

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

February 8, 2016

Those present at 6:00 p.m.:

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

Staff Members: City Manager Carol Houck
City Secretary Renee Bensley
City Solicitor Bruce Herron
Deputy City Manager Andrew Haines
Communications Manager Kelly Bachman
Community Affairs Officer Ricky Nietubicz
Finance Director Lou Vitola
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)(9) for the purpose of the discussion of personnel matters in which the names, competency and abilities of individual employees are discussed.

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

1. The regular Council meeting began at 7:00 p.m. with a moment of silent meditation and the Pledge of Allegiance. Ms. Sierer welcomed a group of Boy Scouts to the meeting.

2. 1. **PUBLIC PRESENTATIONS:** None

3. 2. **ITEMS NOT ON PUBLISHED AGENDA**

A. Public

04:03

John Morgan, District 1, said he was glad to there was an amendment to the Code for the height limit on no-impact accessory buildings or structures. He inquired when the noise ordinance matter would return to Council. Ms. Houck reported staff was currently reviewing the revised ordinance and anticipated it coming back the first meeting in March.

Jean White, District 1, said she had missed the discussion on the City logo at the January 25th meeting. She suggested leaving the current City of Newark logo, including "Delaware" spelled out, on the majority of items, and use the "more digitally friendly" revised logo on the City's website and Facebook. She considered the new logo in very bad taste. She believed it lacked symmetry and balance, the crispness and beauty of the current logo. She believed no one would notice that the digital logo was not the same as what Newark had been using currently. She believed time spent on this matter could be better spent in other ways and noted she had spoken at six meetings on the matter.

4. 2-B. **ELECTED OFFICIALS WHO REPRESENT CITY OF NEWARK RESIDENTS OR UTILITY CUSTOMERS:** None

5. 2-C. **UNIVERSITY**

(1) Administration

09:44

Caitlin Olsen reported University students returned February 8th for spring semester. On February 7th, the University held an all-sports women and girls' day that was a sell-out and a great event. There would be an all kids day on February 13th and she suggested registering soon. They were looking to secure a date for the Camp Real kids to attend a game. She reported February 20th was the first decision day and the University anticipated a large influx of families and students in the City that day.

Mr. Gifford thanked Ms. Olsen for having Mr. Armitage follow up with him regarding a noise matter he had inquired about. The noise on the STAR campus was train station construction.

Mr. Markham thanked the University for their continued effort in clearing snow around the Rodney and Dickinson dormitories.

6. **2-C-2. STUDENT BODY REPRESENTATIVE**: None

7. **2-D. LOBBYIST**: None

8. **2-E. CITY MANAGER**

11:46

Ms. Houck reported everything was in order for the anticipated snow storm that may or may not arrive later in the day.

9. **2-F. COUNCIL MEMBERS**

12:07

Mr. Morehead

- Wished everyone a happy Chinese New Year.
- Thanked all for their condolences on the passing of his father-in-law, including the police and staff for enhancing his father-in-law's quality of life through their efforts to ensure his safety during his walking escapades. He reiterated what a great city Newark was for the elder community.

Mr. Ruckle

- Reported he had received a FOIA request from the new animal control division of the State of Delaware. He was upset as it was his opinion the State was going to attempt to change laws with regard to pet limitations. He wanted all to be aware of the potential for the upcoming changes. He believed the State of Delaware was now a "no-kill" state and felt this could cause many issues. Messrs. Markham and Morehead asked that the FOIA information be forwarded to Mayor and Council.

Mr. Markham

- Stated he had a constituent who had his home broken into and copper pipes stolen. He believed the City policy regarding water leaks would not cover this loss and should be modified if this was the case. He had encouraged the constituent to contact City staff if he had not done so already.

Mr. Gifford

- Was interested in finding out various ways the homeowner could/would be covered on the issue Mr. Markham mentioned. He felt if there was a water leak issue due to stolen pipes, there should be ways the resident should be covered under a water leak policy.
- Asked for an update on the individuals living in the woods near Villa Belmont. Ms. Houck reported there was no news since the first outreach but she will follow up.

Mr. Chapman

- Noted an article on the front page of the Newark Post regarding the Newark Country's Club's overwhelming membership-driven decision to stay in the current site. He felt this was wonderful news for the City, particularly Districts 1 and 5. He wanted to give them as much advertising as possible and urged people to become more informed, aware and offer support. He planned to reach out to the country club this week and urged all to do so as well.

- Stated there were no new updates on the grocery store in the Fairfield Shopping Center. There were numerous individuals in contact with the developers and owners and they were being assured there were active efforts to place a grocery store in that location.

