretary, or the designee of the city secretary, shall, within seven days of receipt thereof, send copies of the complaint to each member of the board of ethics and to the official or officials against whom such complaint has been filed. Hereinafter, the complaining party shall be referred to as the "complainant" and the official against whom a complaint has been lodged shall be referred to as the "respondent."
- (b) The city secretary shall also promptly contact the members of the board of ethics, as well as the complainant and respondent, in order to ascertain a date and time when a hearing can be convened on such complaint. As soon as a date and time have been agreed upon for a hearing before the board of ethics, the city secretary shall send written notice of such scheduling to the complainant and to the respondent.
- (c) The city secretary shall also send a copy of these rules of procedure to the complainant and the respondent. If either the complainant or the respondent advises the city secretary that he or she is represented by legal counsel or other representative, a copy of these rules of procedure shall be provided to that attorney or representative.
- (d) Any party to a hearing before the board of ethics has the right to be represented by an attorney or to be assisted by a lay person.
- (e) The record of hearings before the board of ethics shall be preserved on audio recording equipment. Any party to a hearing shall have the right to arrange for the services of a certified court reporter to transcribe all or any portion of the proceedings. Such court reporter services shall be paid for by the party requesting such services, or by both parties if mutually agreed upon prior to the hearing.
- (f) Prior to the commencement of the evidentiary portion of a hearing before the board of ethics, any party may challenge the jurisdiction of the board over the matters complained of. The board of ethics may raise jurisdictional questions *sua sponte*. The board shall satisfy itself that it has jurisdiction over the respondent and the subject matter of the complaint before proceeding with the remainder of the hearing.

The board shall have the authority to dismiss any complaint which it deems to be frivolous. For purposes of this section, a "frivolous" complaint is a complaint which alleges a substantially insignificant or trivial violation of the code of ethics or a minor violation which occurred as the result of inadvertence or innocent error.

(g)

The board shall be provided legal assistance during the course of the hearing by the city solicitor or by the deputy city solicitor. The board may elect to designate its legal counsel to serve in the capacity as law officer during the conduct of the hearing. At any appropriate point in the proceedings, the board shall have the right to adjourn to an executive session in order to seek the advice of its legal counsel.

- (h) At the outset of a hearing, a party, or his or her representative, shall be offered the opportunity to make an opening statement summarizing the position of that party as well as what that party believes the evidence will show. The complainant shall make an opening statement first, followed by that of the respondent.
- (i) Complainant shall present his or her case first. Evidence shall be presented in the form of testimony, documents, or other demonstrative evidence. All witnesses shall testify under oath. In order to testify at a hearing, a witness shall be called by one of the parties or by the board. Members of the public not called to testify by a party or by the board shall not be permitted to testify. Any witness called by any party or the board shall be subject to cross-examination by any other party. Members of the board may question any witness.
- (j) The board of ethics shall have the power to compel the attendance of witnesses and/or the production of documentary evidence by the issuance of a subpoena. Such subpoenas may be issued by the board *sua sponte*. A party seeking to compel the attendance of a witness or the production of documents shall request the issuance of an appropriate subpoena not less than seven days prior to the date of the relevant hearing. Such subpoenas shall be issued by the chairman of the board of ethics on behalf of the board.
- (k) In order to be admissible, all evidence shall be relevant and material to the issues before the board. Evidence will be excluded which is unduly cumulative, repetitive, or scandalous.
- (l) After the evidentiary portion of the hearing has been concluded, each party shall have an opportunity to make a closing statement to the board. The complainant shall give a closing first, followed by the respondent. The complainant may then make a brief rebuttal closing.
- (m) As promptly as possible after the close of the hearing, the board of ethics shall deliberate and come to a decision on the complaint. In arriving at its decision in a particular case, a majority of the board shall be satisfied that the complainant has proved, by a preponderance of the evidence, that a provision of the code of ethics has been violated by respondent.
- (n) As soon after a vote as may be practicable, the board shall issue a written decision which sets forth its findings of fact, conclusions of law, and decision on the complainant. Said written decision shall be forwarded to the parties or their representatives. The written decision on a particular complaint shall constitute the minutes of the board of ethics with respect to the matter.
- (o) All decisions of the board of ethics shall be lodged with the city secretary. The city secretary shall provide copies of such decisions to the mayor and council for review and acceptance. If the board of ethics has determined that a violation of the code of ethics has occurred, the mayor and council shall establish the penalty for such violation.
- (p) The parties to a hearing may, with the consent of the board of ethics, agree to waive or dispense with any of the aforementioned rules of procedure. If the complainant and the respondent agree to any such change, a request to proceed in another fashion shall be submitted to the board of ethics not less than seven days prior to the date of the relevant hearing.

(Ord. No. 97-29, Amend. No. 2, 11-24-97)

Sec. 2-97.4. - Members of board of ethics—Conflict of interests.

No member shall sit on the board concerning any matter which directly or indirectly affects his own interests.

(Ord. No. 88-37, Amend. No. 2, 12-12-88)

Sec. 2-97.19. - Applicability of code of ethics; interpretation of provisions.

When a councilman or other official or employee has doubt as to the applicability of any provision of this code of ethics to a particular situation, he should apply to the board for an advisory opinion and be guided by the opinion given. The councilman or other official or employee shall have the opportunity to present his interpretation of the facts at issue and of the applicable provisions or provisions of the code of ethics before such advisory decision is made. The code of ethics shall be operative in all instances covered by its provisions, except when superseded by an applicable state statute or city charter provision and said statute or city charter provision is mandatory, or when said state statute or city charter provision is discretionary but is determined to be more appropriate or desirable.

(Ord. No. 88-37, Amend. No. 2, 12-12-88)

**CITY OF NEWARK
DELAWARE**

BOARD OF ETHICS

**NOTICE OF AND AGENDA FOR A
MEETING OF THE BOARD OF ETHICS**

**Thursday, October 1, 2015
7:00 PM - Council Chamber**

The Newark Board of Ethics will hold a hearing on Thursday, October 1, 2015 at 7:00 pm in the Council Chamber of the Newark Municipal Building, 220 South Main Street.

The purpose of the meeting is to consider Mayor Polly Sierer's request for an advisory opinion regarding her potential participation in discussion and potential votes regarding the pending rezoning ordinance for the property located at 300 West Main Street (Newark Country Club). Mayor Sierer seeks an advisory opinion regarding an interpretation of the relevant City Code provision (Section 2-97.11 – Conflicts of interests prohibited generally) as it applies to her positions as a voting member of City Council and as a member of the Newark Country Club.

If you have any questions, please contact the City Secretary's Office at 366-7000.

/rkb

Agenda Posted – September 24, 2015

Attest:

Sworn by:

City Secretary

Notary Public (Seal)

Advertised: **Newark Post** – September 25, 2015

be guided by the opinion given,” Mayor Sierer seeks an advisory opinion regarding interpretation of the relevant Code provision, City Code Section 2-97.11, Conflicts of interest.

Pursuant to Newark Code of Ethics provision 2-97 .11.: "No councilman or other official or employee, whether paid or unpaid, shall engage in any business or transaction or shall have a financial or personal interest, direct or indirect, which would be incompatible with the proper discharge of his official duties in the public interest or would tend to impair his independence of judgment or action in the performance of his official duties."

Per Section 2-97.5.5 (j): "*Personal or private interest* shall mean an interest in a matter which tends to impair the independent judgment of an official or employee in the performance of his duties with respect to that matter."

Section 2-97.11 (b)(1) of the Newark Code of Ethics provides that “a person has an interest which tends to impair his independence of judgment in the performance of his duties with respect to any matter when any action or inaction with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent than such benefit or detriment would accrue to others who are members of the same class or group of persons.”

Summary of Evidence

1. Mayor Sierer addressed the Board pursuant to Section 2-97.19 of the City Code, which gives the official or employee requesting an advisory opinion “the opportunity to present his interpretation of the facts at issue and of the applicable provisions of the Code.” She stated that she became a social member of the Newark Country Club on March 6, 2014. Neither she nor any close relative serves on any Board or committee associated with the Club. She purchased a single share of common stock as a condition of membership. She does not believe that ownership of this single share of stock is a financial interest that would be incompatible with the proper

discharge of her official duties as Mayor in participating and voting on the rezoning ordinance. She does not believe that her membership in the Club would tend to impair her independence of judgment or action in this regard.

2. Upon questioning from the Board, Mayor Sierer reiterated her belief that her social membership in the Club would have no impact on her independence of judgment in her consideration of the rezoning ordinance. Mr. Garvin expressed his reluctance to issue an advisory opinion under these circumstances when it was likely that a complainant raising the same conflict of interest issue could come before the Board after Mayor Sierer cast a vote in favor or against the rezoning. Both Mr. Herron and Mr. Hoffman stated that the Code required the Board to render an advisory opinion based on the facts before it. Mr. Herron explained that if a Complaint was filed after the Mayor cast a vote on the rezoning, the Board would not be precluded from revisiting the issue at that time based on any new testimony or evidence brought forth by a complainant.

Findings of Fact and Conclusions of Law

1. Pursuant to Section 2-97.3(c) of the Newark City Code, it is the duty of the Board of Ethics to render advisory opinions or interpretations with respect to the application of the Code of Ethics.

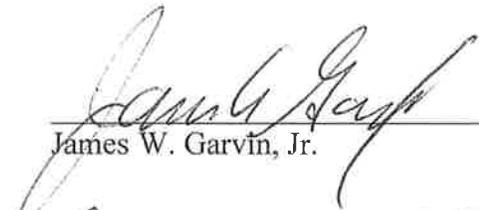
2. Following consideration of the testimony and evidence Board Member Peters moved that the Board advise Mayor Sierer that it did not consider her membership in the Newark Country Club to be a conflict of interest within the meaning of Section 2-97.11 of the City Code which would be incompatible with the proper discharge of her official duties or would tend to impair her independence of judgment or action with respect to her participation in discussion and votes regarding the pending rezoning ordinance affecting the Country Club property. The motion

was seconded by Board Member Rich. The motion passed by a 3-1 vote, with Board Member Garvin casting the "nay" vote.

