

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

November 23, 2015

Those present at 6:00 p.m.:

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

Absent: District 2, Todd Ruckle

Staff Members: City Manager Carol Houck
City Secretary Renee Bensley
City Solicitor Bruce Herron
Community Affairs Officer Ricky Nietubicz
Deputy City Manager Andrew Haines
Planning & Development Director Maureen Feeney Roser
Public Works & Water Resources Director Tom Coleman

EXECUTIVE SESSION

- A. Executive Session pursuant to 29 *Del. C.* §10004 (b)(4) for the purpose of a strategy session involving legal advice from an attorney-at-law regarding potential litigation.
- B. Executive Session pursuant to 29 *Del. C.* §10004 (b)(2) and (6) for the purpose of preliminary discussions on site acquisitions for any publicly funded capital improvements and the discussion of the content of documents excluded from the definition of “public record” in 29 *Del. C.* §10002 where such discussion may disclose the contents of such documents.

Council entered into Executive Session at 6:00 p.m. and returned to the table at 7:04 p.m. Ms. Sierer advised that Council concluded its Executive Session.

- 1. The regular Council meeting began at 7:04 p.m. with a moment of silent meditation and the Pledge of Allegiance.
- 2. MOTION BY MR. CHAPMAN, SECONDED BY MR. GIFFORD: TO REMOVE ITEM 11-B, APPROVAL OF COUNCIL MEETING MINUTES – OCTOBER 26, 2015, FROM THE AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

- 3.
 - 1. **PUBLIC PRESENTATIONS**
 - A. Presentation of Energy Efficiency Programs – Scott Lynch, Energy Services Manager, DEMEC

02:10

Ms. Houck reported that Rob Underwood, Chair of the Energy Efficiency Advisory Council, made a presentation to the CAC on September 8th. At that time, he also acknowledged Scott Lynch’s participation on the Council, and the CAC asked that Scott come back periodically to share some information. Scott did his first update to the CAC a week or so ago and was able to provide information about work being done by DEMEC

on behalf of the nine member cities (including Newark), that would embrace the efforts of the EEAC.

Mr. Lynch's presentation was a result of work done by the Energy Efficiency Advisory Council, which DEMEC sits on and where he serves as the representative. At those meetings there were efforts to build energy efficiency in Delaware to beyond the point it was previously. From there, the presentation would offer details about the proposal that was provided to try to meet those goals. What was being proposed was not yet approved by the DEMEC Board but was discussed at the 11/17 DEMEC Board meeting. Everything shown tonight – the proposed programs, budgets, indicative savings, etc. were subject to change.

Topics would include information about the energy efficiency program contractor, information about the actual proposal and energy savings targets and budgets.

The Efficiency Smart was a program established by American Municipal Power. American Municipal Power was an organization very much like DEMEC, but on a much larger scale. DEMEC was a member of American Municipal Power. American Municipal Power saw a need that individual members were looking for energy efficiency gains and in 2011 they established a program. The Efficiency Smart program was very similar to other programs around the country but in some ways was different. From it being established in its first 3 years of program inception, it achieved over 140% of its initial 3-year targets. In the industry that was generally almost unheard of.

The organization provided municipal customers with a great deal of education on how to become more energy efficient. The data gathered by American Municipal Power for the Efficiency Smart program was third-party evaluated and the data was true that they even achieve upwards and above savings that they even were targeting, 97% one audit and then 101%. The organization's specialty was working with non-continuous and separate municipal organizations. For further information Mr. Lynch encouraged visiting the website: efficiencysmart.org.

The Energy Efficiency Advisory Council had agreed to targets, points for DEMEC to achieve not mandated by legislation or by regulation, that were pointed to as a good place to start. The Delaware State targets of percentage load reduction were .4, .7, 1%, accumulating into 2.1% at the end of the three-year program period.

The initiatives put in front to try to achieve those targets was a customized Commercial Industrial program. Then underneath that, a retail energy efficiency lighting program for retail residential customers to buy down the cost of compact fluorescent lights and light emitting diode lights. There were budgets for each one of those programs and an energy efficiency savings and associated peak energy savings in megawatts and megawatt hours. Those were over the course of 3 years. The costs related to this would be roughly \$1.6 million in the first year, \$2.8 million in the second, and \$4 million in the third year. The way those monies would be collected was there would be a charge placed on the megawatt hours sold in the municipality. Each year, those numbers would change. The assessment could be .6, 1.49 or 2.16 on the chart on the megawatt hours of electric users, or could be leveled out at \$1.50.

This was a proposal of how DEMEC and its members would be able to achieve these targets. The goal would be for Councils in the municipalities to evaluate and choose these targets which could be adjusted.

In the custom commercial industrial program the larger users could be offered services that they may not be equipped for with time or with resources to think about changes with some basic prescriptive upgrades such as general lighting and upgrading refrigeration inside a building. There were also more complicated programs looking at a process upgrade for more energy efficiency.

The retail lighting opportunity was a discount program for home lighting such as compact fluorescents, changing out incandescent bulbs for compact fluorescents or changing out compact fluorescents for LED's. As a frame of reference, a normal 65

equivalent watt bulb that was an LED would normally cost \$7. This program was offering that same bulb to a customer to purchase online for a dollar. This was significant savings and was different from some of the other lighting programs around the country in that customers could purchase online and have the product delivered to their home.

Ms. Houck pointed out that DEMEC had the presentation at a recent meeting. There were concerns from smaller cities with no commercial about more costs and they would not get some of the benefits for the C&I portion of the program. Most members were okay with the retail lighting discount program because the citizens could take advantage of it on their own. With the exception of some of the resort towns having some, Lewes had concerns that they may not see the benefit, even though they may be participating in the lighting program.

Mr. Markham asked who would be a target audience within the City for the C&I. Mr. Lynch said the City itself would be one and the University of Delaware might be another. There was also Dow Chemical and Rohm and Haas. There were also people who were down to the level of 500,000 kilowatt hours in a year. The EEAC and American Municipal Power said they could go even lower than that figure to bring in smaller companies.

Mr. Markham said he looked at the retail lighting site and understood the prices looked better, but he thought some of the efficiencies on the bulbs (particularly the LED's), were a little behind. Going from an incandescent to an LED would provide great savings, but when taking the next step from a CFL down, there was not much difference between the two right now, but there were more efficient bulbs out there. He suggested passing on that there were some efficiencies, it would be good to see them out there. Plus, a lot of times people would buy an LED and think it was equivalent to a 60, but it was really only a 40, so having some larger bulbs would be a good idea.

Mr. Morehead said he spent time on the Efficiency Smart program website and asked if Newark got the benefit of it already as part of DEMEC. Mr. Lynch said right now we had the facility to have the program created, it is an established program but is not something as being a part of DEMEC that was already paid for. It was not for us yet if.

Mr. Morehead asked if what Mr. Lynch presented was a DEMEC budget or a Newark budget. Mr. Lynch explained he put together a budget where all the DEMEC members would be contributing. There would be an apportioned amount for Newark's particular customers. If the municipality had some unique interests that they would like served, it could be customized for that municipality. This would be a base to start from that the municipality could add to or subtract from.

Mr. Morehead said as far as financing these amounts, the City would be looking at a price increase per kilowatt hour to charge people to save them money. Mr. Lynch confirmed that was correct.

Mr. Chapman said he was having a hard time understanding the ultimate purpose of this – whether it was to reduce load or to reduce costs. Mr. Lynch said it was to do both for the participant and the municipality. There was a charge to the customer (City of Newark customer) for operating their business or just living here using the electricity. Incentivizing them to become more efficient was a gain for them. There was also the side of benefiting the municipality. It did cost money for DEMEC to go out to the market and procure electricity which had to be procured in so much capacity, meaning the total megawatts, in particular the conglomerate DEMEC requires, and the energy. Then there was a cost to transmit that energy from when it was generated to here.

This could be thought of as more behind the meter works, just as McKees Solar Park was placed into service which helped lower the peak of the City of Newark and provided electricity into the City that did not have to go through the transmission system with ancillary charges. It was generation that was locally sited, and there was a savings related to that not only to the customer but to the municipality.

Mr. Chapman clarified that the three-year proposal was the funding of the project to achieve these estimates of load reduction. Mr. Lynch confirmed these were budgets to achieve the targets that the Energy Efficiency Advisory Council agreed to. Mr. Chapman thought that the data or the run-outs of estimates would be interesting to review to understand this better and either get behind it or have further discussions about it being reviewed more seriously, for example, what are the out-years four and beyond in terms of costs and benefits, specifically to the residential user but to the business user as well. If what he understood Mr. Lynch was saying was correct, then the load capacity being reduced, the overall DEMEC cost being reduced, therefore the overall municipal cost being reduced, and hopefully a pass-through of cost reduction in the out years, his concern was that there was going to be a per-megawatt additional charge for three years to reduce load capacity, and no ongoing or negligible ongoing cost-savings for the individual users or even the municipalities. Mr. Chapman thought he would want to understand that information a lot better, but as a high-level introduction with these questions and answers, he understood better.

Mr. Morehead asked Mr. Lynch what he wanted from Council tonight. Mr. Lynch said he wanted to present to Council what was presented to the CAC. He was not asking for action today but asked Council to think about it. Once the Councils and the representatives were comfortable with it, the representative on the DEMEC Board would ask for action. Mr. Morehead asked when that vote might happen. Mr. Lynch said they presented this proposal on 11/17, the DEMEC Board came back and asked for additional information. The intent was to present the best data they could at the next DEMEC Board meeting on 12/8 and then it would be for the Board's discussion at that time.

Ms. Houck noted that the CAC heard the same presentation and they were in favor of the \$1.50 over three years to invest in energy efficiency. It might be a good opportunity for Mr. Lynch to engage them with some of the additional information as well and have them send a recommendation back to Council. Mr. Chapman had no doubt that the CAC would say energy use reduction was a plus. He did not know that it answered the rest of his concerns or questions.

Mr. Morehead would like to see this in greater detail before Council instructed the City Manager as the City's representative to DEMEC to vote on it. He thought there were outstanding questions. It looked like a good program, a step in the right direction, but he just wanted to tie it up.

Mr. Lynch said the meeting on 11/17 was for informational purposes. They would continue with informational meetings until the DEMEC Board and the individual municipalities voted. They were not guided by a particular date that they had to have this installed. They wanted to keep it consistent with the action of the EEAC, propose some targets and bring something forward. Mr. Morehead asked if anyone commented that the residential savings were about half of the commercial savings and yet everybody was getting charged the same price. Mr. Lynch said there were comments on that. Mr. Morehead asked if there was a plan to address that concern. Mr. Lynch responded that there were a couple different approaches that could be done with the program. There could be a charge levied just on those people who were getting the incentive, a certain charge for the commercial industrial, and a certain charge for the residential.

Another approach was going with a straight across \$1.50 approach to everybody. This would enable greater flexibility if one particular program was having more success than another so funds could flow out of one program and into the other, be it commercial industrial back to residential. The targets that were shared on 4.7 and 1, there was no requirement that all of it come from residential or commercial industrial. The approach was to bring before Council the most cost-effective programs found through their research. These, by far, met that goal.

Mr. Gifford echoed Mr. Chapman's concerns. He felt like this was possibly behind what people were already doing and asked Mr. Lynch if they were finding that people were making the switch and reducing their lighting power consumption. Mr. Lynch said part of the education was for customers to understand that LED bulbs would last longer than compact fluorescents and would provide additional savings. Also, as the technology

improved, the cost of the LED's would go down. Mr. Gifford thought the market was coming down very quickly. He was a little skeptical about the program right now, after listening to the potential benefits.

Mr. Lynch said that was why the residential lighting was the lowest hanging fruit, transitioning from incandescent to compact fluorescent then transitioning again to LED. It could be the next technology that could revolutionize that. Mr. Gifford said the lighting was not the big draw anymore, it was just a little bit of savings if you go from CFL's. He was switching because CFL's have limitations in their quick-start abilities and he thought consumers were seeing that as well.

4. 2. ITEMS NOT ON PUBLISHED AGENDA

A. Public

27:06

Margaret Cassling, District 1, participated in the Energize Delaware program. She thought it was very worthwhile and that Council should encourage residents to look into saving energy on their own. Her house was built in the 1950's or 1960 and was costly to heat. She scheduled an energy audit with Energize Delaware. The charge for the audit was \$100 and took about two hours. They provided information on where to put insulation and what was wrong. At the same time, they gave her bulbs, pipe insulation, shower heads and energy items for the television. Since making the suggested changes, her heating and electricity costs were reduced by one-third to one-half. Ms. Cassling highly recommended this program and encouraged others to participate in it. She also suggested that the City do some public relations promoting the program.

John Morgan, District 1, asked if there was any update on whether the Newark Country Club was continuing to pursue the lawsuit it filed against the City. Mr. Herron said it was his understanding that they agreed to dismiss that case. He did not believe the Stipulation of Dismissal was filed yet but expected it to be filed shortly.

Mr. Morgan said back in June there was a six-month extension of the Stay of the Briefing Schedule in the case of Newark Residents Against the Power Plant and the City, and since the six months was about to expire he wondered if there was a plan to have a further extension. Mr. Herron was not sure about this.

Mr. Morgan said he was a member of the Boards and Commissions Review Committee and they were reviewing the Board of Ethics tomorrow evening. He looked at the State law and the Newark Code of Ethics, and one of the crucial issues was what is or is not a private enterprise. He wondered whether the University was considered a private enterprise under State Law and City Code. Mr. Herron would get back to Mr. Morgan with an answer.

5. 2-B. ELECTED OFFICIALS:

34:16

State Representative Paul Baumbach made the following comments:

- Thanked Ms. Cassling for getting him to use the Energize Delaware Program, and thanked the State.
- Item 4-A, he added his support to Kevin Smith's appointment.
- Item 5-A-1, compensation, he said Newark expected a lot of the Mayor and Council. There were a lot of meetings and this was not a rubber-stamp Council. The Council members really rolled their sleeves up, dug into the material, asked hard questions, took answers and dug even further. He thought the residents expected high-quality Council members and Mayors and thought it was reasonable to explore a fair level of compensation. Not only did he think it should be fair, but it also should increase with inflation without having to come back and catch up.
- Item 5-A-4, pointed out that tax intercept was a bill he co-sponsored. Regarding body cameras, they had a joint resolution to ask for a statewide policy for the use of body cameras, and encouraged the City to make sure their voice was heard. He was on that bill because he was a strong believer that good body camera policy would help behavior by law enforcement and citizens.
- Item 10-A-1, he thought it made sense to address in the rules who was an elected official under Items Not on Published Agenda. He felt it should be limited to anyone who

represented Newark residents or represented someone who paid Newark utilities. He thought it was important not to have taxation without representation.