Ms. Hadden

- Reformatted her meet and greets. Her guests at the last meeting were Rick Vitelli, Electric Department Director and Andrew Haines, Deputy City Manager. It was very informative and the format would be the same for the rest of the year. The agenda was to inform the public on the operations of the departments and engage in conversation.
- Addressed several constituent concerns.
- Thanked the University and the City Parks & Recreation Department for their efforts with the children that attended Camp Real. She appreciated the quick response when UD offered an event for the kids. She noted the next one was February 18th.
- Would attend a summit on homelessness on February 11th at Clayton Hall.
- Reported Jude Rittenhouse, one of the former owners of Rittenhouse Motor Company on Elkton Road, passed away on Tuesday, February 2nd. The Rittenhouse family had gone a long way to contribute business growth in the City from the young days of Newark. There would be a service Saturday, February 13th at 2:00 p.m. at the Methodist Church on Main Street.

Ms. Sierer

- Stated work had begun on the second annual Mayor's Bike Ride. The date was April 30th and would help kick off National Bicycle Month in May. There would be two routes this year: a longer route and a shorter route for families and children. The ride would start and end in the Newark Shopping Center. The owners of the Shopping Center were very interested in supporting the event.
- Reported the Newark Area Resource Summit would be held at Clayton Hall February 11th from 9 a.m. to noon. State Representative Baumbach and Ms. Sierer had been working together in support of this event to make it happen.
- Noted that Parks and Recreation Department received an award from the United States Tennis Association, Middle States District for tennis in the City of Newark. Ms. Sierer and Messrs. Spadafino and DeBruin attended the awards ceremony and luncheon.

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

11. 4. **APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS:**
None

12. 5. **SPECIAL DEPARTMENTAL REPORTS:**

A. Special Reports from Manager & Staff:

1. Recommendation to Approve the Investment Policy Statements for the City's Pension/OPEB Plans and the City's Cash Reserve Account – Finance Director

25:54

Mr. Haines began the presentation. He reported the Pension Committee met on October 16 and December 18, 2015, to review its initial tasks, assess its scope, and discuss the concept discussed before Council of an RFP of both pension and OPEB value, as well as the cash reserves. In the adoption of the financial policy, it referenced an investment policy statement specifically. There was not one officially formalized, and they would be combined. Staff looked at drafts of the existing document referenced in exhibits C and D on the memo, and discussed combining them. This was anticipated for efficiency on the OPEB and pension. Though they had two different sets of liabilities, the co-mingling of the assets was the more efficient method.

Although it was outside of the committee scope, members reviewed the initial draft investment policy document for the cash reserves in hopes of having a more efficient operation and a single RFP for asset management. The committee supported coming before Council for their review and adoption. Staff could proceed forward with the process of going out to RFP, which was a long time coming. Staff was looking forward to gaining better oversight in management of City assets for pension, OPEB and cash reserves.

The Pension Committee's scope was to recommend to Council the adoption of the IPS for the OPEB and pension. As mentioned, the committee did review the draft for the cash reserves. They believed it made sense and wanted it to go together on the RFP. Mr. Haines introduced Mr. Andy Zimmerman as the professional consultant on the Pension Committee from B&T Investment Partners. He, along with staff including Mr. Vitola, had been with the committee and ensured they understood the scope of the committee. At the second meeting there was civic involvement as well and streamlining the format for ease of reading from a lay person's perspective. Public comment was obtained at the second meeting in December.

Mr. Zimmerman presented exhibits A and B. The current investment policies used to govern pension and OPEB were separate. They were very similar so they were combined. There were minor changes. A benchmark was created for indices for each of the specific nine permissible asset classes in the investment policy statement for ease of tracking and comparing investment manager performance. A permissible asset class was added for the use of exchange traded funds, which were very similar to mutual funds, except they traded on an exchange. Most were passively managed. A new asset class was added – commodities. Commodities must be invested through either a mutual fund or ETF. Commodities brought certain diversification benefits, and they were historically not correlated to stock or bond returns.

Lastly, asset allocation guidelines were broadened slightly. The ranges were tightened and there was a minimum and maximum for each asset class. He believed there was still enough room to allow the manager(s) enough flexibility to generate a lot of alpha for the accounts. The U.S. mid-cap equity was broken out as an asset class and the S&P mid-cap 400 index was added as a benchmark. The emerging market equity was broken out and a benchmark added (the MSCI emerging markets index). A benchmark was added for high yield, which was non-investment grade bonds. Those were all permissible by the current policy, but not specifically listed.

The second change was exchange-traded funds included in the policy. They were prevalent and had been growing at a faster rate than mutual funds in the last seven or eight years. They were similar to an index mutual fund, however, unlike a mutual fund, which one can only get into and out of at the end of each market day at 4:15, it traded all day long on an exchange, just like in common stocks. They were very liquid. The holdings were very transparent.