Decision

The Board of Ethics hereby advises Mayor Sierer that in its opinion based on the testimony and evidence presented, it does not consider her membership in the Newark Country Club to be a conflict of interest within the meaning of Section 2-97.11 of the City Code which would prevent her from participation in discussion and votes regarding the pending rezoning ordinance affecting the Country Club property.

FOR THE BOARD OF ETHICS:



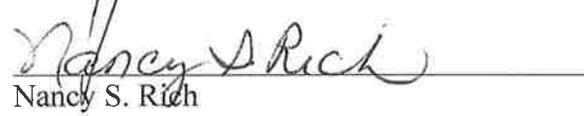
James W. Garvin, Jr.



Mary Ellen Green

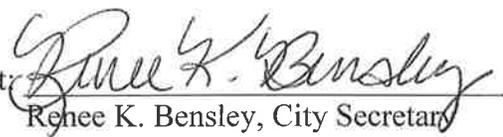


Raymond I. Peters



Nancy S. Rich

Dated: November 13, 2015

Attest: 

Renee K. Bensley, City Secretary

**CITY OF NEWARK
DELAWARE**

BOARD OF ETHICS

**Wednesday, March 21, 2012
7:00 PM - Council Chamber**

The Newark Board of Ethics will hold a hearing on Wednesday, March 21, 2012 at 7:00 pm in the Council Chamber of the Newark Municipal Building, 220 Elkton Road.

The purpose of the meeting is to hear a complaint by Mr. John D. Flaherty, 712 W. 26th Street, Wilmington, Delaware, against Planning Commissioner Angela Dressel concerning her participation in a vote regarding the proposed rezoning of land involving the Newark Charter School expansion.

If you have any questions, please contact the City Secretary's Office at 366-7070.

/pmf

Posted: March 12, 2012

Original

**BEFORE THE BOARD OF ETHICS
OF THE CITY OF NEWARK**

**In the matter of the Complaint)
of John D. Flaherty,)**

Nature and Stage of Proceedings

A quorum of the Board of Ethics being present, the Board convened on Wednesday March 21, 2012, at 7:00 p.m. in the Council Chamber, Newark Municipal Building. Board members present were Mary Ellen Green, Nancy Rich, Raymond I. Peters, Dana Dimock and James W. Garvin, Jr.

At the outset of the hearing, the Board voted to direct Deputy City Solicitor Paul E. Bilodeau, Esq. to conduct the proceedings as its law officer.

Complainant John D. Flaherty attended the hearing and acted *pro se* during the hearing.

Respondent Angela Dressel attended the hearing. Ms. Dressel was represented by Mark Sisk, Esq.

Also present was Roy H. Lopata, former Newark Planning & Development Director, and Patricia M. Fogg in her official capacity as City Secretary.

An audio recording of the proceedings was prepared. The hearing was conducted in an open session of the Board of Ethics. All witnesses were sworn.

These proceedings were initiated by a Complaint filed by Mr. Flaherty on or about February 27, 2012. In this Complaint, it is alleged that Newark Planning Commissioner and Newark Charter School teacher Angela Dressel committed an ethics violation by participating in the "discussion and vote regarding the proposed rezoning of land that would be used by the Newark Charter School Expansion." The Complaint

further stated that Ms. Dressel's husband, Newark Charter School Board President Stephen Dressel, also offered testimony in support of the rezoning at this hearing. The Complaint is silent as to the specific provision or provisions of the Newark Code of Ethics that were allegedly violated by Ms. Dressel.

Pursuant to Newark Code of Ethics provision 2-97.11.: "No councilman or other official or employee, whether paid or unpaid, shall engage in any business or transaction or shall have a financial or personal interest, direct or indirect, which would be incompatible with the proper discharge of his official duties in the public interest or would tend to impair his independence of judgment or action in the performance of his official duties."

Per Section 2-97.5.5.(j): "*Personal or private interest* shall mean an interest in a matter which tends to impair the independent judgment of an official or employee in the performance of his duties with respect to that matter."

Under Section 2-97.3.1.(m) of the Newark Code of Ethics, the Complainant has the burden of proving to a majority of the Ethics Board that a provision of the Code of Ethics has been violated. The Complainant must prove a violation occurred by a preponderance of the evidence.

Summary of Evidence

1. In his Opening Statement, Complainant Flaherty read from a prepared statement which is attached hereto and made part hereof as Exhibit "A". The statement did not reference any specific Newark Code of Ethics provision. Rather, the Complainant alleged violations of the State of Delaware Ethics Code. As in his Complaint, Mr. Flaherty reiterated a violation occurred because Ms. Dressel participated

in a discussion and vote regarding the proposed rezoning of land by the Newark Charter School, at a time when she was employed there as a teacher. Mr. Flaherty's opening statement also noted that Ms. Dressel's husband was the Newark Charter School Board President, and that he offered testimony at this hearing. After presenting his opening statement, Mr. Flaherty rested his case. Neither the Complaint nor the Opening Statement alleged that Ms. Dressel had a financial interest in the outcome of the Planning Commission vote.

2. Upon cross examination by the Board, when asked if it was a defense that Ms. Dressel was relying upon the advice of the City Solicitor, Mr. Flaherty asserted such was not a valid defense, and that "common sense" required that she recuse herself from this proceeding. Mr. Flaherty further stated it was "up to the Board" to determine if Ms. Dressel acted with due diligence in seeking advice from the City Solicitor as to whether she was able to participate in the Planning Commission vote. Upon questioning by Mr. Sisk, Mr. Flaherty admitted that he was not present at the February 7, 2012 Planning Commission meeting, and that he had not attended a Newark Planning Commission meeting in the past.

3. Mr. Sisk then moved to dismiss the proceedings arguing that neither the Complaint nor the Opening Statement made any specific reference to the violation of a Newark Code of Ethics provision. This motion was denied by the law officer, and Mr. Sisk was instructed to proceed with Respondent's case in chief.

4. Ms. Dressel testified that in 2007, a member of the City Council asked her to consider becoming a member of the Planning Commission. She accepted this invitation, and has been a member of the Commission since 2007. Ms. Dressel described

herself as a “career volunteer” who has had considerable involvement with civic organizations. Ms. Dressel does not receive any payment for her service on the Planning Commission.

5. Ms. Dressel testified about a previous application involving the Charter School that came before the Planning Commission in 2008. Prior to the hearing on that application, Ms. Dressel requested and received a legal opinion from the City Solicitor as to whether she could participate in the discussion and voting on this application. In response, she was advised that she could participate in the discussion and voting as long as she publicly disclosed her affiliation with the Newark Charter School, and that in her opinion this affiliation would not affect her ability to fairly and impartially consider the application.

6. Mr. Sisk then submitted into evidence the Minutes of the July 1, 2008 Planning Commission meeting. These Minutes are attached hereto as Exhibit “B”. These Minutes reflect that Ms. Dressel publicly announced she was an employee of the Newark Charter School, and that her husband was a volunteer and served as Chairman of the Board of Directors of the Newark Charter School. These minutes further show that Ms. Dressel offered to recuse herself from the vote if necessary. Because there was no objection, Ms. Dressel did vote on the 2008 Charter School application.

7. Ms. Dressel was then asked about the function of the Planning Commission when considering a rezoning of property. Ms. Dressel testified that the Planning Commission can only make recommendations to the City Council on a rezoning, and that the Council need not follow the recommendation of the Planning Commission.

8. Ms. Dressel then testified about her affiliation with the Newark Charter School. Ms. Dressel stated that she is a second grade teacher at the Charter School, and that she had no plan or desire to teach at the proposed Newark Charter High School should the rezoning application be approved by the Council.

9. Mr. Sisk then introduced into the evidence the Minutes from the February 7, 2012 Newark Planning Commission meeting. These Minutes are attached hereto as Exhibit "C". Per these Minutes, at the February 7, 2012 hearing, Ms. Dressel publicly announced: "I have checked with the Planning and Development Director and the City Solicitor because I am employed by the Newark Charter School and have checked on whether I need to recuse myself, but because I will not have any financial gain from this proposal, I have been advised that I do not need to recuse to myself. So, I leave it to the Planning Commission." This was the only comment made by Ms. Dressel during this proceeding. These Minutes further reflect that Ms. Dressel participated in the vote, which was 6-0 in favor of recommending the rezoning application.

10. Ms. Dressel stated that it was her understanding that her husband was not going to speak at the February 7, 2012 Planning Commission meeting. However, he only did so after he felt compelled to respond to statements others made that he believed to be inaccurate. Mr. Dressel also receives no compensation for his service on the Charter School Board.

11. Further evidence was introduced that prior to the February 7, 2012 Planning Commission meeting, on January 20, 2012, Ms. Dressel sent an email to Planning and Development Director Roy Lopata.¹ This communication is attached hereto

¹ Mr. Lopata retired from his position as Newark Planning and Development Director in late February 2012.

as Exhibit "D". The email, in relevant part, states: "I want to double check on my ability to vote for the NCS HS application. Obviously I'm employed here plus Steve is on the Board. However I have no financial gain by the plan going through. Do you think I will need to recuse myself? Or will just stating my connections to the school be sufficient"? Mr. Lopata then forwarded Ms. Dressel's request to the City Solicitor Bruce C. Herron, Esq. In response, on January 27, 2012, Mr. Herron advised: "I agree that Ms. Dressel would not be precluded from voting on the NCS application. I would advise that she state her belief that her connection to the school does not impact her ability to evaluate the matter on a fair and impartial basis."² Mr. Herron's email is attached hereto as Exhibit "E".

12. At the conclusion of her testimony, Ms. Dressel stipulated that in the future she would recuse herself from voting on any matter pertaining to the Newark Charter School which comes before the Planning Commission.