- On the Council Agenda item in January for the restrictions for open carrying weapons in municipal buildings, he looked over quickly the draft regulation. He thought it was very well crafted and paralleled House Bill 192, so it followed State law very well. He thought it would be good to consider going beyond firearms and banning weapons for open carrying in municipal buildings. In the penalty phase of that ordinance (not in the State law, State law said set your penalties appropriately), he suggested a warning, first offense, subsequent offenses. He thought that might be a more reasonable approach to how it was currently written, but there was time to address that.
- His Coffee would be held the first Wednesday of the month from 7:30 to 9 a.m. on December 2nd, at Panera. In January, it would be held at Caffé Gelato.
- Thanked Mses. Houck and Sierer for agreeing to have a drop-off location in the entrance to City Hall for winter coats and blankets for Syrian refugees.

6. 2-C. UNIVERSITY
(1) Administration

39:18

Caitlin Olsen, University of Delaware, reported that the students were off the entire week for Thanksgiving and holiday break. Classes would resume November 30th.

On Friday, a draft diversity plan would be released, and comments from the community were welcome.

On November 18th, the University announced the selection of their next President, Dr. Dennis Assanis who would take office July 1st.

Mr. Markham referred to the student who was injured in the bicycle accident and heard the family was having trouble finding accommodations. He asked if the University had facilities where they could help this family out to alleviate some of the costs. Ms. Olsen passed on these concerns to Student Life because they have the direct connection to them, so they were handling that, but she would get an update.

Mr. Gifford advised Ms. Olsen that he contacted the UDance representative about additional violations who responded that he would take the complaints very seriously.

7. 2-C-2. STUDENT BODY REPRESENTATIVE: None

8. 2-D. LOBBYIST: (See item 5-A-4.)

9. 2-E. CITY MANAGER

42:20

Ms. Houck announced that new parking soft gated equipment was installed in Lot #1 behind the Galleria. The system was working as expected and was a great improvement over the old equipment that had not taken coins for a year or more. The lot was also staffed to help explain the new equipment to customers.

There was an unfortunate and avoidable accident that occurred on a City sidewalk recently where a pedestrian was badly injured and hospitalized after being hit by a bike. Riding bikes on the sidewalk was an important issue for the City to address and staff would be looking into extending the restriction to other areas and improving the signage. Ms. Houck said enforcement and education efforts had already been increased within the community and citations issued by the Police Department.

10. 2-F. COUNCIL MEMBERS

44:31

Mr. Markham:

- Thanked Newark High School students for planting trees at Curtis Paper Mill Park during their break.
- Wanted to introduce a conversation about traffic in the City. While the City had a transportation plan, it rarely came up in conversation about developments and other items. There was conflicting information about putting apartments where people work and

where they go to school, comments that parking was inadequate and with too much parking comes more traffic.

He had meetings recently with the police and DeIDOT about timing and finding out some information, and Public Works was looking at intersections and bikes and the impact of bike lanes, how do fewer cars or fewer lanes for cars affect things and how pedestrian controls fit in. Other ideas to consider were reconfiguring streets, whether a parking garage would provide more options and would it be a plus or a minus. There were discussions with DeIDOT and WILMAPCO about an origin destination study to determine where the traffic is coming from, whether it was internal or external.

Ms. Hadden supported this effort and suggested looking at public transportation options to determine how to best serve the community and have a good bus system in place. Mr. Markham said the next step was getting the study back. If the traffic was just passing through the City, there were limited choices of what could be done but the City would know where to concentrate its efforts.

Ms. Houck reported that they engaged Dave Gula from WILMAPCO who would start internal discussions to see how they might be able to help. Regarding the buses, there were lots of buses going through town, and there might be opportunity for an overlay to be placed to see where efficiencies could be gained with the possibility of starting as an inner circle and then branching out. Mr. Markham added that they have two sensors they use, and have used them on I-95 and 141. Right now, it was a request to WILMAPCO to come up with the origin destination study, and they have done these before.

Council was supportive of engaging WILMAPCO in the initial process.

Mr. Morehead:

- The Newark Co-op moved into much larger premises and incurred huge startup costs. They were conducting a fund raising effort, and he encouraged anyone who was interested in becoming involved to look at their website and contact them for more information.
- The next budget hearing was Monday night at 6 p.m. The proposed budget was \$48 million, and he requested the input of residents. Details were available on Budget Central on the front page of the City's website.
- Asked to include the lobbyist's communication on the front page of the City's website to make the information available to the public.

Ms. Hadden:

- Gave kudos to Council-member Markham for bringing up the traffic study.
- Regarding the bicycles on the sidewalks and the increased enforcement, since the ELI students turn over every so many months, we should reach out to them more than just once a year. Ms. Houck confirmed that the police department already has done so.
- The next meet and greet was December 2nd.
- Noted that Qdoba applied to the Alcohol Beverage Commission for a permit for outdoor music on their sidewalk patio and asked if that was against Code. Ms. Feeney Roser said it was and the department sent a communication to the Alcohol Beverage Control Commission stating the same. Even if they gave it to them, the City would not allow them do it. It would be better if they did not have an alcohol permit that allowed them to do that.

Mr. Gifford:

- DeIDOT has improved Elkton Road and he was enjoying that. He asked what the next steps were after they do this. Mr. Coleman reported they had not provided a specific schedule, but the plan was first to go do point repairs which they were doing now. Once all the point repairs were done they would do a 1" mill and overlay. They would mill off the top inch and put down an inch of hot mix on both Elkton Road and Christina Parkway. Mr. Coleman expected that would be done next spring.
- Thanked Mr. Coleman and the City Manager for help with Twin Lakes. Good progress was being made in the Twin Lakes development trying to get some of the last items done so that neighborhood could eventually transition to the homeowner's association and be completed. That would be just the townhouse side, not the condo side.

He said they got their paving, so they were happy for the winter to be able to plow the streets without hitting the potholes and sewer caps.

Mr. Chapman: None

Ms. Sierer:

- Wished everyone a happy Thanksgiving.

11. 3. **ITEMS NOT FINISHED AT PREVIOUS MEETING:** None

12. 4. **APPOINTMENT TO BOARDS, COMMITTEES AND COMMISSIONS:**

- A. Appointment of Kevin Smith to the Vacant At-Large Position on the Community Development/Revenue Sharing Committee to Expire March 15, 2017

57:12

Ms. Sierer nominated Mr. Smith for the CDBG Revenue Sharing Committee. He was a resident of Newark for 16 years and lived in District 1. He had extensive background in community affordable housing development.

There were no Council comments and no public comments.

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: THAT KEVIN SMITH BE APPOINTED TO THE VACANT AT-LARGE POSITION ON THE COMMUNITY DEVELOPMENT/REVENUE SHARING COMMITTEE TO EXPIRE MARCH 15, 2017.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Ruckle.

13. 5. **SPECIAL DEPARTMENTAL REPORTS:**

- A. Special Reports from Manager & Staff:
1. Mayor and Council Compensation Review

58:56

(Secretary's Note: Items 5-A-1 and 5-A-2 were discussed simultaneously.)

Mr. Vitola reported that the memo posted on Budget Central spoke for itself. It was over 11 years now since Council's salaries were last increased. Some of the commentary at the November 2nd budget hearing was that there was a lot of time committed and a ton of meetings and work to do to stay on top of community issues and work on behalf of the community, that it would be appropriate for Council compensation to increase at a level commensurate with CPI going forward. That was an option that was on the table, but what staff recommend was going back over the last 10 years and seeing what Council's level of compensation would have been had it been increased with the CPI over that time period.

Staff did that exercise and recommended that Council consider increasing its compensation from \$7,000 a year for the Council members to \$9,000 and from \$8,400 for the Mayor to \$11,000. Going forward, they would consider putting some type of language in the ordinance similar to what New Castle County did which allowed the figure to increase incrementally with the CPI over time. Staff would do some work to determine what the appropriate CPI measure was. Most likely the full basket of goods in the Atlantic City, Philadelphia and Wilmington CPI region.

Mr. Haines said he was asked to look into other fringe benefits. They started looking at this but because the wording of "fringe benefits" or "medical benefits" was slightly outside of compensation, Mr. Herron was asked to determine, as he noted in the memo, that those types of fringe benefits would be applied if so desired by Council in the same fashion as the salary compensation. It would be the same type of time frame and adoption as outlined in Mr. Vitola's memo from November 10th that followed Charter

Section 308. After looking at comparable peers, Council matters, styles of government, they removed that piece of Wilmington being a strong Mayor city and looking around.

The city of Dover had Mayor-only coverage and would pay the same deductions as employees. Harrington had vision and dental as an option for Mayor and Council to be a part of, but they pay 100 percent of the premium for that.

From a pure medical standpoint, that was what they found as fringe benefits. Other colleagues looked at the use of tablets for day-to-day operations, shared office space or attending conferences, but they were not viewed in the same light as a fringe benefit.

The second page showed the 2016 premium plans and put into context what medical, vision or dental plans from a premium standpoint would value in 2016 just from a conversational standpoint so there was some context to what the values would be.

Mr. Haines mentioned to Ms. Houck and Mr. Vitola that previously he was familiar with the concept of having a life insurance policy on the Mayor and Council during their term. The last paragraph noted the costs of the City's group plan for a term life insurance policy which caps at \$150,000 at this point. That was a \$25.50 per month expense or \$306 annually. It also falls into the fringe benefits discussion.

Mr. Chapman asked if the costs referenced in 5A2 on the chart were the total gross and not what the employees paid. Mr. Haines explained that was the full gross value of the monthly premium.

Mr. Gifford referenced the healthcare plan in the city of Harrington and clarified if you want to be on the healthcare plan, you pay the full amount. Mr. Haines said this was like Cobra where you paid the full the premium. Mr. Gifford asked what the employees paid in Newark. Mr. Haines said Newark was self-insured for workers comp and at times that may drive the City's experience. Staff continued to look at other options. Employee only coverage had no deduction. The City also drove it itself through work related injuries. Mr. Haines reported there was a 17.5% contribution for dependent coverage.

Ms. Hadden asked if the city of Dover was a full-time Mayor or the same form of government Newark had. It was a different form of government than Newark but it was believed that the mayor had more responsibility and was responsible for the police chief.

Mr. Markham said in looking at his own situation an increase was not worth it. He already sent more than half of his income to the fed or to the state or to social security. He would rather keep the money within the City and have an amount of money that he could send to a project in a neighborhood than to have a salary because this was really more like a stipend.

Mr. Morehead noted that Representative Baumbach talked about fair value and from Mr. Morehead's perspective, people did this job as a public service. Quality folks were interested in the job for that reason, and it did not require money to do that. If it did require money, the amount being discussed would be insufficient. He was not particularly interested in this change at this point.

Mr. Gifford said health insurance was available from many other sources at this point so he saw no need to get into the complexities of that. Plus, if one did buy the health insurance, it would be more than the salary was right now and a Council member would actually have to send money to the City. He thought there were plenty of other options.

The Chair opened the discussion to the public.

John Morgan, District 1, wondered during the time of the reservoir lawsuit which cost the City a lot of money, whether Newark could afford to have a part-time Mayor and Council. He thought the decisions made then were not made in the best manner. If there were Council members with a higher degree of legal expertise, perhaps the City could have saved a lot of money.

Mr. Morgan became even more interested in what was happening in the City during the power plant controversy. At that time, most Council members were working very hard, probably 20 or 30 hours a week or more grappling with some of those issues. He was particularly impressed by what Ms. Hadden did in getting up at night to go make noise measurements in all the neighborhoods.

He thought there could be a very good case for saying Council deserved to be paid more than \$7,000 - \$8,000. He thought they deserved more like \$40,000 - \$50,000 if they were competent and did their job well. It seemed to him that usually half of Council's time at meetings was taken up by proposals from developers and there was a lot of reading to prepare for those projects.

He thought consideration should also be given to appropriate compensation for Board of Adjustment members which was provided for in State code and for members of the Planning Commission who were also looking at these big projects. If there was going to be a need for more money to pay people at an appropriate level, then the proposers of multi-million dollar developments should be paying an appropriate amount in fees to have their proposals considered.

Carolyn Carter, District 5, felt this was not a good time for Council to consider an increase in their salaries. The residents appreciated the public service performed by Council. However, their stipend was never meant to pay the same kind of rate earned by people in the private sector.

Jeff Lawrence, District 3, addressed the amount of time spent by Council members preparing for and attending Council meetings within the context of pay. He pointed out that last year the increase was blamed on residents due to the power plant issue. Since then public comment was minor, yet meetings continued to increase in number and in duration. He suggested that Council think about their role as legislators and figure out why there were so many meetings and what made them run so long.

Mr. Chapman said he did not initiate the conversation of a Council increase to request full-time compensation or to get the financial value out of the work they do. He said the leading motivation for anyone who held or would hold the seat in the future had nothing to do with financials. His primary concern was there would be a time when it would become laughably negligible. At some point prior to 2003 and again in 2003, an appropriate and balanced valuation for compensation was determined. For Council to continue to ignore that, they were either agreeing with the very small minority of naysayers that anybody who filled the seven seats on Council was not worth it. If the staff proposal of increasing Council salaries from \$7,000 to \$9,000 was enacted, the amount in the budget would total \$12,000 annually. He thought all members of Council would agree that \$7,000 or \$9,000 was not adequate compensation. It was his understanding that there was only one Council member that ever donated their salary back to the City.

Mr. Chapman received only positive feedback from constituents who contacted him since the public conversation several weeks ago. Their response was that it was absurd Council increases were not just automatic. This department report was intended to provide more information to facilitate a conversation. He was disappointed to hear from Council so far that this was not a conversation worth having.

Mr. Morehead noted that regarding Mr. Morgan's point of how Council could be more effective, for him, communication was a challenge. It was very time consuming as was the background work. If there was somebody in the City Secretary's office that Council could ask to do research for them, he felt that would be a better use of this money. He was all for making Council more effective but was not sure this was the conversation that would do that.