13. Mr. Sisk then called Mr. Lopata to testify. Prior to his retirement earlier this year, Mr. Lopata served as Planning Director for the City of Newark since 1977. Mr. Lopata testified that as the Planning and Development Director, he often served as a conduit between members of the Planning Commission and the City Solicitor, as the City Solicitor is a part-time position, and the City Solicitor is not always available for consultation. Mr. Lopata further testified that the advice provided by Mr. Herron in this instance was consistent with the advice provided by previous City Solicitors.

14. At this point of the hearing, the evidentiary presentations were closed. The Board sought the advice of its law officer.

² At the time he provided this advice, Mr. Herron did not realize that "Steve" was Ms. Dressel's husband.

15. The law officer advised that under the Newark Code of Ethics, Section 2-97.4., *et seq.*, there are two types of conflicts of interest recognized – one that is financial in nature, and one that is of a personal or private interest. The Board was further advised as to the definition of personal and private interest as set forth in Section 2-97.5.1.(j): “Personal or private interest shall mean an interest in a matter which intends to impair the independent judgment of an official or employee in the performance of his duties with respect to that matter.” The Board was then advised by the law officer that because there was no allegation of a financial interest, that the Complainant’s allegations in this case pertained to the Respondent’s potential personal and private interests in the success of the Newark Charter High School rezoning application.

16. The law officer then advised the Board that it had three alternatives:

(a) It could rule that, by a preponderance of the evidence, a violation or violation(s) of the Newark Code of Ethics occurred;

(b) It could rule that, by a preponderance of the evidence, no violation of the Newark Code of Ethics occurred; or

(c) Pursuant to Section 2-97.3.1(f), it could dismiss the Complaint as alleging a “substantially insignificant or trivial violation of the code of ethics or a minor violation which occurred as the result of inadvertence or innocent error.”

Findings of Fact and Conclusions of Law

1. In the materials attached to Mr. Flaherty’s Complaint is the case of *Beebe Medical Center v. Certificate of Need Appeals Court*, 1995 Lexis 329195 (Del.Super.). In this case, the Board noted Judge Terry’s holding that “there is a strong presumption of honesty and integrity in the administrative adjudicators.”

2. The Board also took notice that Ms. Dressel did act with due diligence by seeking advice from both the Planning and Development Director and the City Solicitor prior to the vote, and that she did fully disclose her potential conflict, namely her position with the Newark Charter School, at the hearing. It was also noted that the vote was “a recommendation” as opposed to a final adjudication, that the vote was unanimous, and that if she abstained from participating, the result would have been a 5-0 vote recommending the rezoning instead of a 6-0 vote recommending such.

3. Although it was recognized that as an elementary school teacher of the Charter School, Ms. Dressel may have a general interest in the success of the Charter School as a whole, in the Board’s opinion, this general interest is not sufficient to constitute a violation under the Newark Code of Ethics. The Board concluded that Ms. Dressel being a second grade teacher at the Charter School is not a sufficient personal interest under the Newark Code of Ethics, and to rule otherwise would be an overbroad application of the Code of Ethics.

4. The Board concluded that under the circumstances of this case:

- a) Ms. Dressel did not have a sufficient personal interest in the outcome of the Planing Commission vote;
- b) Ms. Dressel acted with due diligence in seeking legal counsel prior to the vote;
- c) Ms. Dressel acted in accordance with the legal advice she received; and,
- d) Ms. Dressel acted throughout with integrity and high motivation.

5. A motion was then made that Ms. Dressel did not commit any violation of the Newark Code of Ethics. This motion was seconded, and thereafter the Board of

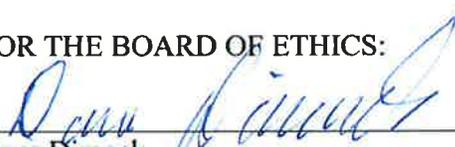
Ethics voted unanimously in support of said motion that there was no violation. The proceedings were then closed.

6. Full procedural due process has been afforded to all parties to these proceedings.

Decision

The Board of Ethics hereby concludes that by a preponderance of the evidence, the Complainant has not proven that a violation of the Newark Code of Ethics occurred. The Complaint is therefore dismissed. The City Secretary is instructed to transmit a copy of this decision to the City Council at the earliest opportunity.

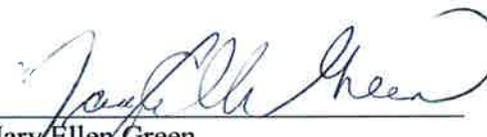
FOR THE BOARD OF ETHICS:



Dana Dimock



James W. Garvin, Jr.



Mary Ellen Green



Raymond I. Peters



Nancy Rich

Dated: April 4, 2012

Attest: 

Patricia M. Fogg, City Secretary

EXHIBIT A



Statement before the Newark Ethics Commission

1 message

jdf0000@aol.com <jdf0000@aol.com>

Wed, Mar 21, 2012 at 4:33 PM

John D. Flaherty
712 W. 26th St.
Wilmington, DE 19802
302-319-1213 email: jdf0000@aol.com

I would like to thank the Secretary's Office for their promptness and professional manner in which they have treated this complaint.

Since its inception as the State Ethics Commission in 1991, the Delaware Public Integrity Commission has been responsible for administering and implementing "Laws Regulating the Conduct of Officers and Employees of the State. The Delaware Public Integrity Commission regulates the conduct of local government officials, unless those municipalities adopt a code of conduct at least as stringent as the State statute.

Seven local governments have approved Codes; New Castle County, Dover, Lewes, Millsboro, Newark, Smyrna, and Wilmington.

On March 1 filed a conflict of interest complaint with the Newark Ethics Commission against Andrea Dressel, a member of the Planning Commission and a teacher at Newark Charter School.

The state code of conduct standards, guiding the conduct of employees, officers and officials, include, in part, restrictions on participating in matters where there are personal or private interests which would impair judgment. It is my understanding that at the City of Newark Planning Commission meeting on February 7, Andrea Dressel, a member of the Planning Commission and a teacher at Newark Charter School, was allowed to participate in the discussion and vote regarding the proposed rezoning of land that would be used for the Newark Charter School expansion.

It was also reported to me that during the meeting, Ms. Dressel's husband, Newark Charter School Board President Steven Dressel and Newark Charter School Director Greg Meece also offered testimony in support of the rezoning. A "conflict of interest" is more than just personal financial gain. Two cases in particular, Post v. Public Integrity Commission, C.A. 07A-09-08 Del. Super. April 30, 2008 and Beebe Medical Center v. Certificate of Need Appeals Board illustrate this point (<http://depic.delaware.gov/sections/conduct/decisions/PIC-CaseDecisions.pdf>). These cases were attached when I filed my complaint on March 1

In addition to the Public Integrity cases, Delaware Code Title 29 chapter 58 § 5805. Prohibitions relating to conflicts of interest, states in part;

(b) Restrictions on representing another's interest before the state. —

No state employee, state officer or honorary state official may represent or otherwise assist any private enterprise with respect to any matter before the state agency with which the employee, officer or official is associated by employment or appointment.

The law is clear, officials cannot review or dispose of matters if a personal or private interest may tend to impair judgment in performing official duties.

I thank you in advance for your attention to this matter.

John D. Flaherty
John D. Flaherty
712 W. 26TH St.
Wilmington, DE 19802
302-319-1213



Newark_notes_1.pages
156K

EXHIBIT B

2. REVIEW AND CONSIDERATION OF AN ANNEXATION WITH RH (SINGLE FAMILY-DETACHED) ZONING OF A 5.0 ACRE PARCEL LOCATED SOUTHWEST OF PATRIOT WAY BETWEEN ELKTON ROAD AND THE NORTHEAST CORRIDOR RAILROAD RIGHT-OF-WAY FOR NEWARK CHARTER SCHOOL OUTDOOR RECREATIONAL FACILITY.

Interim Planning Director Maureen Feensy Roser summarized her report to the Planning Commission which reads as follows:

"On May 13, 2008, the Planning and Development Department received an application for the annexation of the 5.0 acre property on the south side of Elkton Road between the 15.45 acre Newark Charter School site and the First State Freezer Plant. The applicant and owner of the property, Newark Charter School, has requested annexation with RH zoning (one family detached residential) in order to provide an elementary and middle school-related outdoor recreation and recess area. The area will support athletic uses and outdoor games associated with the Newark Charter School.

Please see the attached McCrone, Inc., annexation plan and supporting materials. Please note, in this regard, the plans submitted exceed what is necessary at this point to consider annexation, but the School submitted them to expedite construction if annexation is approved. The Planning and Development Department's report on the Newark Charter School annexation project follows:

Property Description and Related Data

1. Location:

The property is located southwest of Patriot Way between Elkton Road and the Northeast Corridor Railroad right-of-way.

2. Size:

5.0 acres

3. Existing Land Use:

Vacant

4. Physical Condition at the Site:

The property is a grass covered vacant lot that is relatively flat but slopes gently west to east. The area contains two soccer nets and a small set of benches.

In terms of soils, according to the U.S. Department of Agriculture's Natural Resources Conservation Service, the site contains Matapeake Silt Loam and Keyport Silt Loam soils. These soils do not present limitations for the use proposed.

Planning Commission
7/1/08 2

5. Planning and Zoning:

The Charter School property is zoned I (industrial) in New Castle County. RH, the zoning requested by the applicant, is a residential city district that permits the following:

- A. One-family detached dwelling.
- B. The taking of non-transient boarders or roomers in a one-family dwelling by an owner-occupant family resident on the premises, provided there is no display or advertising on the premises in connection with such use and provided there are not more than three boarders or roomers in any one-family dwelling. An owner-occupant taking in more than two boarders, however, must apply for and receive a rental permit.
- C. The taking of nontransient boarders or roomers in a one-family dwelling by a non-owner occupant family resident on the premises, is not a use a matter of right, but is a conditional use, provided there is no display or advertising on the premises in connection with such use, provided there are not more than two boarders or roomers in any one-family dwelling, with special requirements including the requirement for rental permits.
- D. Churches or other places of worship, with special requirements.
- E. Public and Private Schools.
- F. Municipal Parks and Playgrounds; non-profit community centers for recreational purposes.
- G. Municipal utilities; street rights-of-way.
- H. Public and private swimming pools.
- I. Temporary construction and real estate buildings.
- J. Private garages as accessory uses.
- K. Other accessory uses and accessory buildings, excluding semi-trailers and similar vehicles for storage of property.
- L. Cluster development subject to Site Plan Approval as provided in Article XXVII.
- M. Public transportation bus stops.
- N. Bed and breakfast, with special requirements
- O. Student Homes, with special requirements

RH zoning also permits the following uses with a Council-granted special use permit.

- A. Police, fire stations, library, museum, and art gallery.
- B. Country club, golf course, with special requirements.
- C. Professional offices in residential dwellings for the resident-owner of single-family dwellings, with special requirements.
- D. Customary home occupations, with special requirements.
- E. Electric and gas substations, with special requirements.
- F. Day care centers, kindergartens, preschools, with special requirements.
- G. Public transportation bus or transit shelters.
- H. Swimming club, private (nonprofit).

Please note that the Charter School development plan, calling for grass and impervious surface play areas, meets all applicable RH district zoning and area requirements.

In terms of adjoining properties, the lands immediately to the south of the site are zoned MI and contain the Northeast Corridor Railroad right-of-way. The lands to the north are zoned MI and include the Interchange Business Park property located within the City of Newark. To the west of the property are lands zoned I in New Castle County and contain the First State Freezer Plant's two-story building. To the east are the lands of the Newark Charter School, zoned RH containing the elementary and middle schools.

Regarding comprehensive planning, the Newark Comprehensive Plan Adjacent Areas Plan calls for single family residential (low density) for the Newark Charter

School annexation site. This single family residential use includes an explanatory footnote indicating that this area is intended to accommodate any future annexation of the properties immediately adjacent to the Newark Charter School, south and east of Elkton Road, for school uses (which are permitted in the residential category). Therefore, the Newark Charter School annexation and proposed uses conform to the City's Comprehensive Development Plan.

Status of the Site Design

Please note that the plan submitted contains detail beyond what is necessary for annexation purposes because it is intended to also serve as the utility permit application for the development. Normally, at this stage in the process the applicant needs only show the general layout of the project. Specific site design details, taking into account topography and other natural features will be included in future building permit submittals.

The current intended use for the parcel is to provide an area for elementary and middle school related recreation and recess activities, including athletic uses and outdoor games. Future uses may include an all weather play area, a covered weather and sun shelter and a small storage building for the playground and site maintenance equipment.

Departmental Comments

The City's Management, Planning and Development, and Operating Departments have reviewed the Charter School annexation and development project and have the comments provided below. If necessary, the plan should be revised as indicated prior to its review by City Council.

1. The Planning and Development Department notes that the Charter School annexation development plan meets all applicable Zoning Code area requirements.
2. The Planning and Development Department notes that the Charter School annexation and development plan corresponds to the land uses recommended in the Comprehensive Plan.
3. The Water and Wastewater Department notes that the site is located in the United Water Company's service area.
4. The Water and Wastewater Department indicates that because the proposed recreational courts are located in a utility easement, City crews may need to drive over or dig under the court area. Any damage to recreational courts caused by sewer maintenance activity will be the School's responsibility to repair.
5. The Public Works Department indicates through the utility and building permit review process the following is required:
 - Any current easement agreements must be conveyed to the City.
 - The applicants must contact United Water to discuss the water meter pit and valve in the swale area which will need to be lowered 2-2½ feet to accommodate the development. A letter from United Water indicating that they are aware of the condition of the water meter pit and valve will have to be submitted to the City.
 - No permanent poles, goal posts, etc., should be anchored into the easements; such equipment should be removable.
 - Easement agreements should indicate that utilities will not be responsible for restoration of courts for repairs to utilities under or across the courts.
 - Through the building permit process, a drainage agreement will be furnished to the School to maintain the bio-swale. The basin should be included since it is entirely on School property unless some type of access easement for pond

maintenance and agreement was obtained by the School during the land purchase that indicates the Interchange Business Park will maintain it in the future.

- The applicant will have to provide documentation that Newark Interchange Business Park will also continue to provide maintenance to the dry detention area.

6. The Building Department notes that permits will be required for the new water line and concrete pads.

Recommendation

Because the Planning and Development Department believes that the proposed Newark Charter School annexation for school related recreational use corresponds to the land uses recommended in the Comprehensive Plan's Adjacent Planning Areas section, and because the proposed annexation, with conditions in this report, will not have a negative impact on the community and, will improve the recreational space available for the Newark Charter School, the Planning and Development Department suggests that the Planning Commission recommend that City Council annex the Newark Charter School 5.8 acre property with RH (single family, detached) zoning as shown on the attached Planning and Development Exhibit A, dated July 1, 2008, and further delineated on the McCrome Annexation and Utility Permit plan, dated March, 2008, with conditions noted in the Planning and Development Department report."

Ms. Feeney Roser: The applicants are here and I will be happy to answer any questions that the Commission might have.

Ms. Dressel: Mr. Chairman, for the record, I would like to state that I am employed by the Newark Charter School and my husband, as a volunteer, is Chairman of the Board of Directors for the Newark Charter School. If necessary, I would recuse myself from the vote.

Mr. Bowman: Very well. Thank you. Does anyone have any questions for Ms. Feeney Roser on the report? If not, the applicants are here. Whoever is going to speak for the applicants, step to the microphone and state your name and address for the record.

Mr. Alan Silverman: My name is Alan Silverman. I am the owner's representative for Newark Charter School for this particular project. I live here in Newark at 23 Wakefield Drive. I have, virtually, no additional comments to add beyond the very comprehensive report that was presented to you by the Planning and Development Department. We are in the process of complying with the specifications required by the City and working out the details with United Water. Although, it did not come through in the written description, the site is fully developed. It is sodded. There is an eight foot security fence around most of the site with landscaping berms and a six foot security fence around the remaining part of the site. The site is extensively landscaped. It was done by a professional landscape architect in compliance with athletic kinds of activities. So, there are perimeter trees and bushes. The fence itself is a fully opaque slotted fence, so there is literally a visual and physical barrier from the industrial uses that are around the property. And, there is an eight foot security fence along the railroad right-of-way. So, the site is completely self-contained. There are access gates for emergency fire apparatus and to bring maintenance equipment onto the field, but all pedestrian access to the site is through the existing school and is controlled by the school. The parking for the recreation and school uses is provided within the existing parking lot of the school facility.

Mr. Bowman: Are there any other questions for Mr. Silverman? We will bring this back to the table.

Mr. Begleiter: Are we ready for a motion?

Mr. Bowman: If there are no questions, we certainly are.

MOTION BY MR. BEGLEITER, SECONDED BY MS. McDOWELL THAT THE PLANNING COMMISSION RECOMMEND THAT CITY COUNCIL ANNEX THE NEWARK CHARTER SCHOOL 5.0 ACRE PROPERTY WITH RH (SINGLE FAMILY, DETACHED) ZONING AS SHOWN ON THE ATTACHED PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT A, DATED JULY 1, 2008 AND FURTHER DELINEATED ON THE McCRONE ANNEXATION AND UTILITY PERMIT PLAN, DATED MARCH, 2008, WITH THE CONDITIONS NOTED IN THE PLANNING AND DEVELOPMENT DEPARTMENT REPORT.

VOTE: 7-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL,
OSBORNE, SHEEDY

NAY: NONE

MOTION PASSED UNANIMOUSLY

EXHIBIT C

*Planning Commission Minutes
February 7, 2012*

B. RECOMMENDS THAT CITY COUNCIL APPROVE THE KATE'S PLACE AND CHOATE STREET TOWNHOUSES MAJOR SUBDIVISION AND SPECIAL USE PERMIT PLAN AS SHOWN ON THE LANDMARK JCM PLAN DATED DECEMBER 1, 2011, WITH THE SUBDIVISION ADVISORY COMMITTEE RECOMMENDED CONDITIONS.

VOTE: 6-0

AYE: BEGLEITER, BRILL, BOWMAN, BROWN, DRESSEL, JOHNSON
NAY: NONE
ABSENT: SHEEDY

MOTION PASSED UNANIMOUSLY

✓ 3. REVIEW AND CONSIDERATION OF A COMPREHENSIVE PLAN AMENDMENT, THE REZONING FROM MI (GENERAL INDUSTRIAL) TO RH (SINGLE FAMILY, DETACHED) OF THE 20.62 ACRE PROPERTIES ON THE WEST SIDE AND SOUTH END OF MCINTIRE DRIVE IN THE NEWARK INTERSTATE BUSINESS PARK AND THE MINOR SUBDIVISION OF THE SITE FOR THE CONVERSION OF THE EXISTING BUILDING TO A NEWARK CHARTER JUNIOR AND SENIOR HIGH SCHOOL FACILITY.

Mr. Bowman: There are a couple of ground rules for this item. We are going to limit the public comment to three minutes. That public comment will address the issues regarding the zoning issues only. We are not going to discuss the relative merits of private vs. public education. Do I make that clear.

Ms. Dressel: Can I make a clarification? It is public vs. public.

Ms. Bowman: Pardon the slip. In any case, we are not going to argue the relative merits of charter schools vs. non-charter schools. If the Chair feels that the comments are becoming redundant, I will ask you to make your point and please sit down because, obviously, with the number of people here, we are not going to be here past midnight, and that is what these things can drag into.

Ms. Dressel: I have to make a statement, please. I have checked with the Planning and Development Director and the City Solicitor because I am employed by the Newark Charter School and I have checked on whether I need to recuse myself, but because I will not have any financial gain from this proposal, I have been advised that I do not need to recuse myself. So, I leave it to the Planning Commission.