Mr. Gifford agreed the job was time consuming. He thought perhaps the salary was intended to get a lot more people to come through the Council seat. He said maybe there should be a conversation about form of government and was the council-manager government what citizens wanted.

14. 5-A-2. MAYOR AND COUNCIL MEDICAL BENEFIT REVIEW

(Secretary's Note: See item 5-A-1.)

15. 5-A-3. ADDITIONAL INFORMATION RE: INTENT TO ISSUE A REQUEST FOR PROPOSAL (RFP) SOLICITING INTEREST AND PROPOSALS RELATED TO A PUBLIC PRIVATE PARTNERSHIP (P3) RELATED TO THE DEVELOPMENT OF A PARKING STRUCTURE WITH RETAIL/OFFICE/OTHER COMPONENT AND RESPONSE TO COUNCIL MEMBER QUESTIONS

01:29:24

Ms. Houck referred to her memo dated November 5th that advised of her intent to issue an RFP to solicit the proposals related to public/private partnership for the Lot 1 site. This decision was brought on by the fact that in recent months the Planning Department was approached by and met briefly with two different groups that expressed interest in making a proposal to the community. Understanding that anyone can sit across the table and say they were interested in doing something, staff felt they had the need to provide an opportunity for things to come forward. The two entities were advised that such a process would be necessary in order to keep it fair and open, the receipt of which would be reviewed and come before Council just like other RFP's. At the last Council meeting, additional information was asked for and was provided in Ms. Houck's memo dated November 13th. It included the priority level as medium in the capital program. That made sense because an RFP for a P3 would most likely not show up until 2017.

Staff was working with the vendor and expected the additional information to be available in the near future and then every month thereafter. The revised Haahs parking report was received and was supplied to Council with the memo of November 13th.

The idea of a traffic study was fully supported by staff with the caveat that it would be necessary to do it when staff knew what was coming. Also a traffic impact should be reflected in any RFP that goes out.

Mr. Gifford said this was an issue he had a lot of interest in. It was a very large expense for the City. He did not expect to get into conversations about parking when he joined Council but it popped up and was something he continued to look at. When the new on-street parking meters were acquired he went along with the idea of getting sensors. He thought with the data collected that the City would be able to understand its parking situation. When an outside source was enlisted to have a parking study that really was the "end all, be all" of parking studies for now, he was not impressed with some of the choices made for that study. Even with the revised copy, some of the errors still existed. At this point, very little data was available. He thought the City first would want to have a good understanding of its sensor data and that the City should be able to get this on a quick rotating basis. He understood a monthly report may be available soon.

Mr. Gifford asked how the City could fund a project like this. Staff reported there were people interested in a public/private partnership, and he would like to know who expressed interest. He did not think there was any justification for this. The other issue was he was not sure if the taxpayers were protected for this. There were other options in the Code such as revenue bonds where the City would not be directly on the hook like a regular general obligation bond.

Before an RFP went out for this, he would like to see details and have a discussion of that RFP. A lot of time could be wasted going through that process and then not being happy with what it was that went out. He was not promoting that the City even do that. He did not understand the parking situation and did spend time going through the revised report. In the private lots there were still totals of cars parked that were higher than the available parking listed and it was still in the percentages for the report. He would like this proofread and understood before he got it. He asked if the design day was selected correctly as it looked like it was a peak day. He understood it was the wish of other Council members to have the parking garage, but he was really skeptical of this, especially when the charge for parking waivers was \$6,000 and this was \$18,000 - \$25,000 a space.

Ms. Hadden noted there were several action items recommended in the report. Page 8 referenced signage and confusion and certain loading zone areas. They had recommendations on making the signs more readable. She asked if those type of action items would be taken care of as they seemed rational to her.

On page 9 regarding residential parking areas there was mention of revising the RPP program and charging a monthly rate for each guest permit because of some abuse that might be going on. That seemed like a good idea to Ms. Hadden.

Echoing Mr. Gifford's comments, on page 13 about the survey day parking demand, there were two instances where use exceeded the supply. She asked how that was possible. Mr. Gifford said they counted the reserved parking that they did not count in the available spots.

Mr. Morehead also shared Mr. Gifford's concerns about having the information available to make a good decision. He proposed that with the validation data available, the City should be able to look at this and understand how far the average customer was walking, which businesses they were going to in order to use Lot #1, for example. If people were not willing to walk halfway down Main Street, what problem was the City solving.

Mr. Morehead thought the City had the information available, but it was a matter of asking the right questions to garnish the data out of that. His other concern was that the City Manager made a statement in the 2016 budget, "The Enterprise funds are comprised of electric, water, sewer and parking. These funds are intended to be self-supporting and also contribute to the governmental funds via operating margin transfers." Mr. Morehead said that study was not done for this garage to ensure that it would meet those requirements for the parking fund. The Haahs study appeared to be a peak study, and the data indicated the building would sit empty a large amount of the time. He found it difficult to believe it would cover its costs and return the operating margin if taxpayer money was involved in funding the project. He did not have a problem with the parking garage but had a problem with the taxpayers paying for it. Based on its location and the fact that Trabant was \$2 an hour vs. the City at \$1 an hour, he thought it would get filled with folks that the City did not intend. There was a much larger conversation about what problem this would solve. Mr. Morehead was concerned that the residents would be on the hook for \$14 million and this would not benefit the businesses downtown but rather the students and University faculty that would be parking most of the day. He believed a financial study was needed in addition to a traffic study. He asked that the validation data and the finance study be looked at before moving ahead.

Mr. Markham remarked that one of the goals of the previous councils was working toward additional parking downtown and solving related issues. Council already took the step of acquiring the land behind Lot #1. Previous councils looked at federal money in terms of grants. It was interesting because Newark was a low-income area due to all the students. At one point in time that was looked at with the DNP. Council saw designs up to \$20 million and rejected them because they made no sense. Mr. Markham thought the idea of a public/private partnership was a good thing rather than going it alone. These people were not going to get in this business if they did not think it would break even at the very least, if not make money. The question would be "what's the deal?" The interest showed some opportunity. Council did not know what that was until somebody brought them something. Council could not have these conversations in private – they had to be held in public. He would like to see what people have to say. He thought that they would have a financial study done before they enter into the millions and would rather they spend their money on the study than the City. Mr. Markham would like to see what this public/private partnership brought. Maybe they would have an idea that the City never even thought about.

Ms. Sierer agreed with Mr. Markham and thought part of this RFP process was an education and research process and there may be ideas Newark did not think of. Council did not have to move forward but part of it was going to be information gathering to see what was available, what the financial information was and what they were willing to ante up to get the information they wanted to make the decision. She supported the RFP.

Mr. Gifford asked if an RFP was needed for someone come in front of Council and talk about what they could do and suggested the City could save a lot of time. Ms. Houck suggested that it may not be one; from the two different entities that came, something could be facilitated for executive session if that was determined the best way.

Ms. Houck said everybody was focused on the RFP for a public/private partnership just as a regular old garage like we were talking about. That was not necessarily the case. She did not think Council should consider that that was the limitation of this type of an exercise. It could be much more interesting. Large expense to the City was mentioned – the only expense would be the normal process to put out an RFP and see what the development community wanted to offer to Newark. It was also mentioned that, "I do not think I am interested." She said no one should know whether they were interested or not at this point in time because there were no proposals. She would like the opportunity to take a look at what the development community may want to offer for this site

Ms. Houck noted that the staff report would be on its way on the Haahs report to tell Council what items they thought the City should take advantage of such as the signing.

Ms. Sierer did not think it was appropriate to bring in the two parties who have expressed interest. She said the RFP needed to go out to the general population. Mr. Gifford was not trying to circumvent the RFP process. He was confused that a lot of work was done in the past and the City still did not know what it wanted. All that money was spent on different studies and the City had systems that could give them information and did not utilize any of it, which shocked him. Going through the public/private partnership process also avoided going through any referendum process which was something the public could weigh in on. He did not think it was the right time to go through the RFP process, and wanted to make it known that he did not think this was the right time for it because the City did not even have the information that they wanted to put in an RFP.

Mr. Gifford found it interesting that the only thing removed from the original version of this report was that Lot #3 was not at all suited for a parking garage, yet it was still in the capital plan for \$3.5 million. The City seemed to be taking the things they wanted and not taking the advice of the things they did not want.

Mr. Morehead echoed the question of did the City need an RFP to move forward. He did not believe Council agreed that commercial on the first floor was a business that they wanted the City to be in, nor apartments on the top floor necessarily a business that they wanted the City to be in. He reiterated that if the folks willing to enter into this private partnership were putting up their own money, he was all for it. If there was money from the residents involved, there had to be some serious discussions about what the City was trying to do and bring forward the data available to them to support that this was a plan they wanted to do going forward.

The Chair opened the discussion to the public.

Helga Huntley, District 1, commented about her disappointment in the continuing errors in the parking study. She focused her comments on the fatal flaw in the study that persisted. She took the data at face value ignoring such mistakes as saying there could be 33 cars parked in 22 spots and assumed that was actually possible. If the City took the data that Tim Haahs presented and used what they advocated (looking at the 85th percentile), they actually had enough information in the report to do that. By looking at the parking revenue data in figure 9 and assuming that was representative of monthly fluctuations in overall parking demand at all hours, it was possible to project parking demand for each two hour segment in each month. Then they could choose the 85th percentile of those segments and ignore all the night time hours, which it was not clear to her whether they meant or not to do that or not. If they did that, the design demand was 776 spots, not 844 as argued by Tim Haahs, which was the 99th percentile. Ms. Huntley's point was that there were currently 72 more parking spaces than Mr. Haahs's criteria said would be ideal in 2015. This gave the City sufficient supply for almost a 10% cumulative demand growth out well past 2025 which would see a need for just 800 spaces according to the study. She said the study's data demonstrated that the downtown parking demand was and would likely be adequately met by the current supply for at least the next decade.

That was ignoring any parking availability in the University's garages which were within an easy walking distance from Main Street. In light of this information, she saw no reason to continue the discussion about building a new parking garage and recommended that any further discussion of a potential municipal parking garage be tabled for the next five years at which point a new study should reevaluate parking needs.

John Morgan, District 1, felt if there was going to be any sort of public/private partnership, it should not involve a confidentiality agreement similar to the public/private partnership with TDC. He noted that a public/private partnership for a parking garage would actually be a public/public partnership with the private side coming from developers/businesses on Main Street who would raise their prices thereby impacting by the residents. If the City found it necessary to raise the rates for parking and had higher rates in the garage than on the street, people would not park in the garage. All this needed to be thought about carefully. He stressed that if the City wanted a traffic study done, it should not be paid for by the developer and strongly suggested that Council pause and think about whether a parking garage was needed in line with Ms. Huntley's comments.

Jeff Lawrence, District 3, pointed out that the public almost unanimously voiced that there was no interest in a parking garage. The only people he heard express an interest in a parking garage were a select few businesses on Main Street. He urged Council to take the measure tonight to give direction that there was no interest in an RFP or a parking garage and that any discussions or activities surrounding a parking garage cease immediately unless further directed by Council.

Jen Wallace, District 3, felt the need for a parking garage was not established and an RFP was premature. She agreed that having developers do a study was a bad idea.

Mr. Gifford thanked Ms. Huntley and did not realize she did the analysis that should have already been received from the parking study. He suggested not issuing an RFP until the available data was understood.

Mr. Markham would like to hear the options since this was a full Council decision.

Mr. Morehead asked Mr. Herron if an RFP was required for people to present ideas because at this point Council did not know what they wanted. Mr. Herron said for people to present ideas, an RFP was not required. Mr. Morehead said he would like to see it go that way. He did not believe the City should be in the commercial leasing business for commercial property or in the landlord business for apartments, but was in the parking business for better or worse at this point.

Ms. Hadden said the statement that Council did not know what they wanted may be because they did not know what was out there to be had. If doing an RFP brought a decision to Council in one way or another about the garage, it was an RFP, and the City did not have to accept whatever came of it. This was an opportunity to gain knowledge and see what options were out there. However, some of the vendors may be reluctant to come forward in an open public format if they were dealing with proprietary information. She felt an RFP would not mean a commitment by the City. Mr. Morehead said it used staff time and at that point defined in the RFP what the City was looking for, yet Council had not agreed what they were looking for.

MOTION BY MR. GIFFORD, SECONDED BY MR. MOREHEAD: TO NOT MOVE FORWARD ON THE RFP AS PRESENTED IN ITEM 5-A-3 UNTIL THE PARKING DATA WAS UNDERSTOOD AND PUT NO EFFORT TOWARDS IT UNTIL THAT TIME.

Mr. Markham raised a question for Mr. Herron as he believed motions made by Council were supposed to be positive motions. Mr. Herron did not know there was an absolute requirement that it be positive and did not necessarily perceive that Mr. Gifford's motion was negative.

Mr. Chapman requested clarification about no further efforts being put toward it. Mr. Gifford clarified that his motion was not to issue an RFP until the information was

understood from the current parking study and the current parking meter and parking lot solutions.

Mr. Markham asked how it would be determined when the report was ready. Mr. Gifford said the study was not yet corrected (a member of the public disputed the entire study), and he wanted to understand the information first, including the information from the City's own systems. Then Council could vote to move forward on the RFP.

Question on the Motion was called.

MOTION FAILED. VOTE: 2 to 4.

Aye: Gifford, Morehead
Nay: Chapman, Hadden, Markham, Sierer
Absent: Ruckle

Mr. Chapman noted that staff did not have direction. Mr. Markham added this is why Council should have positive motions. Gifford said his was positive; he was just looking for action to finish the work that was started.

MOTION BY MR. CHAPMAN, SECONDED BY MR. MOREHEAD: THAT COUNCIL DOES NOT MOVE FORWARD WITH THE RFP.

Mr. Markham asked how this motion was different than the last one. Mr. Chapman said it had no stipulations that were unclear.

MOTION FAILED. VOTE: 3 to 3.
Aye: Chapman, Gifford, Morehead.
Nay: Hadden, Markham, Sierer.
Absent: Ruckle.

MOTION BY MR. MARKHAM, SECONDED BY MS. SIERER: THAT STAFF PROCEED WITH ISSUING AN RFP FOR THE DEVELOPMENT OF PARKING LOT #1.