Mr. Bowman: I think we can accept the opinion of the Solicitor.

Mr. Lopata summarized report to the Planning Commission which reads as follows:

"On December 22, 2011, the Planning and Development Department received applications from Newark Charter, Inc., for the rezoning and minor resubdivision of the 20.63 acre properties in the Newark Interstate Business Park that were occupied in part by the now vacant Lear Seating Manufacturing facility, off-street parking areas, and adjoining vacant previously subdivided parcels. The applicants are requesting rezoning from MI (general industrial) to RH (single family, detached), to permit a proposed Newark Charter upper school with classroom facilities for junior and senior high school students and accessory outdoor playing fields. Accompanying this rezoning request, the applicants have asked for an amendment to the City's 2008 Comprehensive Development Plan IV that would change the existing Plan's land use guideline for the site from "manufacturing office research," to "single family residential (low-medium density)."

Please see the attached Landmark JCM rezoning and minor subdivision plans and supporting letter.

The Planning and Development Department's report on the Newark Charter School project in the Newark Interstate Business Park follows:

Property Description and Related Data

1. Location:

West side and south end of McIntire Drive, south of Elkton Road.

2. Size:

20.628 acres.

3. Existing Land Use:

The 100,000 sq. ft. vacant Lear Seating Manufacturing facility and accessory surface parking lots occupy the 12.79 acre northwest sector of the site (tax parcel #18-054.00-012). The remainder of the site at the end of the McIntire Drive cul-de-sac is vacant.

4. Physical Condition of the Site:

The Newark Charter School building site is a developed property containing a large industrial facility and accessory parking areas. The proposed outdoor playing fields are largely cleared old farmland sites with scattered areas of small trees and scrubby underbrush. The Newark Interstate Business Park's stormwater detention facility occupies the parcel at the extreme southern corner of the park, south and west of the playing fields properties. The Northeast Corridor Railroad right-of-way lies south and east of the Interstate Business Park parcels.

In terms of topography, the Newark Charter School building site slopes very gradually from high points at the south and west toward the northeast. The playing fields site slopes more steeply from north to south to a drainage swale at the stormwater management basin south of the site.

Regarding soils, according to the Natural Resources Conservation Service, the Newark Charter School properties consist primarily of Chester Loam soils. According to the Natural Resources Conservation Service, such soil has "moderate" development limitations for the uses proposed. Please also note that portions of the south and southeast end of the Charter School properties have been used for storage of soils from the DelDOT Elkton Road construction and from previous construction in the Newark Interstate Business Park.

5. Planning and Zoning:

The Newark Charter School properties are currently zoned MI. MI is a general industrial zone that permits the following:

A. Any process involving cleaning, distribution, manufacture, processing, production, warehousing, or testing except manufacture of corrosive acids, gelatin, paint, oils, fertilizer, linoleum, cork products, alcohol, bleaching compounds, or soap; tanning or curing of hides, crude oil refining; rubber treatment of manufacturer; ore smelting; blast furnace; garbage or offal reduction or dumping; asphalt manufacturer or refining; abattoir; junk storage; automobile wrecking; and animal rendering.

B. Oil storage for wholesale purposes.

- C. Railroad and railroad classifications, freight or storage yard, and all appurtenances thereto.
- D. Public transportation facilities, stations and depots, repair garages and storage areas for busses or related public transit vehicles.
- E. Subsidiary retail sales with special requirements.
- F. Warehouse sales with special requirements.
- G. Accessory uses and accessory buildings.

MI zoning also permits, with a Council granted Special Use Permit, the following:

- A. Tower, broadcasting and telecommunications, subject to special requirements.

Regarding the requested RH zoning, this zone would permit the following:

One-family detached dwelling.

- A. The taking of non-transient boarders or roomers in a one-family dwelling by an owner-occupant family resident on the premises.
- B. The taking of nontransient boarders or roomers in a one-family dwelling by a non-owner occupant family resident on the premises.
- C. Churches or other places of worship, with special requirements.
- D. Public and Private Schools.
- E. Municipal Parks and Playgrounds; non-profit community centers for recreational purposes.
- F. Municipal utilities; street rights-of-way.
- G. Public and private swimming pools.
- H. Temporary construction and real estate buildings.
- I. Private garages as accessory uses.
- J. Other accessory uses and accessory buildings, excluding semi-trailers and similar vehicles for storage of property.
- K. Cluster development subject to Site Plan Approval as provided in Article XXVII.
- L. Public transportation bus stops.
- M. Bed and breakfast, with special requirements
- N. Student Homes, with special requirements

RH zoning also permits, with a Council-granted special use permit, the following:

- A. Police, fire stations, library, museum, and art gallery.
- B. Country club, golf course, with special requirements.
- C. Professional offices in residential dwellings for the resident-owner of single-family dwellings, with special requirements.
- D. Customary home occupations, with special requirements.
- E. Electric and gas substations, with special requirements.
- F. Day care centers, kindergartens, preschools, with special requirements.
- G. Public transportation bus or transit shelters.
- H. Swimming club, private (nonprofit).

Regarding RH zoning area requirements, the Newark Charter School minor subdivision meets or can meet all the applicable Zoning Code specifications. Regarding adjacent and nearby properties, the residentially zoned Stone Gate Apartments lie immediately west of the site in Cecil County, Maryland. The MI zoned Interstate Business Park's stormwater management facility is located south of the site and a similarly zoned warehouse facility lies southeast of the property across McIntire Drive. Several vacant MI parcels are located east of the Charter School property across McIntire Drive. The RR (row and townhouse) and AC (adult community) zoned Twin Lakes townhouse and adult community subdivisions are

located further to the east and northeast of the site. Small BC (general commercial) zoned parcels, including a Dunkin Donuts, are located north of the property across Elkton Road.

Regarding comprehensive planning, the requested amendment of the City's Comprehensive Development Plan IV would call for "single family residential (low density)" uses at the site. Please note in this regard that Plan IV indicates regarding "residential" uses that:

" . . . professional, administrative and medical offices, churches, schools, nursing homes, funeral parlors, community centers, daycare centers, police and fire stations, office research facilities and similar light industrial uses may be accommodated very satisfactorily along with or adjacent to residential areas depending upon the specific use involved, site design considerations, proposed site amenities, and the availability of adequate services and facilities."

Status of the Site Design

The Newark Charter School minor subdivision plan at the Newark Interstate Business Park calls for the renovation of the existing old vacant Lear Seating Manufacturing building to establish a new Charter School educational facility, including classrooms, resource centers, a "cafetorium," lab space, music rooms, and related facilities. School bus and car parking areas will be provided at the existing large surface parking lots on the site. Access to the school site will be through the existing curb cuts from McIntire Drive and, further to the north from Elkton Road where a "flashing" traffic signal is in place. The vacant south end of the property will be used for soccer, field hockey and lacrosse fields.

Traffic and Transportation

At the request of the Planning and Development Department, the State Department of Transportation (DelDOT) reviewed the Newark Charter School plan for the Newark Interstate Business Park and noted the following:

- Prior to the issuance of a building permit for the site, that the applicant should complete an analysis of morning peak hour conditions at the Elkton Road and McIntire Drive intersection to determine whether the left turn lane on westbound Elkton Road will be adequate to handle the expected traffic to the site and, if not, to require the extension of this left turn lane.
- Prior to the issuance of a building permit for the site, that the applicant should complete a "signal justification study," to determine the extent of the need to modify the existing traffic signal at the Elkton Road/McIntire Drive intersection flashing to fulltime operation and complete related DelDOT recommended traffic analysis for the project.

Departmental Comments

The City Management, Planning and Operating Departments have reviewed the Newark Charter School plan and have the comments below. Where necessary, the plan should be revised prior to its review by City Council.

1. The Planning and Development Department notes that the proposed rezoning and Comprehensive Plan amendment for the Newark Charter School follows the same process and site conditions when the original grade school Newark Charter School was approved at properties further to the east on Elkton Road, in 2002.
2. The Department also notes that the DelDOT suggestions for the site should be incorporated into the required subdivision agreement.
3. The Public Works Department indicates the following:

- General note #18 needs to be revised to reflect Newark Charter School responsibility for all onsite storm drainage systems and stormwater quality and quantity facilities. The City's responsibility begins within the public right-of-way at McIntire Drive. The stormwater management pond at the end of the site is not to be maintained nor be the responsibility of the City.
- The plan should show all existing drainage easements and landscape buffers.
- Drainage easements will be required to be graded to facilitate access for maintenance.
- Grading at the Northeast Corridor Railroad right-of-way will need to provide a swale/buffer combination to direct runoff to the existing stormwater pond at the south end of the site.
- A vehicle supportable maintenance path is required at the south end of McIntire Drive to provide access to the stormwater pond.
- Metes and bounds need to be shown along Elkton Road.
- Regarding stormwater management and drainage details, the applicant should review additional requirements and specifications with the Department, through the construction improvement plan process.

4. The Electric Department indicates that services can be provided to the site. Any changes to the existing electrical distribution system will be paid for by the applicants.

5. The Water and Wastewater Department indicates the following:

- Existing and proposed water and sanitary sewer lines need to be shown.
- Water will be provided to the site by United Water.
- Sanitary sewage capacity at the site's lift station will need to be evaluated; depending upon this analysis, capacity at the force main will also need to be examined.

6. The Code Enforcement Division of the Planning and Development Department indicates that the plan must meet all Building and Fire Code requirements.

7. The Parks and Recreation Department indicates the following concerning the landscape plan:

- The note regarding the Warranty should be revised to read as follows, "Warranty all plants and materials from a period of two years from City of Newark inspection and approval."
- Additional landscape plan comments will be provided during the construction improvement plan process including proposed landscaping for the athletic fields portions of the site.

8. The Police Department indicates the following:

- The subdivision plan shows adequate access and egress for the new Charter School for staff and students off McIntire Drive. As noted above, a plan will need to be developed regarding activating the Elkton Road signal, especially during school hours.
- The Department also notes that we currently have an officer assigned to the Newark High School. This officer may be required to spend time at the Charter High School.
- The Department also suggests that general note #19 be revised to include, in addition to fencing between the Northeast Corridor Railroad right-of-way on the site, fencing separating the site from the adjoining properties in Cecil County, Maryland.

Recommendation

Because with the proposed Comprehensive Plan amendment, the Newark Charter School rezoning will conform to the requirements of Comprehensive Development Plan IV,

because the proposed use at the vicinity corresponds to a similar City approval for the existing Charter School buildings to the east on Elkton Road, and because the proposed Charter School development plan, with the Departmental recommended conditions, will meet all City standards and specifications, the Planning and Development Department suggests that the Planning Commission consider the following:

- A. Recommend that City Council revise the existing Comprehensive Development Plan IV land use guideline for this location from "manufacturing office research," to "single family residential (low-medium density);" and,
- B. Recommend that City Council approve the rezoning of the 20.63 acre old Lear Seating and adjoining parcel sites from MI (general industrial) to RH (single family, detached), as shown on the Planning and Development Department Exhibit A, dated February 7, 2012; and,
- C. Approve the Landmark JCM Minor Subdivision Plan for the Newark Charter School properties in the Newark Interstate Business Park, as shown on the plan, dated December 22, 2011."

Mr. Lopata: I will be glad to answer any questions and, of course, the applicant will be making a brief presentation.

Mr. Bowman: Are there any initial questions from any members of the Planning Commission for Mr. Lopata?

Ms. Brill: Since the current property is zoned MI, has there been a soil analysis for possible contaminants at the site?

Mr. Lopata: I will let the applicant answer that.

Mr. Joe Charma: I am with Landmark JCM. Tonight with me are Greg Meece, the director of Newark Charter School; Alan Silverman, the project facilitator for Newark Charter School; and, David Grayson, the construction manager with GG & A.

First, I would like to answer Ms. Brill's question. This site has been used as a light manufacturing type facility. A Phase I investigation has already been done, there was no evidence of any type of contamination. They assembled car seats there, so nothing came up in any of the preliminary environmental reports to indicate that we have any soil issues.

Tonight is it my pleasure to present a project that represents the culmination of an idea that began in 2001 – a Charter School that sprang from humble beginnings in modular classrooms on leased property on Barksdale Road that grew to a new elementary school and middle school on Elkton Road and now with the proposed high school at this location off Elkton Road. The former Lear Seating facility was forced to close along with the Chrysler Plant more than four years ago will now be repurposed and developed into a Charter High School. The site is located in Newark Interstate Business Park totals 20.63 acres of land. The existing 100,000 sq. ft. manufacturing building will be retrofitted with engineering science labs, music rooms, a cafeteria, and many other amenities that are appropriate for a high school for approximately 1,140 students and 62 facility administrators. The new school will also feature 7.84 acres of open land which will be developed as soccer, hockey, and lacrosse fields. This site is very desirable for redevelopment as all the major infrastructure is in place. No additional impervious surface is required as existing parking, loading and truck storage areas will be retained as is or reconfigured to accommodate 517 cars and 30 bus parking spaces. In fact, the redevelopment of the 12.8 Lear parcel will decrease the impervious cover by almost 20,000 sq. ft. Stormwater from the site will be conveyed through existing drainage systems into two wet ponds – one located on the northeast portion of the site and one on the southwest portion of the site. Additional stormwater quality enhancements will be added to the site by the creation of attractive, environmentally friendly rain gardens developed in portions of existing parking lots. Existing sanitary sewer, water distribution and electrical distribution systems will be designed to accommodate the previously approved 500,000 sq. ft. of industrial

manufacturing site, which will easily accommodate the proposed school service demands. DelDOT has reviewed the proposed site transition and has indicated that the daily traffic associated with the school would be less than that associated with the previously industrial site. However, a traffic count and operational analysis of the existing intersection of Elkton Road and McIntire Drive will be performed in order to evaluate morning traffic volumes, the existing signal operation parameters and the left turn adequacy from Elkton Road.

Overall this project will have a tremendous positive impact on the community by not only repurposing a large vacant building and site and providing nearly eight acres of open recreational area but by completing the mission of Newark Charter School to provide a high quality K-grade 12 education at an institution consistently ranked among the highest in the nation for test scores. I will entertain any comments you have.

Mr. Begleiter: The idea for this began in 2001?

Mr. Charma: Yes.

Mr. Begleiter: The plant became vacant just four years ago. The idea was for a school somewhere but not necessarily on this site?

Mr. Charma: The idea was for the Charter School started in 2001 with the modular units on the IRA property on Barksdale Road. That is what I was referring to.

Ms. Brown: You have talked about wet ponds. Do you have fencing around this?

Mr. Charma: The ponds are very beautiful if you go out there and look at them. There is currently no fencing around the ponds. They are more like farm ponds and they are constructed in a fashion where they do have safety benches and in accordance with State regulations. Currently, ponds are not required to be fenced anywhere in the State. Actually, if you fence them, you incur liability.

Ms. Brown: Okay, because you are dealing with high school students that are different than younger kids.

Mr. Charma: I believe the Charter School will probably fence the ponds as appropriate. They will probably fence off the athletic fields there and that fence will probably run along the top of the bank of the pond and probably up into this landscaped area.

Ms. Brown: Is this an adjacent property to Twin Lakes?

Mr. Charma: Yes, it is.

Ms. Brown: How are you going to prevent these high school kids from traipsing through Twin Lakes?

Mr. Charma: I don't have an answer for that.

Ms. Brown: This something you need to address with fencing or something.

Mr. Charma: There are probably no attractive nuisances in Twin Lakes. Mr. Lang is in the audience tonight. I don't anticipate any issues.

Ms. Brown: They are high school kids.

Mr. Lopata: Peggy, that is kind of the opposite of the traditional thinking because you want schools and neighborhoods integrated. The children at the old Charter School on Barksdale Road traipsed through my back yard to get from Briar Lane, which I actually encouraged because it made me feel less old.

Ms. Brown: But, not everyone will appreciate it. The other question I have is about the income to the City. Currently, we are getting taxes, I assume, for this non-used industrial area. As a school, we will not get taxes. Is that correct?

Mr. Charma: That is correct, but you will sell a lot of electricity.

Mr. Johnson: What was the tax base that the City was getting?

Mr. Lopata: When the Lear Seating was there, we were certainly drawing revenue from the industrial site which would be appraised at industrial rates. Property taxes in Delaware are relatively low. As everyone here in the room knows, our key revenue source is electric. In terms of revenue from property taxes, it would go down to zero.

Mr. Johnson: But, what was it?

Mr. Lopata: I don't know off-hand, Ed.

Ms. Brill: I am still concerned with the soil analysis? Do you know what company was there previous to Lear Seating.

Mr. Lopata: This was vacant farmland.

Mr. Charma: This was built for Lear.

Mr. Bowman: We will open this topic up for public comment. To reiterate the rules, this is not an education discussion. This is a discussion of the merits of this project based on the zoning and code compliance from the applicant.

Mr. William Hurd: 115 Lovett Avenue. I am a parent of four students at Newark Charter School and I wholeheartedly support the proposed rezoning. The school is a great asset to the community and its growth and continued success should be encouraged. Having spent the last few months applying to high schools for my son, we found few suitable schools in any of the neighboring districts. Having a high school option will allow us to give our children the rigorous and well regarded education they currently receive at Newark Charter in this new and convenient location.

Dr. Mugtedar Khan: Professor at the University of Delaware. I have two children at Newark Charter School. You must have seen my son on television or in the newspaper. He is being labeled as the future Steve Jobs, but if this school doesn't become a high school I promise you, I am leaving Delaware within the year or he is moving to the Red Clay District. I read all the opposition letter to this project and I am amazed. The first thing that we have to understand is that education itself is America's best industry. We export education. We bring international students here. So, to see education as something competing with industry and rezoning that area for a school, for which from all indications is going to be one of the best high schools in the State if not the country, would really be shooting ourselves in the foot. Especially, since in the future the economy is going to be based more on knowledge than industry. From the predictions of your population, 2000 number increase by 2030 suggests that you really don't expect any major industry to move into the that area in the near future. That is why the projections for Newark's population is 2000 in the next 18 years, which is probably the kids that we are going to have in the next 18 years. We have a major problem in the State with high schools particularly. If you notice, all those people how said that Newark Charter would be a problem, did not sing the merits of any other high school. Nobody said we have these great high schools, why do we need another high school. So, we do need a good school. Right now it is like sending your kids to Newark Charter School is like sending your kids to Harvard for two years and then pulling them out and sending them to a community college. So, we do need a good high school. And, my last point is that I know a lot of people who are buying houses in this area so that their kids might be able to go to Newark Charter Elementary and middle school. So, I think a high school will attract more people to the City, increase the property values, increase the revenue. Our kids study very hard, which means they stay up late and they will use a lot more of your electricity.

Mr. Matt Doyle: 15 West Ridge Court. I think the land should be rezoned RH so that the Charter School can expand. It seems to me that Newark still has plenty of unused general industrial space available. Therefore, I don't see value in keeping the land the way it is. A

lot of people here have an opinion about this whole situation and might not get to stand up here and talk to it. So, I would just like to ask all the people in the audience that support the rezoning of the land to RH just raise your hand so everybody knows what is up.