Mr. Morehead expressed concern with this motion that someone could come in and build an apartment complex. Mr. Chapman said they could only bring a recommendation to build an apartment complex. Mr. Chapman thought the current proposal was far away from the original purpose which was to address parking concerns and was not good in general.

Mr. Markham withdrew his motion and suggested moving on since Council was deadlocked and not give staff any direction. Council agreed to move on.

16. 5-A-4. LEAGUE OF LOCAL GOVERNMENTS – LEGISLATIVE COMMITTEE – ACTION ITEMS FOR DISCUSSION/DIRECTION

02:13:40

Ms. Houck reported the information was to provide the opportunity for discussion in a timely manner and facilitate direction of Council to staff and the lobbyist. The realty transfer tax discussion first came about at the last legislative session. If the discussion that took place at the end of last year's session was enacted, Newark would have received \$5.7 million less in the transfer tax revenues over 10 years.

The second item was tax intercept. It carved municipals into those that received the funds to go out to people in their tax payment with priorities put in place for child support, etc.

The accommodations tax was discussed and it was decided to set up a meeting with the hotel lobbyist and Council before pushing anything in the legislature to see if there was a middle ground between both sides.

Regarding municipal street aid and gas tax, it was not clear to Ms. Houck where Council stood. She wanted to know if the City should push for this. She felt now might be

the best time for this, especially if a guarantee could be put into it that the money would go to infrastructure improvements. Information on the gas tax from last year was shared.

Additional concerns identified to keep a close watch on were unfunded mandates, such as the municipal separate storm sewer system (also known as MS4). Unlike some of the smaller communities, Newark was already impacted by MS4 requirements. If the additional requirements being discussed were put in place, staff believed this would require an additional semi-technical staff person.

Body cameras were concerning based in part on the large funding cost for the storage. There was talk about shifting DELJIS costs to municipalities from the State fund.

HB 200 was the bill in reference to accessible parking. The changes being recommended would impact all parking lots in the City, even if they were being re-striped and would significantly reduce the municipal inventory.

Council members provided their opinions on the list.

Ms. Hadden noted the following: Realty transfer tax – keep a watch, take a position at some point. Tax intercept – a good idea and should be watched. Accommodations tax – although it would not have a significant impact on the City, the City's peers and other municipalities would be watching this. Newark should watch it with them. Municipal street aid/Gas tax – the City should be interested in that as it would have an impact. Unfunded mandates – a real concern for Newark, especially with sediment storm water, street sweeping, litter control, etc. – keep a watch and direct for that. HB 200 (van parking and parking lots) – not sure of the impetus for the new language, but felt the issue was best left to the local governments, local zoning and building codes and the Federal ADA Act.

Mr. Chapman understood the lobbyist had to be given direction to provide a public voice from the City. However, he was concerned with procedure and asked Mr. Herron if it was problematic for Council to individually give an up or down on specific items. Mr. Herron advised there was no problem with the current discussion where each Council member gave their views and that formal direction could be made by motion.

Mr. Chapman said he would share his personal opinion but could not say he was expressing the voice of his constituents. Ms. Sierer thought the important part was that this information came from the Legislative Committee, which she, Ms. Hadden and Ms. Houck served on and these topics were brought up by representatives from other municipalities on the committee. The committee wanted direction from municipalities to take to the State. This would benefit Mr. Armitage but Newark's committee members would either have to go back and say nothing and the other municipalities would drive it or they needed some direction from Newark City Council.

Ms. Houck added this was an attempt to try to get this information on Council's radar. There was not a lot of success with understanding what Council wanted with the last legislative session. Newark was silent on most things and this was an opportunity to give Council the first cut that the Legislative Committee came up with. There was also more information that she shared with Council today that came from the League's lobbyist Mark Lally as well as from Mr. Armitage.

Mr. Morehead said last year the lobbyist was given some direction as the bills were evolving and that was a concern he had here. His example was the parking. There were parts of the bill that were horrible and parts of the bill that were necessary. He thought Council could provide a general direction without support for the bill specifically. He would support Ms. Hadden at this point with watch rather than putting the impetus of all of Newark behind any one bill as the bills continue to evolve. That would be his concern because Council was not on top of the wording as it changed day by day.

Ms. Sierer asked if there were any major objections to the items discussed in the Legislative Committee meetings.

Mr. Gifford noted the following: Realty transfer tax - keep what we have, does not supporting the State raising the tax. Tax intercept – okay with that if the City wanted to continue down that path. Accommodations tax – no. Municipal street aid/Gas tax – maintain at least for the time being but would not promote the gas tax as a means of maintaining municipal street aid. HB 200 – opposed anything that made parking difficult and then watch the other issues as it evolved.

Mr. Chapman noted the following: Realty transfer tax – if imposed by the state, he was in favor of the stipulation that those additional revenues raised come back to infrastructure projects or municipal street aid. Tax intercept – made sense in high level theory. He wanted to better understand what some of the City's delinquent accounts were. Was it relatively small amounts for typically the least advantaged and therefore putting people in a bad or worse situation or was it large players, big businesses, people that have the means to pay but were not. Accommodations tax – no. Municipal street aid/Gas tax – being increased or continue to be funded via a gas tax – he was fine with that. Unfunded mandates – would not comment until he had time to read it. HB 200 – this had a lot of back and forth and seemed to cause a lot of issues for Newark as a municipal government and businesses in compliance. The state had a lot they want to figure out and he was not interested in anything that would cause additional cost for the municipality and/or businesses without seeing a benefit to true accessibility in relation to the ADA.

Mr. Markham noted the following: Realty transfer tax – watch because the City and local governments did this work. He preferred them not to raise the taxes, but the State did not usually listen anyway. Tax intercept – fit into Newark's rules of being in good standing in doing with the work with the City. That would not be much of a windfall to the City but thought we would be in that. Accommodations tax – thought the state would take it if municipalities suggested it so he was not really interested in supporting that. Municipal street aid/Gas tax – Newark needed to keep its street funding, so he was torn about the gas tax because he did not want to see the roads go to pot. Unfunded mandates – there was a lot here with the storm water control. He would like to know from Public Works if these were valid. Some of these things seem like they were record keeping, so he would like to know what their value was. Body cameras – a good idea, but storage was a concern. If this was State mandated, it would be great if they provided the storage. HB 200 – the parking was a concern, but he thought there were items in there that Newark should be doing for disabled residents and visitors.

Mr. Morehead noted the following: Realty transfer tax – watch and have routine updates as it evolved. Tax intercept – watch at this point. Did not think this was a lot of money and did not see that as the State's responsibility. Accommodations tax – watch as it evolved to understand what was being offered. Municipal street aid/Gas tax – this was an important part especially since the City did a lot of the maintenance of the State roads. He would support maintaining the street aid. He would have to see how a gas tax came out in order to know whether or not to support it. Keep watch. Unfunded mandates – the sewer was a watch. The body cameras were a good idea, the sooner, and the better. DELJIS – did not know how much money was involved, so he did not have an opinion. That would be a watch in the short term. HB 200 – He drove a handicap van for many years. The lift for a wheelchair was usually four feet wide. To have a four foot space next to a van space (at least nine feet in Newark), was 13 feet and if there was a car parked in that next space, you still could not get off the lift because the lift had walls on both sides as it was meant to go off the far end. Thus, there were parts of this he supported. He did not support retrofitting what effectively would be grandfathered parking, but he thought it was necessary to move forward and provide accessible accommodations. Parts of this were excellent, and there were parts the City would probably not be interested in. In the short term, watch with the general support depending on the final terms that come through. He thought it was something that Newark should move forward in the long term.

Mr. Armitage reported that Ms. Houck forwarded information about State-wide storm water management. It continued at the Federal level to be tied up in Congress and in court challenges but DNREC felt they needed to move forward and do something. He would pass along information as it became available so staff had a chance to evaluate and share what the consequences may be to Newark. Mr. Markham asked if this fee would stay at the State level or would be sent back to the cities because they said if

municipalities did their own fee, they would cut what the State does. Mr. Armitage could not answer that question because he had not seen the bill. His sense was that the State was going to keep that money and because of the requirements the State put in place for Newark, Newark would again have to do something that piggybacks on the State.

Regarding the date for the reception with the local legislators, Mr. Armitage asked Council to check their calendars for January and send him or Ms. Houck available dates including those around the Martin Luther King holiday (January 18) when they might be able to include some of the Federal legislators. Ms. Sierer asked Ms. Houck to send out an email for some date options and then Council would reply promptly back – she was not sure about getting on their calendars for January because they book so far out.

Mr. Armitage put together a matrix of what Council said, and the vast majority was to watch. There would be a much better sense of many of these issues when the Governor presented his budget at the end of January and there would probably be some foreshadowing in his State of the State in the previous week.

There were no public comments.

17. 6. **RECOMMENDATIONS ON CONTRACTS & BIDS:**

A. Recommendation on Contract No. 15-12 – South Well Field Treatment Plant Filter Rehabilitation

02:40:14

Mr. Coleman reported Contract No. 15-12 was for filter remediation at South Well Field Treatment Plant. The filters were bedded with manganese greensand with an expected life of 5 to 8 years. Tonight was the 12-year anniversary of this plant coming online, and was still the original media. It was well past time to replace it. According to the manufacturer it would generally work okay until it just stopped, so it should not be put off.

The project was bid and 12 vendors attended the pre-bid meeting. Five bids were received. Derstine Company was in line with the engineer's estimate at \$12,000 under the estimate of \$230,000. The condition of the internal components would not be known until the filters were opened up. At that point, the plant was offline and the City may have to purchase water if there was any issue with the Curtis Treatment Plant while the South Well Field plant was offline.

The plan was to be able to act quickly if an issue was uncovered once the filters were opened. Mr. Coleman requested a contingency to be authorized of \$90,000 in addition to the contract price of \$218,000. Funding was available in this project and he would look to the Curtis intake study and replacement project if any additional funding was needed. The manufacturers indicated they did not think there would be anything wrong inside the filters based on their age but it was better safe than sorry.

One item with item 6A and 6B was the Jenny's Run Culvert Removal Project would involve taking the reservoir supply line out of service so it was preferable for them not to happen at the same time. Mr. Coleman wanted to get both approved now to get one started and finished before the second one started. Both had about a 30-day period when they could happen – that was how long they would take, and the second project had bog turtle implications so the City had to be out of the creek by the end of February. Timing was of the essence with these or else at least a year would be lost on the project.

There were no comments from Council and no public comments.

MOTION BY MR. GIFFORD, SECONDED BY MR. MOREHEAD: THAT CONTRACT NO. 15-12, SOUTH WELL FIELD TREATMENT PLANT FILTER REHABILITATION, BE AWARDED TO DERSTINE COMPANY, LLC, FOR A TOTAL COST OF \$218,000. CONTINGENCY SPENDING OF UP TO \$90,000 WAS AUTHORIZED TO COVER THE COST OF CURRENTLY UNKNOWN INTERNAL COMPONENT REPAIR OR REPLACEMENT IF NECESSARY ONCE THE MEDIA HAS BEEN REMOVED FROM THE FILTERS.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

**18. 6-B. RECOMMENDATION ON CONTRACT NO. 15-13 – JENNY’S RUN
CULVERT #1 REMOVAL**

02:43:14

Mr. Coleman presented the recommendation to award Contract No. 15-13 for the Jenny's Run Culvert Removal #1. This was the furthest downstream culvert on Jenny's Run before it emptied into the White Clay Creek. This was the one that, when it backed up, flooded out and cut off Paper Mill Road. An alternative analysis was done between culvert removal, replacement of larger pipes, etc. The cheapest option was the culvert removal and stream restoration option.

Hardy & Son was the low bidder on this project. Five bids were received. Their price of \$168,000 was slightly under estimate which was pretty rough because a portion of this was design build as opposed to doing it design bid build. The design build portion was the bank stabilization. The contractor was on the hook for coming up with an acceptable bank stabilization method on the DeIDOT road side. The project was close in scope to the White Clay Creek crossing finished in 2014. That project cost was \$165,165 so \$168,000 was right in line with it.

Mr. Markham asked for clarification that Paper Mill would be dug up and the water pipe would be lowered there. Mr. Coleman explained it was not under Paper Mill Road. Heading north on Paper Mill Road, there was the park access off to the right going into the old Paper Mill Park across from the reservoir. It was the pipe underneath. There were actually three sets of similarly sized culverts going up the hill. The culvert under Curtis Lane was the same size as the culvert under that park access, which was the same size as the culverts under old Paper Mill Road. Mr. Markham asked where the stream bed restoration was going to be done. Mr. Coleman replied the park access lane was being taken out. Effectively the two pipes there were mostly collapsed with one completely collapsed. Mr. Coleman confirmed that Curtis came in and the restoration would be from Curtis Lane down. The water generally stays in there and then hops the curb at that point.

There were no public comments.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT CONTRACT NO. 15-13, JENNEY’S RUN CULVERT REMOVAL #1, BE AWARDED TO JOSEPH T. HARDY AND SON, INC. FOR A TOTAL COST OF \$168,000.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

**19. 6-C. RECOMMENDATION TO WAIVE THE BIDDING REQUIREMENT AND
EXTEND ELECTRIC LINE TREE TRIMMING CONTRACT FOR AN
ADDITIONAL YEAR**

02:46:27

Ms. Houck presented the recommendation for an hourly rate and labor and equipment to carry out the necessary tree trimming along the City's electrical lines. If approved, this would be the last contract extension for Contract No. 12-01. Funds to cover the cost had been requested in the 2016 Operating Budget totaling \$200,000. It was recommended that Council waive the requirement to accept bids for these services and extend the 2014 labor prices in all terms and conditions of contract 12-01 through December 31, 2016.

Mr. Markham noted this came to Council every two years and was basically the same thing for almost 10 years because other companies could not come in and compete, but Asplundh always seemed to be low.

There were no public comments.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT COUNCIL WAIVE THE REQUIREMENT TO ACCEPT BIDS AND EXTEND THE 2014 LABOR PRICES AND ALL TERMS AND CONDITIONS OF CONTRACT NO. 12-01 WITH ASPLUNDH THROUGH DECEMBER 31, 2016

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Ruckle.