Ms. Annalisa Ekbladh: 37 Lynn Drive. I have been a resident of Newark for 13 years. I submitted my comments prior to the meeting with the regard to the impact on my City with regard to jobs and tax losses associated with the proposed rezoning and my opposition to the rezoning. But, I would like to speak for a minute about what Newark High School means to my family and why it is so important to protect its future. I have stood by while the Newark Charter School opened an elementary school and saw the polarizing and negative affects it has had on our community skimming off the top students from traditional public schools and creating a system that is highly segregated white and black, low income and (inaudible). We cannot stand by and let this happen to Newark High School. Newark High School has served our community for 118 years. It is ranked among America's top high schools by Newsweek magazine. It boasts the second highest average SAT scores in Delaware, offers the second highest number of APP courses in the State and shows the highest rate-of growth among honors and AP students on DECASS in the State. Newark is the cornerstone of our community as it has educated some of the best and brightest in Delaware. My daughter is among them. My daughter is the recipient of the Michael C. Ferguson Award which means she is among the top 150 students in DECASS in the State. She is an honor student, active civic volunteer and athlete. Newark provides her an outlet for each and every part of her life. She loves Newark High School and we are so very proud to be a part of this high school community. When our traditional public schools like Newark can meet the needs of all of our children why would we squander our resources on a new school. Before agreeing to build a new school here in Newark we must answer a few questions. Will Newark High School provide programs and opportunities to students that do not already exist in Newark? No. Will the Newark Charter School provide educational opportunities.

Mr. Bowman: Your time is up. Thank you. Now, you have heard from both sides on that issue. We will not entertain any more comments on either side of that type.

Mr. Lopata: If I might reiterate to help the Chairman out and the Commission so that everybody here understands. Many of you are new to Planning Commission meetings. This is a land use decision. The Chairman quite rightly indulged some folks and let them let off some steam on both sides of the issue of whether or not a charter school is a good thing or a bad thing. All of us have individual opinions on that. That is not the issue before the Commission. And, certainly, the Commission should not to make a recommendation based on anything other than land use. They are charged with looking at whether or not this is a good land use. Now, by-the-way, that is a debatable question that is perfectly reasonable to discuss this evening. So, I think the Chairman is saying, if we could refrain from remarks about the pros and cons of charter schools and stick to, is this a good land use or not, I think we will have a more productive discussion.

Ms. Karen Zalewski: 119 Timberline Drive. I do believe to some degree the issue of whether or not a charter school is needed does apply to this land use issue because we are deciding whether or not to give up a future revenue from tax piece of property. We are a city of 31,000 residents and we have an excellent public high school. I would really asked those who have only truly looked into Charter to open your mind a little and maybe give it a look. The City of Wilmington has 71,000 residents. More than double the number of residents that we have in the City of Newark. They have no public high schools. So, to use resources and to give up land that can generate revenue in the City of Newark for a second public high school using public dollars is, in my opinion, unethical.

Ms. Marylee Dichiaro: 45 North Pond Drive. The state and local governments are looking to add jobs especially in hi-tech fields. There is a great desire to bring companies to the former Chrysler site. Companies with well educated employees are less likely to move to an area with a struggling feeder public school system where student ratios are out of balance and schools are up to a 60 percent low income students. In order to attract individuals and businesses to Newark, we must make a commitment to improving the feeder schools first. This will benefit the whole community and make Newark a place people want to move.

Ms. Ann Paris: 268 Campfield Road. I speak as a parent of a child at Newark High School. My youngest child, I chose to choose into Red Clay School District. In my hand I have a copy of a letter that I get every year for the last year from Christina School District letting me know that Newark High School is a failing school. They have had five years. If we had not gotten my youngest son into a different school, he would not have been in Christina, we would have moved. I think this is a good land use because if we had a better high school, we would attract people into our district who would want to stay and bring money, bring jobs, bring in tax revenue and the property values. So, I think it is a good use and I think that you will see people, as Red Clay closes their Choice Program to outside of the district, you will see more people leaving the Newark area because they don't have choices for their children's education.

Ms. Elizabeth Sheinberg: I am a board member in the Christina School District. I am a board member who has both a child in Charter and a child in the district, although not Newark Charter. I was not going to speak. I came to listen tonight, but I did not to share one piece of information with you. You asked about the revenue loss to the City. Specifically, I cannot speak to the City but I did pull the taxes for 2011 for the three parcels in question when I was looking at the information. The grand loss to both the school district and the County is slightly more than \$50,000 a year. I grew up in Newark. I live just outside the City limits. My parents still live in the house I grew up in. I speak to my dad a lot and he is a pretty wise guy and his one thought on this whole debate tonight is that this is putting the cart before the horse. It is our understanding that Newark Charter's application is still before the Department of Education and State Board of Education and they have not ruled to approve it yet. So, the concern is the Planning Commission getting this decision too soon.

The one other piece of information that my father asked me to offer to you is that there is already a building in the Christina School District which is in Newark although outside the city limits that is within an industrial park. It is zoned for a school. It is empty. There is excess property. It could have been possible at some point for negotiations to happen that would have allowed an existing building in industrial zoned for a school to actually have a school there by meeting both Newark Charter's needs as well as taking an excess property off the market. That is what I offer to you - \$50,000 in lost revenue in the way of school taxes.

Ms. Lisa Diller: 182 King William Street. I have been a resident of Delaware on and off for about 30 years. I'm addressing this issue strictly from the land use and from the zoning. I'm basing my comments on comments by Mark Waterhouse who was the City of Newark's consultant on the Economic Development Plan from Garnett Consulting. I had the opportunity to speak with him after a presentation on the development plan and one of the issues I asked him, because I am also the County Council Representative for the Greater Newark area, I said to him specifically when I spoke with him during the summer, one of the things that I am extremely concerned about is what I see as this flipping of industrial zoning to something else. In the County, industrial zoning refers to as much the outside storage of materials. So, you could have a lab that required outside storage. You could have all kinds of things in an industrial zone that simply required outside storage as opposed to a place where you do manufacturing. So, that is the first thing. Industrial zoning is bigger than just manufacturing.

The next point I want to raise is that those 21 acres -- and this is what Mr. Waterhouse said -- when you rezone industrial land, you never get it back. You never get the opportunity to have anything on that land that will produce jobs. So, you flip this zoning, you are giving up the opportunity for jobs.

The next point is the issue that I am looking at here is that we have already given up a great deal of income with the Chrysler Plant. Please don't do it again. The area in which this is based has some residential but it is almost entirely commercial and industrial zoning. This is in Planning Area II. I am referencing pages 114 and 115 of your Comp Plan. Frankly, looking at this zoning from the beginning, I think the original placement of a school in this area was a bad decision. Why are you doing it twice?

The other issue is that quite frankly you are looking at a very modest projection of people in this community the population to rise. You are putting more resources into yet another school where there will not be the children to fill it. I'm out of time. Thank you.

Mr. Steve Dressel: 8 Wynclyff Lane and I am, in full disclosure, the Chairman of the Board at Newark Charter School. I think having a high school as the anchor to the end of Elkton Road is a fabulous idea from a planning perspective. I see a lot of business development taking place, Suburban Shopping Center, etc., and what better draw to draw people into that end of what may soon be called "South Main Street or West Main Street" I forget which one. I think it is a great opportunity. The land there is currently not being used. It is not producing. We already heard that the school will produce jobs. I don't know where Ms. Diller gets her information but teachers actually do get paid and they pay taxes. So, there are jobs that will be created. So, I think it is a wise choice for this project to move forward.

Mr. Andy Hegedus: 258 Beverly Road. I have been a resident of old Newark for 17 years and I am finally feeling like a Newarker now. I am here tonight to speak in opposition to the proposed rezoning of land to support the expansion of the Newark Charter School to include the high school grades. I have only two points to make tonight. It seems that the issue that forced this discussion tonight is Section 2-89(d) of the Municipal Code that requires issues that request rezoning classifications and changes the Comprehensive Plan that come before you. Actually, it is Section 2-89(b) that interests me more, which is that you are supposed to review the best methods of financing and assessing the cost of public improvements and civic development within the City. Regarding financing, I believe that we need to continue to maintain all the options that we have for revenue generation for our city long-term since all public schools whether traditional or charter are tax exempt organizations with the rezoning and construction of charter schools. Newark is permanently losing over 20 acres that will generate income if the current zoning is maintained from both taxes and electricity when they are rebuilt. For long-term financial reasons alone, I am opposed to the proposal.

Second, on civic development, based on the Code and the definition of civic development, I believe you are to consider plan and recommend to City Council those things that you believe are going to advance or make Newark a better community when you make decisions about zoning or buildings. That thread needs to be throughout the decisions you make. When it comes to schools like charter schools, the Department of Education is not charged to care about our community. They care about financial viability of the Charter School and its academic performance. They have no formal interest in our community and its long-term health and advancement. You do. No one else is charged by the Municipal Code to do that besides you. You need to understand that this decision is huge, really huge, like monumentally huge. This decision will have repercussions for years and years to come. Trust me, I am not exaggerating on this. To build our community, you know and I know the good public schools that literally educate all kids well is what we need. There is a way to build community. One way is to have civic institutions that bring us together, not divide us. This town already struggles with a divisiveness that has come with the existing Newark Charter School. In my neighborhood at parties and barbeques, we can't even talk openly about education. It arouses too many passions, too many emotions. My wife even asked me to go easy tonight with my comments because of what it might mean to some friendships.

Rezoning RH to allow anything residential to be built there with MI zoning on either side of it, if the Newark Charter School isn't approved, would allow homes to be built in an industrial place. So, why is that a good decision. So, I say that the City of Newark is now and should remain one community with one great school and continue to be one great place for all of us and our kids.

Mr. Punith Venkatesh: We are talking about 20.62 acres. We have thousands of acres in Newark. Sacrificing 20.62 acres to get one of the best schools in the country is nothing compared to the loss of revenue of \$50,000 a year. There is no comparison at all because you are going to produce such good students from the school.

Second, is the jobs. Somebody already pointed out that there will be teachers. There will be employees and there will be construction going on. There will be immediate jobs, so this would be a great opportunity to give jobs during the time of decision. So, I would very strongly support the uphold of this request.