20. 7. FINANCIAL STATEMENT: *(Ending August 31, 2015 and Ending September 30, 2015)*

02:48:14

Mr. Vitola presented the unaudited Financial Statements for the year to date periods ending August 31 and September 30, 2015. Year to date operating surplus was running very close to budget in August before dipping to about \$254,000 below budget at the end of September. The trend and the reasons for that were largely the same as in recent months. The governmental funds showed lower receipts than expected. That revenue shortfall remained primarily between fine receipts and permit revenue. Fine revenue was the largest part of that, and the variance would continue to be down. Most of the variance was attributable to police staffing and low red light camera receipts. On a positive note, transfer taxes were higher than expected as a result of strong real estate activity. That trend seemed to be continuing and property taxes were also higher than expected on a higher than expected assessed evaluation in July 2015.

Expenses continued to track under budget which was mitigating but not completely offsetting. Lower than expected personnel costs drove the positive expense variance, a function of some open positions and the related healthcare and other personnel cost savings that went with it. In the enterprise funds, the electric utility was no longer propping up the water and sewer utilities as a mild July and an even milder August pushed electric margins down. As mentioned in the July report, the average high in July was 85 degrees and the average temperature was 77 in Newark, not very far below the average for July but then again in August the average temperature was even a degree cooler than July. September had historically low electric volume sales so the trend was persisting. Even worse, the water and sewer sales were behind the budgeted volume, which drove down margins. Mr. Vitola expressed some concern about this one because it did not bounce back in August and September which were usually high volume months. The October figures were in and that was not adding any relief either. This would be repeated again for the October report. Budgeting seemed to be appropriate even though 2014 volumes were way up, almost 18% higher than the 2013 volumes and higher than the previous three year average. It was budgeted for an amount in 2015 that was 5.2% less than the 2014 numbers. Weather changes, conservation and other factors were being assumed that could drive usage back down. The budget was for an amount that was 11.8% higher than the average from 2011 to 2013 which was right in line (conservative really) because the Smart meters alone were supposed to have accuracy that was 12% more and there was growth since 2013, so the 2015 budget numbers were fairly conservative.

Regarding what was happening with Artesian Water, all Mr. Vitola got from them was their third quarter public release. While they did not mention volume specifically, they did attribute the entirety of their 2015 vs. 2014 water revenue increase to their rate increase instituted in November 2014. While they did not mention volume per se, it was clear that volume was flat, possibly down, possibly marginally up.

Mr. Vitola spoke with UD's Water Resources Group and while the summer peak volumes in the last few years were not materially different from each other, the trend was lower volume but that was more over the last 5 to 10 years, not specifically 2015 vs. 2014. More conservation was budgeted in 2016 and that was the point of the City's rate structure. The inclining rate structure encouraged conservation. The more conservation

there was, the more the City was resilient to drought and the more poised for any growth that happens in the form of capacity. With those benefits the City had to cover the fixed cost of running a water utility and on the capital end and infrastructure improvement that go with it. To that end, this dynamic would be part of the 2016 rate study and there would be two full years of water data after the Smart Meter install as well as the regional data from UD Water Resources to be part of the study.

Expenditures in the enterprise funds were 6.6% below budget. Sewer expenditures were particularly below budget as seen on the eighth graph, page 22. The bulk of the cost for the emergency repair hit in October's financials, but even then, that emergency repair did not completely derail the expense underage in the sewer funds, so that was not a major impact going forward.

The other funds continued to benefit from lower fuel costs which were all but certain to persist through the rest of the year. The City's cash position was \$31.6 million at the end of September, which consisted of \$10.3 million in operating cash and \$21.3 million in the City's cash reserves. One of the City's current liabilities was the electric regulatory liability, which was \$1.4 million at the end of September. That was part of the revenue stabilization adjustment or RSA being passed back to customers on the monthly bills as well as any growing over collection during 2015.

As Council was aware, so far in the budget process staff conducted a brief financial workshop, one CIP presentation to the Planning Commission and one budget hearing on November 2nd. The next step was Monday's second budget hearing. Mr. Vitola directed Council to Budget Central for updates and responses to questions as well as the new CIP and operating budget drafts.

Mr. Markham referenced red light camera fines being down and thought the camera locations were no longer in the best locations for accident prevention. He suggested asking DelDOT if there were better areas to place them.

Mr. Markham asked where property tax collection stood at the end of September (the due date). Mr. Vitola would have to get back with that information, although it was very high. Mr. Markham said if all the property tax was included, the cash balance would be higher than the \$31.6 million shown. Mr. Vitola explained all the cash came in, but the revenue was not recognized right away. With most of the cash there, the \$31.6 million cash balance was probably at its peak for the year. It was \$1.5 million lower as of this morning. Mr. Markham would be curious where the City was percentage wise.

Mr. Markham asked for the green energy fund balance. Since McKees was paid off, the City should be paying off the funds for people who applied and were on hold. The City pays that off before going to the third/third/third that Council approved, so he wanted to know that information.

Regarding water meter accuracy, Mr. Markham asked if there were any improvements in electric meter accuracy because they were mechanical previously and slow down or die overtime. He also asked why there were still large meters in the system that had not yet been replaced with new meters. If there was a place where the City would see the biggest difference on a meter, it would be its large customers. Mr. Vitola said it was not all doom and gloom – there were even areas where unmetered water was found which would improve system losses and improve revenue. Ms. Houck had details on the process that was ongoing with the large meters.

Ms. Houck said as part of the Smart meter report there was a listing of the meters which included some that were not changed yet. Some were University meters, and there was a strict schedule on moving through to get those changed. She said ten or so would be done this week, so it was on a fast track. Also, the M&V did not include them and the target was being met, so it was only going to get better. She agreed, they needed to get done. Mr. Markham thought the project was done and was surprised to learn otherwise.

Mr. Markham referenced the water usage and in reference to his comments at the budget, he did not think that the funding increase would be realized because people were

cutting back. He suggested that Mr. Vitola do some analysis on neighborhoods that historically did lawn watering for trends.

Mr. Markham asked what the RSA liability was expected to be at the end of the year. Mr. Vitola responded with the lighter volumes, it might not get all the way to zero. Part of the \$1.4 million was new over-collections that were building that liability back up. It was not just the over-collection from 2014 that was three quarters of the year through. When that happened in the past it was common. If there was any residual or if too much was given back, it was adjusted as part of the next RSA calculation. Mr. Markham pointed out that currently it was going up, it went up almost a \$100,000 in one month. Mr. Vitola said even though the volumes were lighter, the City was buying less and what was bought helped to keep the margins not too bad, so there were some over collections that added to that regulatory liability. It was adjusted every month with the actual month's results. Mr. Vitola had no way to tell what the end of the year would be until the volume came through.

Mr. Gifford asked if the forecast would be adjusted on the red light camera revenue in the upcoming year. Mr. Vitola said it was significantly reduced in the 2016 budget. It was built into the fine amount, and he would break it out and post it on Budget Central.

There were no public comments.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THE AUGUST AND SEPTEMBER 2015 FINANCIAL REPORTS BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Ruckle.

21. 8. **ORDINANCES FOR SECOND READING & PUBLIC HEARING:**
A. **Bill 15-28** – An Ordinance Amending the Comprehensive Development Plan by Changing the Designation of Property Located at 21 North Chapel Street

03:01:41

(Secretary's Note: Items 8-A, 8-B, 9-A and 9-B were discussed simultaneously but voted on separately.)

MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR BILL 15-28.

John Tracey, Esq., Young Conaway Stargatt & Taylor, represented Astra Plaza and was joined by Dev Sitaram and John Mascari of Karins and Associates, civil engineers, Dan Hoffman of DCI, architect, and property owner Angela Tsionas.

Mr. Tracey reported the bulk of the project existed since the approval of the Astra Plaza Shopping Center in the mid-1990s. The apartments and the two story mixed use building all existed. Mr. Tracey pointed out the addition on the visuals which he referred to as a three story addition. In reality, first floor parking would be there and above that would be the two floors of apartments. Mr. Tracey referred to the visuals to show the portion of the property that was the subject of the rezoning and the comprehensive plan amendment. That was the 0.10 acre parcel owned by the Tsionas family since about the same time they acquired the property that ultimately became Astra Plaza. It had a single family residential home like the rest of the properties on Chapel Street, with the exclusion of the Chapel Street Theater. The parcel that would be rezoned did not have any of the actual building structure on it, but would be a mix of parking spots, a storm water management facility and landscaping.

This proposal would eliminate the parcel line between the two parcels and become one parcel under a single zoning category, BB, which was the current designation for the Astra Plaza property. The Planning Department's report went into some detail about bedrooms and units per acre comparing this to other BB projects, some of which Council

considered recently. This project was far below what the list contained for the other properties that were zoned BB. In addition, the site had a parking waiver dating back to 1996, and no additional waivers were being requested as a result of the project.

The project was reviewed by the Downtown Newark Partnership Design Committee. The Committee recommended in favor of the design and indicated that it would be a positive improvement to N. Chapel Street. Having said that, the Committee noted that the design could be improved by moving the addition forward, closer to N. Chapel Street.

The building itself as seen in Mr. Hoffman's rendering was designed to blend into the existing Astra Plaza building, continuing the same treatments with brick and the like. The one comment DelDOT made with regard to this project was improving the sidewalks along Chapel Street where a lot of pedestrians were walking. ADA improvements would be made to the sidewalks as part of the entrance as well as widening it where it was not meeting the required widths with regard to the project.

Tsionas Management would engage a private security company to help monitor the addition to the property as well as the existing structure.

Mr. Markham noted that Chapel Street was in his district and asked if the current entrance to Astra Plaza would be maintained. Mr. Tracey said it would. Mr. Markham asked if there would be additional parking for the businesses located there. Mr. Tracey reported no parking would be added specifically for the businesses, but parking spaces would be added to accommodate the additional apartment units. Mr. Markham had hoped there would be a few more spots for the businesses because parking was limited there. Mr. Tracey confirmed this would not be a party property and would be deed restricted to 24 unrelated tenants for 6 units, the same ratio in the existing Astra Plaza.

Mr. Morehead referred to page 2, item 6 of the Agreement, and asked for confirmation that the developer agreed to four unrelated tenants per unit, not just a total of 24 unrelated tenants in whatever configuration. Mr. Tracey confirmed that was correct.

Mr. Markham was pleased this was fully parking compliant and did not require any parking waivers.

The Chair opened the discussion to the public.

John Morgan, District 1, attended the Planning Commission meeting when this project was reviewed. He thought the City should be in favor of it. He commented about the overhead electrical lines and telephone wires and asked whether the owner thought it would be a good use of their own money to try to bury those lines. Ms. Tsionas, Tsionas Management, thought at the moment that might be too much of an undertaking for her – if others were to contribute, maybe.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Ruckle.

(ORDINANCE NO. 15-23)

- 22. 8-B. BILL 15-29 – AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE, BY REZONING FROM RM (MULTI-FAMILY RESIDENTIAL – GARDEN APARTMENTS) TO BB (CENTRAL BUSINESS DISTRICT) 0.10 ACRES LOCATED AT 21 NORTH CHAPEL STREET**
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(See Items 8-A, 9-A and 9-B)

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR BILL 15-29.

Mr. Morehead supported this based on the unanimous support of the Planning Commission.

Mr. Markham supported this. Part of the reason was he knew what Chapel Street looked like, and the Planning Commission had a unanimous vote plus the proposal met or could meet all applicable Code requirements and because it did not conflict with the development pattern in the nearby area.

Mr. Chapman supported the rezoning. The reasons previously stated by Council tonight covered his supporting reasons as well.

Mr. Gifford supported the rezoning for the same reasons stated by Mr. Markham.

Ms. Hadden supported this rezoning because it did not conflict with the approved comprehensive plan, there would be no negative impact on the surrounding community and the Planning Commission unanimously voted for this.

Ms. Sierer supported the rezoning for the reasons stated by Mr. Markham.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Ruckle.

(ORDINANCE NO. 15-24)

23. 8-C. BILL 15-30 – AN ORDINANCE AMENDING THE COMPREHENSIVE DEVELOPMENT PLAN BY CHANGING THE DESIGNATION OF PROPERTY LOCATED AT 53 AND 57 WEST CLEVELAND AVENUE AND 56 CHURCH STREET

03:18:35

(Secretary's Note: Items 8-C, 8-D and 9-C were discussed simultaneously but voted on separately.)

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 15-30.

John Tracey, Esq., Young Conaway Stargatt & Taylor, represented the owner and the developer of the property, Kevin Heitzenroder. He introduced project engineer Mark Ziegler and Hillcrest Associate representatives Rick Longo and Alan Hill. At this time Mr. Tracey offered a PowerPoint presentation.

The project came with the unanimous recommendation of the Planning Commission. He would go into some detail to cover all of the points because there was some history attached to the project.

The goal of the developer was to revitalize one of the gateway areas into Newark, in particular the New London Road/Cleveland Avenue area. The site currently housed the Elks Lodge building, which was purchased by his client.

The nearby Cleveland Station project approved by Council several years ago was approved under BLR zoning at the time when it did not require commercial components. The project was approved for six buildings with associated parking and other features. The drive aisle extending from New London into the site one way traffic with parking above it. That was part of this approval as well. Also, there was full access from Cleveland

Avenue, both rights and left in and out. The project could be constructed today. All the plans were approved and the construction improvement plans were approved. All that was waiting were the building permit approvals. It had a current density of 30 unrelated individuals in the 25 bedrooms across the six units. The Elks project property also maintained full access to and from Cleveland Avenue similar to the UD parking lot that existed further to the east.

Since Council approved the Cleveland Station project several things happened which brought the project back to Council today. The adjacent Elks Lodge building was placed on the market and was purchased by Mr. Heitzenroder six months ago. In addition, the property to the rear was placed on the market by its owner, Mr. Roy, who was here this evening, and that was placed under contract by Mr. Heitzenroder as well.

The combination of these parcels to what was already approved on the site afforded the opportunity to look at this in a more comprehensive fashion from a planning perspective, and that was reflected by this plan. The Elks Lodge building would be demolished as part of this plan as well as the existing structure on Church Street. The six units approved on the original plan would be replaced with 11 additional units, totaling 17.

Mr. Tracey noted the bottom two units in the visual would only be accessed from Church Street. There would be no other way to get there via vehicle. From a zoning standpoint the site area was a mix of three different zoning categories. The BN primarily included the Elks Lodge property. The BLR represented what was currently approved today. If Council approved the plan, the site would be far more consistent with everything around it from a zoning classification. Mr. Tracey pointed out the predominance of RM zoning prior to the time that this matter would be considered by Council.

There was a lot of discussion about traffic both in the prior hearing which predated Mr. Tracey's involvement and in the ongoing discussions with this project. The site was currently zoned for retail use and if it were developed as such with a very standard use of a 4,000 square foot convenience mart, this would have a large effect on traffic demands in the area. That was the topic of the discussions with the Planning Commission and Council. Data presented by Mr. Tracey showed that obviously residential uses generated far fewer trips than commercial use for this area.

Some access issues were raised at the prior hearing with regard to being able to have full access on and off Cleveland Avenue. The proposed entrance location was consistent with the application already approved on the property.

Mr. Tracey mentioned that while the unit count was going from six to 17, not all 17 units would be taking access or would have the ability to take access from Cleveland Avenue. That was because the two bottom units on Church Street only had access from Church Street. In addition, at the access from New London Road into the property there were six parking spots along that road that would be assigned as part of the parking plan to a variety of units. Since that access would be one way in from New London Avenue, the only way to access those sites would be from that. Two more units essentially would only be able to access their parking from New London Road. What that did was this started with six units that could access from Cleveland Avenue, 17 total, 11 new, subtract out the four that would not be in all likelihood using Cleveland Avenue, and that was an increase of roughly seven units. Mr. Tracey compared to what was able to occur with the Elks Lodge and the various functions that they would have there. There would often be higher traffic demands when those would be accessing the site. He thought it was key to understand the ability to take a left turn off of Cleveland Avenue into the property - this project was located in an area where there was a de facto bypass lane allowing drivers to move around folks that were making a left turn. Very seldom if ever does the right turn lane back up to the point where the entrance would be. With only again roughly 13 of the total units taking access from Cleveland Avenue it was not anticipated there would be a long back up with people waiting to make that left turn.

Mr. Tracey noted they had a minimum number of LEED points to hit of 24. They would exceed what was mandated by Code and would push to a goal of 32.

Mr. Tracey referred to a site map showing the existing uses in the area. It mapped out owner occupied rentals, institutional and University of Delaware owned properties. The vast majority of the properties in the area were not owner occupied.

Mr. Tracey noted they were looking to do a comprehensive project and were using the site plan development of the Code which allowed some alternative design options in exchange for superior architecture and the LEED alternatives.

As part of the site plan, several deviations from setbacks and the like were being requested. Mr. Tracey referred to visuals to show the most substantial deviations and said they already talked to the adjacent property owner. He had no objections with that location and with the reduction and the side setback.

A 40 foot height variance was received when the original six units were approved. They were looking for a 38 foot height variance for these units for roof peaks. Most should be closer to 35.

They suggested a density restriction that carried through what was already established for this property which would be 85 unrelated individuals. This fell in line with what was approved for Campus Walk and South Main Commons. It was far less dense than BB projects talked about recently. There would be a parking plan for this property. The last request was for a density increase of about 1/3 of a unit above what would otherwise be permitted. It was a reduction from the original plans submitted. He added when doing higher architecture, it was necessary to do what you could to hit the LEED numbers, and further reductions made that far more difficult.

Mr. Markham asked if the project was fully parking compliant with no parking waivers. Mr. Tracey replied there were five more spaces than required.

Mr. Markham clarified that the Elks property was free and clear because there had been some questions about it. Mr. Heitzenroder reported they owned the property outright. Mr. Markham asked if Mr. Roy and the community supported the project. James Roy said he was here to support his family basically and if the community had any objections, he would think there would be some folks here. To give Council some history, he said he was not here by choice but was here to bring some closure to what his mom had requested as far as her last living will and testament. His dad got that property in 1923 with the GI Bill and later acquired the property next door. Mr. Roy said the proposed project made very good sense.

Mr. Markham asked what was going on with the wedge property next to this. Mr. Heitzenroder reported at this point the wedge property served no benefit to them. It was made clear through the broker that represented the Elks Lodge that they had an interest in purchasing it just to clean it up. Mr. Markham asked if pedestrians were expected to cut-through and how that would be dealt with since there would be a clear path from Cleveland to Church. Mr. Heitzenroder did not expect pedestrian cut through. A fence would be installed so no pedestrian traffic could cut through the adjoining properties. They would encourage folks to use the sidewalks to get down New London towards campus.

Mr. Markham asked if the sidewalks on Cleveland would be widened. Mr. Heitzenroder believed the developer's agreement specified a minimum of five feet everywhere, including where the telephone poles were located.

Mr. Markham wanted to discuss the entrance traffic because he was not in full agreement about the lefts and had two concerns: it was going to back up traffic and the right lane was not striped for going around. He would rather see no left during rush hour traffic because Cleveland had enough problems without more backups. Mr. Heitzenroder said they might have to agree to disagree on this left turn issue. The peak morning was three trips in and out and that was both entrances, the one off New London as well as the one off of Cleveland. The PM peak consisted of 11 total trips in and out, which, even if divided between the two entrances, were down to five or six and that was in and out.

Mr. Heitzenroder said they felt like the traffic was so minuscule coming in or out, (and they did have the bypass lane) and DeIDOT evaluated this intersection going from right to left and it was a Category A. They were more comfortable with a left turn in than sending someone that lives in the project through the intersection at Cleveland and New London, going around the curve on Hillside and adding them to the next intersection at Hillside and 273 and then making them turn left and adding them to the third intersection at the bottom where Wonderland is. He was not comfortable sending everybody through three more intersections based on three morning and 11 afternoon trips, particularly when the historic nature of the site was many, many, more people have been going in and out of here off of Cleveland from the Elks Lodge. Mr. Markham noted it took just one car on Cleveland to back it up. Mr. Markham requested to have that reviewed by Public Works and DeIDOT about whether or not there should be a no left turn there, either 100% of the time or during rush hour traffic. He would defer to their decision.

Mr. Gifford thanked Mr. Heitzenroder for the booklet which was helpful. He had previous discussions with the developer and got his questions answered.

Mr. Morehead asked if the current entrance was exactly in the same spot as it was for the project that was previously approved. Mr. Heitzenroder said it was exactly in the same spot. Mr. Heitzenroder clarified that project was left turning off Cleveland westbound at any time. Mr. Morehead shared a concern there. He had the opportunity to drive through there all hours of the day and thought that was a workable situation given that the drivers were not timid in the left turn.

Mr. Morehead asked for the plan for the garage doors. Mr. Heitzenroder said every unit had garage doors and they were committed to building the garage doors. Not only would they house vehicles, they would house the trash cans and bike parking which was important from a marketing perspective. All the units would have the doors as shown.

Mr. Chapman commented that his only concern was the consideration of left hand turns. He thought the opportunity for an issue was greater with increased units. He would personally feel the impact if there was one to be felt since he drove that road every day. At that time, Council had the ability to take away left hand turns into that development if it posed problems. He did not feel a study was required to move forward with the project and asked for clarification from Mr. Herron that the City was not bound to allow left hand turns forever and could change traffic patterns. Mr. Herron confirmed that was correct.

Mr. Markham clarified that he was asking for an opinion from DeIDOT and/or Public Works for what they would recommend. He was not asking for a study. He also said that he was more than willing to take their opinion at face value and go by what the professionals recommended. Mr. Heitzenroder said he was happy to stipulate that and point that out to DeIDOT as they review the entrance under the new plan and they were the experts at turning and what problem would be created with proceeding through other intersections. Again he pointed out this was a very small amount of cars, but he was happy to live by DeIDOT's decision.

The Chair opened the discussion to the public.

Joseph Wood, owner of 55 Church Street, commented that there were concerns from the community about traffic when the first project was presented. He understood the owner's rights to do what he wanted with the property but said it did not matter how the community felt because the City would allow it to happen anyway. He noted backups on Cleveland Avenue and disagreed with any traffic studies in the area. Mr. Wood felt with 68 students in these apartments, they would cut through the lot and down Church Street. He wanted the City to consider that all the large projects were being built for students and there was nothing done for the families who wanted to live in or move back to Newark.

Mr. Roy was also from Church Street. There were currently 10 houses on the street, with 7 of those being rentals. His family lived on the property since 1946, so he saw how much the community changed. Relative to his family, the time had come for a change, and he had to do what his mother requested him to do with their property.

Donna Jackson said her mother's house was at 46 Church Street. She had a similar situation to Mr. Roy, but her mother did not want her house sold. Ms. Jackson's issue was with transportation and the difficulty of trying to turn off of Church Street to New London Road. She was disturbed by the congestion on Cleveland Avenue and urged the City to look into the left turn situation as Mr. Markham suggested. She also felt the students would continue to cut across. She believed Newark was turning into a college town and was becoming a place where families would no longer want to live.

Jean White, Radcliffe Drive, noted the proposed development project was being submitted as a site plan proposal. Even with RM zoning, the project was non-compliant in eight different ways. Two of those ways were particularly troubling for her. The first was the maximum lot coverage under RM should be 20%, and it had a lot coverage of 31.6%. Her other area of concern was that the open area should be 40%, and the open area of this project was only 26.9%. The project had positive features in terms of its architectural and energy efficient aspects. That was not enough for her to justify greatly exceeding the lot coverage and the greatly reduced open area. She thought it was important to eliminate one of the 17 units to make it 16 units. By doing that, it would bring it a little bit more in compliance and it would not be quite as dense and quite as tight.

Ms. White thought the restriction should be one unrelated person per bedroom. From the presentation at the Planning Commission meeting, she understood there were actually 69 bedrooms rather than 68. One of those townhouse apartments had five bedrooms and all the rest had four. Students bring cars with them and she thought it was likely that more cars would go in and out than was proposed. Ms. White discovered that six of the 56 parking places were along the road being called Roy Lane. Presuming everybody was going to walk up and back Roy Lane she asked that a sidewalk be put on the northern side of it. She thought it would be dangerous for students or others to be walking back and forth on the road.

Mr. Markham asked if the applicant had any response to Mrs. White's questions. Mr. Heitzenroder explained that one of the things that made this presentation and process so long was the fact that the first project was approved under BLR and could be built exactly where it was shown, exactly where it sits today. That was a large contributor to the variations on the plan. Six of the 17 units on the footprint could be built tomorrow on that same exact footprint. Now they have down-zoned the outside property to a residential zoning from a commercial zoning and down-zoned that 6-pack from a commercial zoning to a residential zoning. By doing that and getting into this RM zoning district, the requirements for the issues that Ms. White pointed out were greater even though it could be built exactly where it sits. That was a large contributor to those issues.

Mr. Heitzenroder understood it was not Council's job to oversee the finances for private development, but he built a lot of projects in Newark. None would have the construction costs between the materials shown here and the LEED points they were going after, of anything they had done thus far. He felt what they presented, particularly vs. what was allowable under the current zonings was a very responsible plan. Mr. Heitzenroder did not think there was room for a sidewalk down Roy Lane.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THE COMPREHENSIVE DEVELOPMENT PLAN BE AMENDED BY CHANGING THE DESIGNATION OF PROPERTY LOCATED AT 53 AND 57 WEST CLEVELAND AVENUE AND 56 CHURCH STREET.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Ruckle.

(ORDINANCE NO. 15-25)

24. 8-D. BILL 15-31 – AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE, BY REZONING BN (NEIGHBORHOOD

SHOPPING), BLR (BUSINESS, LIMITED RESIDENTIAL) AND RD (ONE FAMILY, SEMI-DETACHED RESIDENTIAL) TO RM (MULTI-FAMILY RESIDENTIAL – GARDEN APARTMENTS) 1.02 ACRES LOCATED AT 53, 57 AND 63 WEST CLEVELAND AVENUE AND 56 CHURCH STREET

(See Items 8-C and 9-C.)

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 15-31.

Ms. Hadden approved the request because the rezoning would bring the property more in line and consistent with the surrounding area and she did not feel it would have a detrimental effect to the surrounding areas.

Mr. Gifford approved the rezoning because the development would improve the condition of the current neighborhood and property. It also eliminated the commercial zoning of one of the pieces of the property which he saw as a benefit to the neighborhood.

Mr. Chapman supported the rezoning as he was in agreement with the reasons previously stated by Ms. Hadden and Mr. Gifford.

Mr. Markham had voted against the original plan. However, he supported this plan because it improved the area and did not conflict with the development pattern of the nearby area. He thought it brought the properties more into conformance and took into consideration the Planning Commission's recommendation to approve.

Mr. Morehead supported this because he believed the rezoning was consistent with the surrounding properties, the owner requested down-zoning, removing the BN supported traffic concerns at this intersection in perpetuity, because of the unanimous support of the Planning Commission and because of the LEED initiatives exceeding Code requirements.

Ms. Sierer supported this project based on Mr. Morehead's reasons.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Ruckle.

(ORDINANCE NO. 15-26)

25. 9. RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:

- A.** Request of Astra Plaza Associates for the Major Subdivision of 0.89 Acres Located at 174 East Main Street and 21 North Chapel Street In Order to Demolish the Single Family Home, Create One Tax Parcel Out of the Two Parcels and Add a Three Story Residential Building With Six Three-Bedroom Apartments With First Floor Parking to the Existing Two Story Mixed Use Building on the Site to be Known as Astra Plaza

(See Items 8-A, 8-B, and 9-B.)

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THE RESOLUTION BE APPROVED AS PRESENTED FOR ASTRA PLAZA AT 174 EAST MAIN STREET AND 21 NORTH CHAPEL STREET.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Ruckle.

(RESOLUTION NO. 15-DD)

- 26. 9-B. REQUEST OF ASTRA PLAZA ASSOCIATES FOR A SPECIAL USE PERMIT FOR SIX APARTMENTS IN THE BB ZONE AT THE PROPERTY LOCATED AT 174 EAST MAIN STREET AND 21 NORTH CHAPEL STREET**
-

(See Items 8-A, 8-B and 9-A.)