Mr. John Hundley: 12 Timber Creek Lane. Each of you, I think, are in receipt of a letter from several opponents of the project and several of the arguments of the letter address the property value question. The letter specifically references a study by the UCLA and Dartmouth College that found that, one student level standard deviation difference in a school's mean test scores was associated with a 10 percentage point difference in house values. While that is a very impressive statement, I think that it is important to note that the study was titled "School Quality, Neighborhoods and Housing Prices and the Impacts on School Desegregation." It was related to a study done on housing prices and schools in Mecklenburg County, North Carolina, which I think you would agree that is not Newark, Delaware. So, I just want to be aware that fact is not relevant to Newark's housing prices.

The other issue is there are several references to population. I think if you look at the U.S. Census statistics from 2010, you will see that we are far exceeding the pace of population growth that would outlined in the letter provided by several of the opponents.

Another comment was made that as average test scores in traditional public schools decrease, so do property values. And, I would argue that the exact opposite is true as well, that as scores increase property values also increase and there is a study from 1999 that indicated that parents are willing to pay 2.5% more for a home for a 5% increase in test scores.

And the last point that was made by one of the opponents tonight was that if you have industrial property and you convert it to any other use, you never get it back. I think you only need to look at the Newark Chrysler Plant to see that it is no longer there and we are changing the use of the formerly industrial property.

Mr. Bowman: If there is no other public comment, I will let you speak Mr. Meece, and you are representing the applicant, as I understand it, and I am going to hold you to three minutes.

Mr. Greg Meece: School Director at the Newark Charter School since 2001. Our address is 2001 Patriot Way. Newark Charter School has operated in the City of Newark for the past 11 years, originally at Barksdale Road and for the past nine years at 2001 Patriot Way. Over the years we have served the educational needs of almost 3,000 students. All of these students were accepted by a lottery without regard to ability, disability or income as is referenced in Delaware's Charter School Law and the Neighborhood Schools Law, we do give a preference to families living local. Currently, 1,338 students are enrolled in kindergarten through grade 8. We are preparing to expand our program which will include grades 9 through 12. We need additional space. The proposed location for this expansion is 200 McIntire Drive in the City of Newark. Since this site is currently zoned industrial, our request is to have it rezoned residential in order to permit the operation of a public school there. This is the same request that we made on two previous occasions when you rezoned the property currently in use for our elementary and middle schools.

I want to say why Newark Charter School's Board of Director's made this decision to expand. This high school is designed for our students so they can continue to grow academically in our program. In most cases, these will be students who are already enrolled in our school and have been there for as many as nine years. Some will try to frame this in terms of stealing students from other schools. The opposite is true. These are our students. They have been with us for almost a decade. 98% of our parents said that they would prefer to stay with our program after 8th grade. Even now, only 4% of our 8th grade students apply as their first choice to the local school district. 96% apply to other public charter schools, non-public schools, votech schools or other choice schools. Unfortunately, many of them can't gain access to these schools. For example 50% of our 8th graders apply to the Charter School of Wilmington. This week we learned that only one student from our school was accepted there. The reason most of our students fail to get into that school is because they live in Newark. There is only one high school in the City of Newark - public or private or charter. Yet, we are in a State that gives parents parental choice. Our parents are not the only ones who wish us to expand. And, this is important in light of some of the discussion about taxes and income. The local business community has asked us to do this because they feel that it is in Newark's best interest economically. Our formal application to the Delaware Department of Education includes letters of support from the President of the

New Castle County Chamber of Commerce, the Delaware Technology Park, W.L. Gore, the DuPont Company, the Greater Newark Economic Development Group, the Mayor and others. Private foundations have pledged nearly \$1 million to help us get started. The economic viability of our city, the ability to attract businesses here, the value of our properties and our homes and the quality of life depend on having excellent schools and this is what Newark Charter School is. In New Castle County last year our school finished number one on the State Test in every subject and in every grade. We were cited by the Delaware Department of Education as a superior school every year that we have been in existence. We were cited by the United States Department of Education as a Blue Ribbon School. Our school was named the top work place in Delaware in the News Journal two different times. And an international study published by the George Bush Presidential Center lists the Newark Charter School as the number two school in the nation in reading. Our school is thriving in every category and our waiting list has been as high as 2,000 to 3,000 students in recent years. Many more families would love to be part of our school, but for every open seat in our school there are 12 students mostly from Newark who are waiting for a chance to come. Our expansion is simply to give our parents the ability to keep their children in the school of choice beyond eight grade. We need a rezoning to give them that option.

Mr. Bowman: We are going to bring it back to the Planning Commission. Does the Planning Commission have any other questions for the applicants or Mr. Lopata? Hearing none, the Chair will entertain a motion.

Mr. Begleiter: I would like to make the motion of approval tonight. The City has tons of vacant or unutilized industrial land. Zoning can be changed at any time as if has on this particular site and many other sites. If this school doesn't get built and the land remains vacant, the same Commission and Council can change the zoning the next time around. One of the things that we struggle with at almost every meeting is trying to find ways to create a market in Newark for single family owner occupied homes. One of the strongest beacons for that kind of influx of development to a city the size of Newark with its 9,000 or 10,000 permanent residents is the provision of high quality education and that means both high quality education at Newark High School as well as other schools like Charter. So, in my mind, there is no reason not to recommend that City Council revise the existing Comprehensive Plan land use guideline for this location from manufacturing research to single family residential and to recommend that City Council approve the rezoning of the 20.63 acre parcel from MI to RH and to approve the Landmark JCM minor subdivision plan for the Newark Charter School properties in the Newark Interstate business Park as shown on the plan of December 22, 2011.

MOTION BY BEGLEITER, SECONDED BY BRILL THAT THE PLANNING COMMISSION MAKES THE FOLLOWING RECOMMENDATIONS:

- A. RECOMMEND THAT CITY COUNCIL REVISE THE EXISTING COMPREHENSIVE DEVELOPMENT PLAN IV LAND USE GUIDELINE FOR THIS LOCATION FROM "MANUFACTURING OFFICE RESEARCH," TO "SINGLE FAMILY RESIDENTIAL (LOW-MEDIUM DENSITY);" AND,
- B. RECOMMEND THAT CITY COUNCIL APPROVE THE REZONING OF THE 20.63 ACRE OLD LEAR SEATING AND ADJOINING PARCEL SITES FROM MI (GENERAL INDUSTRIAL) TO RH (SINGLE FAMILY, DETACHED), AS SHOWN ON THE PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT A, DATED FEBRUARY 7, 2012; AND,
- C. APPROVE THE LANDMARK JCM MINOR SUBDIVISION PLAN FOR THE NEWARK CHARTER SCHOOL PROPERTIES IN THE NEWARK INTERSTATE BUSINESS PARK, AS SHOWN ON THE PLAN, DATED DECEMBER 22, 2011.

VOTE: 6-0

AYE: BEGLEITER, BRILL, BOWMAN, BROWN, DRESSEL, JOHNSON
NAY: NONE
ABSENT: SHEEDY

MOTION PASSED UNANIMOUSLY

Respectfully Submitted,

Elizabeth Dowell
Secretary to the Planning Commission

EXHIBIT D

City of Newark, DE 19711
302 366 7030

From: Angela Dressel [mailto:dresselad@gmail.com]
Sent: Friday, January 20, 2012 4:06 PM
To: Roy Lopata
Subject: NCS HS application

Roy,

I want to double check on my ability to vote for the NCS HS application. Obviously, I'm employed here, plus Steve is on the Board. However, I have no financial gain by the plan going through. Do you think I will need to recuse myself? Or, will just stating my connections to the school be sufficient.

As you are gearing down towards retirement, I hope that things are going well for you. It has been a great pleasure to work with you on the commission. I truly appreciate your help in answering my questions and making things clear for the public and those of us who are not city planners. You've always taken a very balanced approach, even when you've had one set of ideas. I've been impressed that with additional information, you've been flexible and have helped to guide us to a thoughtful decision. Also, you are amazing with the public. Kudos for that! I know it is not an easy task, especially when one group or another is up in arms and adamant that 'not in my backyard' is the only way to go.

Thank you!
Angela

EXHIBIT E

Alice VanVeen

From: Bruce Herron [bherron@delaw.org]
Sent: Wednesday, March 14, 2012 2:49 PM
To: Alice VanVeen
Subject: FW: NCS HS application

Bruce C. Herron, Esquire
Losco & Marconi, P.A.
1813 N. Franklin Street
Wilmington, DE 19802
302-427-6987 direct
302-656-7774 facsimile
bherron@delaw.org

From: Bruce Herron [mailto:bherron@delaw.org]
Sent: Friday, January 27, 2012 10:48 AM
To: 'Roy Lopata'
Subject: RE: NCS HS application

Roy I agree that Ms. Dressel would not be precluded from voting on the NCS application. I would advise that she state her belief that her connection to the school does not impact her ability to evaluate the matter on a fair and impartial basis. Please let me know if you need any further information. Bruce

Bruce C. Herron, Esquire
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1813 N. Franklin Street
Wilmington, DE 19802
302-427-6987 direct
302-656-7774 facsimile
bherron@delaw.org

From: Roy Lopata [mailto:rlopata@newark.de.us]
Sent: Friday, January 20, 2012 3:57 PM
To: 'Angela Dressel'
Cc: Bruce Herron
Subject: RE: NCS HS application

Hi Angela – First, thank you for your very kind words . . . You have been from the start the kind of hard working citizen/commissioner that makes Newark a special place in which to serve . . .

Regarding, your "conflict," issue, as you can see, I have copied City Solicitor Bruce Herron regarding the issue. I suspect that he will opine that your voting on a pending Feb. 7, 2012 Newark Charter School request for a rezoning, and minor subdivision is no different than the UD employees on the Commission who participated in the Bookstore debate and vote or the recent Science and Technology Zoning District amendment discussion. In any case, I (or Bruce directly) will let you know. R

Roy H. Lopata
Planning & Development Director