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THE SPECIAL USE PERMIT FOR ASTRA PLAZA ASSOCIATES FOR SIX APARTMENTS IN THE BB ZONE AT THE PROPERTY LOCATED AT 174 EAST MAIN STREET AND 21 NORTH CHAPEL STREET BE APPROVED AS PRESENTED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

- 27. 9-C. REQUEST OF CLEVELAND HOLDINGS, LLC FOR THE MAJOR SUBDIVISION OF 1.02 ACRES LOCATED AT 53, 57 AND 63 WEST CLEVELAND AVENUE AND 56 CHURCH STREET IN ORDER TO DEMOLISH THE EXISTING BUILDINGS, CREATE ONE TAX PARCEL OUT OF THE FIVE PARCELS AND CONSTRUCT 17 TOWNHOUSE STYLE APARTMENTS ON THE SITE TO BE KNOWN AS CLEVELAND STATION**
-

(See Items 8-C and 8-D.)

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: TO APPROVE THE RESOLUTION FOR THE PROPERTIES AT 53, 57, 63 WEST CLEVELAND, AND 56 CHURCH STREET.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

(RESOLUTION NO. 15-EE)

- 28. MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: TO CONTINUE THE MEETING PAST 11:00 P.M. TO COMPLETE THE AGENDA.**

04:08:52

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

- 29. 9-D. REQUEST OF BATSHU M. PATEL FOR THE MINOR SUBDIVISION OF 0.043 ACRES LOCATED AT 70 EAST MAIN STREET IN ORDER TO CONSTRUCT TWO ADDITIONAL FLOORS CONTAINING ONE THREE-BEDROOM APARTMENT ABOVE THE EXISTING ONE STORY RETAIL STRUCTURE**
-

04:09:09

(Secretary's Note: Items 9-D, 9-E and 9-F were discussed simultaneously but voted on separately.)

Ms. Feeney Roser provided a summary of the project. Mr. Patel, the property owner, originally applied to add apartments above the existing retail space at 70 East Main Street, which was a non-conforming parcel. He did that in 2012. After many iterations of the plan and a trip to the Board of Adjustment, Mr. Patel eventually applied for approvals to add two floors above the existing retail space (now Insomnia Cookies), to add two new 2-bedroom apartments. He also applied for the associated special use permit for apartments in the BB zone and a four space parking waiver.

The Planning and Development Department on behalf of the Subdivision Advisory Committee, recommended that the Commission not recommend approval of the requested application, largely because the project was as dense as or denser than recently approved downtown developments for which the City had received some perceived community benefits. For example, the Newark Shopping Center which was at the same density that Mr. Patel was requesting, was a project that significantly improved the aesthetics of an aging shopping center in the heart of downtown. The City thought that was a benefit. Another example would be 58 East Main Street, which is just a little bit denser than what Mr. Patel was requesting, but that project dedicated a 23-space parking lot to the municipal inventory.

The Department could not find such benefits from this project at the proposed density. Instead of recommending the submitted application be approved, the Department suggested that the Commission might want to consider approving a revised plan with one 2-bedroom apartment and the required 2-space parking waiver with a series of conditions, not the least of which was to work out the details of a cross-access agreement for pedestrian/vehicular access to the development, which was actually contained on the property to the east which is 72 East Main Street (the Indian Sizzler), as well as to get permission from the owner of 72 East Main Street to alter the roof line of the building, which pre-existed Mr. Patel's building and actually extended over his air rights then getting construction easements from property owners on either side of Mr. Patel's property because there was no way the construction could be contained on the property at 70 East Main Street due to its size. Finally, there was some concern that the new construction would affect existing windows at both 66 East Main Street, which is National 5&10 and the Indian Sizzler property so that the plans be revised not to negatively impact them.

The project was reviewed at the July Planning Commission meeting. At that time the Commission voted unanimously not to approve the parking waiver, subdivision or special use permit plan, either as proposed by the applicant or the Planning and Development Department. Following the Planning Commission meeting, the applicant, as permitted in City Code, submitted a request that Council reconsider the Commission's decision to deny the parking waiver, and then submitted revised plans reducing the proposal to the addition of one 3-bedroom apartment on 2 floors above the existing retail space. Further, the applicant indicated that the reduced building design would not have a negative impact on adjoining properties because it would not block their windows and further that the building design was improved since the Planning Commission meeting to add a green roof and other energy efficient design concepts. The applicant was here tonight requesting approvals of his revised plan for one 3-bedroom apartment and a 2-space parking waiver.

Regarding the parking waiver request. Mr. Patel was now requesting a 2-space parking waiver. Should Council approve the development and the 2-space parking waiver, the fee associated with it would be \$3,355, based on the Public Works and Water Resource's latest estimate of the cost to construct one surface parking space without the land costs included. The estimate was updated on October 20, 2015, and it came to \$6,755, which was why there was a difference between what the Planning and Development Department originally said the waiver would generate and what it was now.

The waiver was based on that \$6,755 cost, times 2 spaces, times 25% of those costs for residential use, as called for in the Code. The Department recognized that Council requested a review of the parking waiver policy, its practice, and its fees, and

further that in speaking with the Planning Commission about that project, the Commission was also interested in reviewing overall parking requirements by use and parking design standards used in the City. A 2016 work plan was created to holistically review and consider amendments to the Code regarding parking as a whole, and most particularly in downtown. Tonight, Mr. Patel's request must be decided on the current Code, which allowed deviations from parking standards in BB with a fee based on a percentage of the cost to construct an off-street surface level space, which historically did not include the land costs.

Mr. Morehead asked whether the revised plan needed to go back through Planning Commission. Ms. Feeney Roser said it did not. It was the developer's opportunity to say, "Council, I would like you to consider this," knowing that it came with a negative recommendation. She believed the reason he did that was because they did not – and he may have to speak to this for Council – but the Commission did not give a positive recommendation to what the Planning Department had suggested, which was to go to this one unit, although it was 2-bedroom and now it said 3.

Ms. Feeney Roser clarified that it went to Planning Commission as two units, and the Planning Department's recommendation was they not approve that, but consider approving a one apartment, 2-bedroom unit and a 2-space parking waiver, which the Department was willing to recommend in favor of. The Commission did not consider either of those to be something that they wanted to recommend to Council.

Dave Dalby, architect for the project presented the proposal for the renovations at 70 East Main Street, known to most people as Newark Newsstand. When Newark Newsstand closed, they started looking at renovation of the project to accommodate new possible tenants, but that would require the building to be modified to new codes, most obvious being the ADA requirements. When they started the due diligence for the renovation it was discovered that the years had taken a toll on the building, and it was better to demolish and reconstruct. In fact, during the due diligence process, the building had actually been condemned by the City of Newark.

A few surprises were discovered during that design phase. The existing building was built 6 inches over the property line at the back corner here which was addressed and corrected during the construction. As mentioned, the cornice and roof of the existing Indian Sizzler overhung the property by about 12 inches. Surprisingly, the existing building actually shared a sewer line with the Indian Sizzler. During the reconstruction the property line issue was corrected and the structure was now built entirely on its property and well within the property line issues.

During the demolition of the building, some open windows were discovered going into the basement of the existing Indian Sizzler. At one time there was a basement in the Newark Newsstand and it was thought maybe those two were connected through those openings through that basement. When Newark Newsstand decided to close that to create more retail floor space, those windows were probably haphazardly closed up and dirt piled up against them. During the excavation, those windows were closed with concrete block and construction moved on. As part of the new construction a new sewer line, a new water line, and a new fire suppression sprinkler line were added.

The initial design intent was to replace the existing retail operation. This was done and the model shown by Mr. Dalby represented what existed there now. This was the new Insomnia Cookies. During that process, meetings were held with the Planning Department, the Building Department and the Design Review Committee to discuss the possibility of adding rental apartments above the first floor. This was proposed primarily as a revenue generation for the owner, but also the proposed design would improve Main Street by filling what essentially was a gap between two adjacent properties. In fact, it was mentioned during the Planning Commission meeting that this felt like an alley between two 2-story buildings. Mr. Dalby said it was not an alley, it was a functioning building, and they wanted to make it function better and improve Main Street.

The first required variance was received for an increase in the cubic content that was required because of an increase in the cubic content of the existing facility by more

than 20%. At 1,400 square feet, even 2 feet additional of ceiling height would have exceeded that 20% limit. Next they proceeded to the Planning Commission hearing to request the 2-parking space waiver and approval to proceed with the project. As already mentioned, they were turned down there.

Mr. Dalby presented what he felt were a couple of misconceptions raised at that public hearing. One was the issue of an easement along the existing Indian Sizzler property. This was an easement in place for many years for access to the rear of this building. There were no restrictions on that easement and over the years it was used for deliveries and trash removal for the Newark Newsstand and was still used for deliveries and removal for the Newark Newsstand. They were not proposing any real change to that, were not proposing any student parking or student driveway access here.

The other misconception was that they would be blocking windows along either Indian Sizzler or along the National 5 & 10. In fact he thought a letter was introduced and one of the Council members had indicated that the property was 6 inches away from the building and would be blocking those windows and limiting the use of an existing window air conditioner. However, from the plan that was presented to the Planning Commission they purposely kept the front of the building over 30 feet back from Main Street, effectively not blocking any of the windows of National 5 & 10, keeping the two primary bedroom windows and the TV room to Indian Sizzler with full access. There was a toilet room window. There was a Code requirement for an egress of 5.7 square feet from any second floor bedroom. Mr. Dalby said they purposefully held their building 5 feet away from this building to provide egress from that bedroom and limited light and ventilation. The window that was effectively blocked was a kitchen window. That kitchen also had a window going out to the deck and a door going out to the deck.

Mr. Dalby said they would welcome the opportunity to work with the owner if he wanted the window to be completely closed during construction so he did not have to worry about maintenance or cleaning. They did not feel that blocking the window affected the light or ventilation of the kitchen area.

Based on the comments from the public hearing and the Planning Department they had modified the proposed design. Instead of the two 2-bedroom apartments they proposed a single, 3-bedroom apartment with 2-floor occupancy. By doing that, they were able to provide larger bedrooms and eliminated the space of one bedroom. There was some concern about the size of the bedrooms, so they now had larger bedrooms and larger common space that exceeded the requirements of Chapter 17 of the Newark Code.

The change allowed for expansion of the roof of the second floor apartment and the roof of Insomnia Cookies. The proposal was to make those planted green roof areas with a few benefits, one of those being an improved view from the residence of the Indian Sizzler. The residents in the National 5 & 10 would now be looking down on green areas instead of just a roof. This roof opened up directly from the windows from Indian Sizzler. Part of the advantage of doing the green roof was they could put plantings in there that would limit or discourage gathering. Mr. Dalby felt it provided a unique opportunity for the residents to walk out onto a second floor deck with greenery. From Main Street they liked the terraced look which was unique to Main Street.

Another added benefit was storm water management. One of the issues raised during the Planning Commission and was raised in the past was how to handle all the water coming off these roofs. They would welcome the opportunity to work with the adjacent owners to physically seal between the two buildings. Mr. Dalby could not touch their building without their permission which means he could not put a piece of flashing up to close that 6 inch gap which would be his proposed solution.

The third floor affected the roof line of the existing Indian Sizzler. They would have to cut into the cornice and while that may seem like a negative aspect, they feel was very positive, because now he could provide flashing and control the water run-off so it did not go down between the buildings. This would solve a problem that existed for many years.

Mr. Dalby thought this design presented a unique and positive addition to Main Street, correcting longstanding design and construction problems and water run-off. While the preliminary plans addressed most of the major construction issues, fire-rated walls around the stair tower and fire-rated walls between the buildings were identified. In addition, the size of the bedrooms and living areas were larger than required by Code.

As far as obtaining LEED certification, the project might be on the small side to fulfill the requirements. Mr. Dalby would like to continue researching that in addition to the green roof to control water run-off.

Mr. Morehead commented that the drawings showed bedrooms for five people. Mr. Dalby replied that was left from the original presentation. The plan presented here was for two 1-bedrooms on the first floor and a 2-bedroom on the second.

Mr. Morehead said it appeared the living area had no windows and no doors out onto the front balcony. Mr. Dalby reported that each bedroom had a door going out to a balcony. There was a window on the outdoor deck onto the Indian Sizzler going into the common area and on the common area on the third floor, again there was a window going out to the deck and another window deck in the sleeping area.

Mr. Morehead wanted to hear from the adjacent building owners as far as agreement to the plan to alter their roof line.

Mr. Gifford had a question about the Indian Sizzler roof. It essentially overhung the property, and was visible in the cutout on the model and in the drawings. It was a fairly old building, so was that a historical error. Mr. Dalby did not know if it was built before 70 E. Main or if it was one property at one time. The fact that there were windows going into the basement could mean this was all one property once and at some point subdivided.

Mr. Gifford said he walked the property and looked at it. He tried to look at it from, as mentioned by Mr. Dalby, the gap in the skyline. He had to actually cross the street to determine it, so it did not stand out as a big error in how Main Street was presented to a pedestrian. That was not such a large issue. The one issue he did have was though there was an easement to get out back and to access the stairwell, it was fairly tight. It was a one car driveway and really no walkway. He asked how pedestrians could go up and down that all the time considering there would be business activity back there, too. It seemed it would be hard to share that door with the business use. Mr. Dalby said not to downplay the number of pedestrians and residents, but there would be 3 bedrooms with a total of 4 people. It would need to be addressed if the project moved forward. Mr. Gifford noted there was a fairly large area in the back for parking. He did not know how many parking spaces there were, but it was not full. He asked who owned the parking area.

Mr. Gifford noted that right now with this development, there was one residential window that was impacted on the Indian Sizzler property. Mr. Dalby said it was not closed completely but it was blocked by a one story. They provided the egress and the air and ventilation to it. Mr. Gifford asked whether the opposition to the 2-bedroom single level suggestion by the Planning Department was just a financial situation. Mr. Dalby said it was not, first, it would not have solved the window issue at the Indian Sizzler. It would have had to have been further out towards Main Street to get the proper square footage. Also, it would not have provided the design impact with the green roofs and the balconies. He was very excited about the idea of being able to pull this second floor back and create the other green roof. That floor was not pulled back in the original recommendation.

Mr. Markham asked if there was a reason the applicant did not go back to the Planning Commission for a change in recommendation. Mr. Dalby said this seemed to be their next avenue. Mr. Markham asked Ms. Feeney Roser if they could voluntarily go back again. He thought Center Street had done that. Ms. Feeney Roser said they could voluntarily go back again or Council could send them back again and get Planning Commission's input. The Planning Commission did consider in their recommendation going to a one bedroom, 2-parking space waiver. In order to counteract that, they have to come to Council and ask Council to overturn the Planning Commission's decision. The Planning Commission makes the decision on the parking waiver and people can appeal

to Council to change that, or Council can change it itself. It was Council's purview to send it back to the Planning Commission. They would not make it until the January meeting.

Mr. Chapman asked if the balconies and doorways coming off the front of the building were required by fire code. Mr. Dalby said they were required by fire code – a window would suffice.

Mr. Chapman was uncomfortable with the little balconies. He could not imagine tenants not hopping that little balcony and enjoying what was already called a terrace, especially if it was landscaped to feel more like a terrace and less like an industrial roof. It was a safety concern and was not like a normal balcony. If it was a normal balcony, if there was not an easy hop of the fence to the roof, he would not have a concern with it. He understood that that limited the marketing. He would much rather see windows on the front apartments. Mr. Dalby said they could make that change. The other thing they could do was to fence around the entire area. Mr. Chapman did not want them on the roof. Mr. Dalby felt the densely planted bushes would prohibit having any place to gather.

The Chair opened the discussion to the public.

John Morgan, District 1, said on the one hand they heard it was necessary to have some of the doors or they could be replaced with windows to meet the fire code. Then there was discussion about having this planted so densely that a human being could not really get out there. He asked if that defeated the purpose of the fire code.

Brian Handloff, National 5 & 10, saw some issues with the project in general. The first thing would be the past. Mr. Dalby mentioned this was an alleyway. It was, in fact, a side yard (that was the story he got from his grandfather who grew up in the building that was the 5 & 10). When the Newsstand was originally built it was a shed, nothing more than a shed. Over the years it became two sheds and three sheds and ultimately a building was built there. It was never intended to be a permanent structure, let alone a three story structure. Along with these balconies it gave direct access onto their roof as well, which was flat, smooth, and a place for people to hang out which created a problem. Moving forward, they were now looking at a 30 foot high brick wall along the edge of his property. Granted, it was not his property, but at some point in the future, his family talked about potentially redeveloping their site, and creating access in the process of doing so, from Lot #3 to Lot #2. Losing the ability to have any windows on that side of the building made that a much harder project to make work. That was not directly Mr. Patel's problem, but it was something they were not in favor of. Ultimately through the process of tearing down the newsstand, through building the first floor, through the development of this, it was the first time he had ever seen this. There was absolutely no communication in this development, and he would not like to see this move forward.

Mr. Gifford asked Mr. Handloff if he knew who the side yard belonged to. Mr. Handloff believed it was part of the Indian Sizzler property at the time. Theirs was built to the line before the newsstand was there. Mr. Gifford said that might explain why the roof intersects with it.

Mr. Sammi, owner of Indian Sizzler said that whatever Mr. Darby explained, renovation at 70 East Main would block the second floor windows of his 3 bedroom unit. His concern was that he could not rent his apartment anymore, and he needed the rent from his tenant to pay his mortgage. The parking lot belonged to him, and his tenants used the lot. The driveway was very narrow, and he was concerned about the safety of students who would be walking through there. Mr. Dalby reported his client had access in and out, but Mr. Sammi said it was not like that. They had the access when they had the newsstand, but Mr. Sammi said he was told by the previous owner told that Mr. Patel's property only had access for loading and unloading once or twice a week.

Mr. Morehead asked Mr. Sammi if he was comfortable with the work proposed to change the roof line. Mr. Sammi did not approve of changes to the building which was historical.

Mr. Morehead asked Ms. Feeney Roser in a situation like this where one building was hanging over another person's lot line, their airspace as she called it. how did that work. Ms. Feeney Roser said the Indian Sizzler building predated the new addition of the newsstand, so it was allowed to continue there unless Mr. Sammi agreed to have Mr. Patel alter it.

Mr. Gifford asked if a written access agreement was found for loading and unloading. Ms. Feeney Roser said there was an agreement, but it did not address pedestrian traffic. There was a disagreement between the property owners about what the easement agreement meant. The City's interpretation was that it did not address it. That was why a condition was to come up with a cross access agreement that would address the fact that it would be pedestrian and vehicle traffic. Mr. Sammi would have to agree to a new agreement.

Mr. Gifford asked the Chair if the applicant would be allowed to hand an agreement that he could read to Council. It was something that was really important in the Planning Commission comments that would have been nice to have.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: TO SEND THIS PROJECT BACK TO THE PLANNING COMMISSION FOR THE REVIEW OF THE CHANGES THAT WERE PERFORMED.

Mr. Chapman was concerned that this might be an example of Council sending something back to Planning Commission and transferring its role to ask them to do a job that was not theirs. They already made their recommendation and there was a proposal in front of Council now. He understood it offered the applicant more time to adjust the plan, but he was worried about Council developing a trend or practice of just sending things back to the Planning Commission without some maybe clear direction.

Mr. Markham said in his opinion they substantially addressed issues the Planning Commission brought up. It was Council's prerogative not to send it back, but he made the motion to give them a shot at a better score if they truly have addressed the issues.

Mr. Morehead noted the Planning Commission already voted unanimously to turn down a 2 bedroom unit, and Council proposed to send back to them a 3 bedroom unit. He opposed this motion based on that simple fact.

Ms. Feeney Roser said the motion would say exactly what they did. The first proposal they reviewed was for 2, 2 bedroom apartments. The Planning Department suggested that if it was reduced to 1, 2 bedroom apartment and a 2 space waiver, they might consider recommending in favor of it. She believed the way the motion read, it said neither. Mr. Morehead and Mr. Gifford noted it said 1, 2 bedroom. Ms. Feeney Roser said so they had considered that as well. Mr. Morehead said they turned down a single 2 bedroom apartment unanimously.

Ms. Feeney Roser explained the proposal was for 2, 2 bedrooms and a 4 space parking waiver. The Planning Department's recommendation to the Planning Commission was that they not approve the 2, 2 bedrooms, but instead that they approve 1, 2 bedroom apartment with a 2 space parking waiver, and that was the motion that went before them and they turned that down, so essentially they turned down both options.

Mr. Markham withdrew his motion.

Mr. Morehead pointed out at that same meeting, Planning separately turned down the 2 space parking waiver, unanimously again.

Mr. Markham said Council had to make a motion and had to consider this based on a recent ruling by Mr. Herron that we must give all these a vote.

MOTION BY MR. MARKHAM, SECONDED BY MR. GIFFORD: THAT THE RESOLUTION BE APPROVED FOR THE MINOR SUBDIVISION LOCATED AT 70 EAST MAIN STREET IN ORDER TO CONSTRUCT TWO ADDITIONAL

FLOORS CONTAINING ONE THREE-BEDROOM APARTMENT ABOVE THE EXISTING ONE STORE RETAIL STRUCTURE.

MOTION FAILED. VOTE: 0 to 6.

Aye – 0.

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

Absent – Ruckle.

30. 9-E. REQUEST OF BATSHU M. PATEL FOR A SPECIAL USE PERMIT FOR ONE APARTMENT IN THE BB ZONE AT THE PROPERTY LOCATED AT 70 EAST MAIN STREET

(See Items 9-D and 9-F.)

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THE REQUEST OF BATSHU M. PATEL FOR A SPECIAL USE PERMIT FOR ONE APARTMENT IN THE BB ZONE AT THE PROPERTY LOCATED AT 70 EAST MAIN STREET BE APPROVED.

MOTION FAILED. VOTE: 0 to 6.

Aye – 0.

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

Absent – Ruckle.

31. 9-F. APPEAL OF BATSHU M. PATEL FOR A TWO SPACE PARKING WAIVER FOR THE MINOR SUBDIVISION PROPOSED FOR THE PROPERTY LOCATED AT 70 EAST MAIN STREET

(See Items 9-D and 9-F.)

MOTION BY MR. MARKHAM, SECONDED BY MR. GIFFORD: THAT THE MINOR SUBDIVISION PROPOSED FOR THE PROPERTY LOCATED AT 70 EAST MAIN STREET BE APPROVED.

MOTION FAILED. VOTE: 0 to 6.

Aye – 0.

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

Absent – Ruckle.

32. 10. ITEMS SUBMITTED FOR PUBLISHED AGENDA

A. Council Members:

- 1. Resolution 15-__:** Amending the Rules of Procedure for the 2015-2016 Council Year

05:04:18

Ms. Sierer explained she brought forward for Council's consideration a change to the Rules of Procedure under item 2-B which currently read elected officials. With Mr. Morehead's collaboration they discussed changing this item so it was for officials who represented Newark residents, including state, county and local officials.

She proposed that it be changed to read Newark and state elected officials. She felt the intent of it was to conduct City of Newark business and limit it to Newark officials who represent Newark. Any other officials beyond those were welcome to speak under public comment and would have three minutes to do so.

Mr. Morehead wanted to offer an amendment to clarify that the meaning was for elected officials representing constituents residing in the City of Newark or constituents paying utility bills to the City of Newark. Mr. Markham asked Ms. Bensley if that could be added with an asterisk explanation under the public comment explanation paragraph. Ms. Bensley said it would be preferable to add it to the public comment section because the

explanation section was not published in the newspaper, and an extensive description at the 2B line would cost more money.

Mr. Chapman wanted to offer a similar amendment but not include elected officials whose constituents paid City of Newark utility bills or utility customers of the City. His wording was similar, elected officials whose constituents reside inside the City of Newark municipal boundaries. Mr. Morehead said the issue of constituents paying utility bills was brought forward with a concern of taxation without representation. Mr. Chapman did not intend to limit those elected officials from having an opportunity to speak in a special location on the agenda but for that additional piece to then be added in a footnote somewhere.

A lengthy discussion ensued by Council members.

Ms. Sierer and Ms. Hadden commented that Council was wordsmithing at this point. Ms. Hadden suggested making an amendment to say for 2B, Elected officials whose charge is to represent citizens within the boundaries of the City of Newark. Mr. Gifford stated that according to Robert's Rules, the Chair ran the meeting and could essentially shut down anybody at any time.

Jen Wallace, District 3, offered a suggestion to use the wording, "Elected officials who represent City of Newark residents or customers."

AMENDMENT BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT ITEM 2-B, "ELECTED OFFICIALS" BE CHANGED TO READ, "ELECTED OFFICIALS WHO REPRESENT CITY OF NEWARK RESIDENTS OR CUSTOMERS".

AMENDMENT BY MR. CHAPMAN, SECONDED BY MS. HADDEN: TO ADD THE WORD "UTILITY" BEFORE THE WORD "CUSTOMERS".

The Chair opened the discussion to the public.

John Morgan, District 1, commented there was a standard procedure for curtailing discussion of a motion in Robert's Rules of Order. It was "Call the question". For example, if there were a Council member who had very strong opinions attempting to filibuster, a 2/3 majority of Council could curtail the debate and vote on the motion. Most of the City's agenda consisted of motions, so call the question was possible with the exception of items not on the published agenda where there was no motion, so there could not be a call the question, meaning voting on anything because there was nothing to vote on. Mr. Morgan suggested having something like a 10 minute time limit on everybody, Council members, lobbyist and elected representatives. The chair could extend the 10 minutes beyond that for further dialogue. It would be fair to everybody as nobody was being singled out. In regard to downstate officials, Mr. Morgan said if Newark ever want to get PILOT funds, the City would need to get a lot of downstate representatives voting for them.

Helga Huntley, District 1, supported limiting the elected officials to those who had some relevant business to the City of Newark. Whether it was extended to utility customers in addition to residents, she did not have strong opinions on it. However she also noticed that what the elected officials were supposed to be speaking under according to the agenda was Items Not on the Published Agenda. Tonight was a prime example of an elected official who came to speak and spoke on everything on the agenda. That might be something Council might want to consider, not to box the elected officials into speaking on items not on the published agenda, but to give them a spot where they could also address items on the agenda. This rule was never enforced but she thought they should be consistent with the practice. Ms. Huntley advocated that public presentations be open to public comment as well.

Question on the motion was called.

MOTION PASSED. VOTE: 4 to 1.

Aye – Hadden, Markham, Morehead, Sierer.

Nay – Gifford.
Abstain – Chapman.
Absent – Ruckle.

Mr. Chapman noted that he intended to vote in favor of the Motion but failed to voice his vote. Ms. Sierer said Council would take the vote over again.

Question on the Motion was called.

MOTION PASSED. VOTE: 5 to 1.

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

Mr. Morehead followed up on Ms. Huntley's request that public presentations be open for public comment. After further discussion by Council, Mr. Herron opined that since this subject was not on the advertised agenda, it could not be voted on.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT THE RESOLUTION BE APPROVED AS AMENDED.

MOTION PASSED. VOTE: 5 to 1.

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

(RESOLUTION NO. 15-FF)

33. 10-B. OTHERS: None

34. 11. APPROVAL OF CONSENT AGENDA

02:25:56

- A. Approval of Council Meeting Minutes – October 12, 2015
- C. Approval of Council Workshop Minutes – October 28, 2015
- D. Receipt of Alderman's Report – November 9, 2015
- E. Receipt of Board of Ethics Decision – October 1, 2015
- F. **First Reading – Bill 15-33** – An Ordinance Amending Chapter 30, Water, Code of the City of Newark, Delaware, By Increasing the Water Rates Effective January 1, 2016 By 7.2% and Implementing a Fire Protection Surcharge – **Second Reading – December 14, 2015**
- G. **First Reading – Bill 15-34** – An Ordinance Amending Chapter 25, Sewers, By Increasing the City Sewer Rate Effective January 1, 2016 – **Second Reading – December 14, 2015**
- H. **First Reading – Bill 15-35** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Amending the Management Salary Plan – **Second Reading – December 14, 2015**

Mr. Morehead asked whether corrections to various items could be done at any time or if they had to be done now. Ms. Bensley said they had to be done prior to the approval of the Consent Agenda. Mr. Morehead asked to pull item 11-C, Approval of Council Workshop Minutes – October 28, 2015, from the agenda.

Ms. Bensley read the Consent Agenda as amended

MOTION BY MS. HADDEN, SECONDED BY MR. MOREHEAD: THAT THE CONSENT AGENDA BE APPROVED AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.
Absent – Ruckle.

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: TO POSTPONE CONSIDERATION OF ITEM 11-C UNTIL THE DECEMBER 14, 2015 COUNCIL MEETING.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

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

Renee Bensley
Director of Legislative Services
City Secretary