Commodities were in addition to the existing permissible asset classes. The managers only invest in commodities in the form of an Act 40 mutual fund or an ECF, because of the transparency of liquidity diversification by not using any commodities, futures or speculative investments.

Asset allocation guidelines were broken out for each of the main asset classes with minimum and maximum targets. The belief was there was enough flexibility to enable the manager(s) to generate alpha, but at the same time, the funds should be kept very well diversified. This would certainly do that. In other words, it is not prudent to have 80% of the funds invested in U.S. large-cap stock.

Mr. Chapman asked if the Pension Committee had reviewed what was submitted so far. Mr. Haines responded staff had provided a draft version to the Pension Committee, which it reviewed. At the second meeting in December, there was an opportunity to offer comments back as well as any public comment. Edits were made and the draft version was what was currently being reviewed.

Mr. Chapman asked if there was any commentary or questions around specifically the maximum range for emerging market equity or international emerging market. He suggested some detail providing why the range allowable in that particular asset class. Mr. Zimmerman stated historically, emerging market equities from a risk/return standpoint had a very low risk adjusted return. He felt it should be well diversified because they behaved a little bit differently than U.S. stocks and bonds. While the minimum was zero, the target was five, the maximum was ten, and the thought was warranted based on the historical performance characteristics of the asset class.

Mr. Chapman asked if there was any commentary or concerns about ranges, more specifically, with that particular asset class. He thought it was very forward thinking, and the higher level market analysis was going to mirror what was said, probably in more detail. He believes it was less than public funds perspectives. He felt 10% was a bit high. Mr. Haines stated there were different individuals on the committee and everyone was cautious of international politics. He reported that was when the discussion about diversification occurred. Most of the group understood that was a sage direction to go.

Mr. Chapman asked how the recommendation of 5% was determined versus 2%. Mr. Zimmerman replied it was thought that 5% was pretty de minimis, but with the volatility of what was happening right now in the market, he believed the manager needed a little bit more than 2%. Right now with the way trading happened electronically, 2% could move in a matter of minutes and it would be more practical to make it 5%. Mr. Chapman agreed.

Mr. Chapman noted it was uncommon for such a policy statement to speak to or directly try and manage fee expectations. He stated he was not used to seeing guidelines for where appropriate fees might be in terms of choosing management or the underlying assets. He inquired if it was normal not to address fees. Mr. Zimmerman felt fees belonged in the investment policy statement because he believed it was a negotiation when a manager was selected. Where the RFP fees were kept should be left up to the manager. The industry was relatively standardized, but he had not seen fees addressed in an investment policy statement.

Mr. Chapman asked if were addressed at all prior to the negotiation phase or was there a different appropriate document. Mr. Zimmerman stated it was a requirement of the RFP to return with an asset-based fee, performance-based fee, which he believed the committee would want to consider. It came down to the review process with the RFPs back with various managers. Typically, it was going to be a standard fee based on assets under management. It could be tiered. Some managers may come back and say the first \$25 million is at X and then it drops lower as the account grows. He noted the Pension Committee was going to review this and make a recommendation. He assumed that would be part of the recommendation that came back to Council to approve.

Mr. Markham asked how the benchmark was chosen. Mr. Zimmerman said in every asset class, there were probably five or six different benchmarks. He stated they used what were thought to be most widely used and most common. There were several different companies that created benchmarks. The ones his company had chosen were market cap weighted indexes, which is commonplace for the industry. They want to see the mid-cap manager and how they compare against the S&P 400 mid-cap index.

Mr. Markham replied he understood the S&P, but when Bank of America, Merrill Lynch, and Barclays were chosen, there had to be some rationale behind picking those. Mr. Markham asked how the benchmarks were reviewed. Mr. Zimmerman stated it was tough for an active manager to beat a benchmark once fees, etc. were considered. He believed the ones picked were very well-diversified. A benchmark did not have a fee, so the benchmark got a head start. He said he could pull up the holdings in the benchmark easily on his desktop, and believed they were very transparent. They held only liquid securities. Everything was publicly traded inside each of the benchmarks; publicly traded companies, or publicly traded securities on exchanges.

Mr. Markham asked Mr. Chapman if he believed them to be fairly reasonable. Mr. Chapman stated Mr. Zimmerman addressed them sufficiently, so he did not feel it warranted further discussion.

Mr. Zimmerman stated an investment policy statement for the cash reserve funds was created along with a more formalized document. The three main objectives were principal preservation, maintaining adequate liquidity to meet city demands and needs, and maximizing income and yield. The permissible securities were relatively short in maturity, very liquid, and very well-diversified.

Mr. Chapman stated there was much commentary at the dais last year, upon one of the quarterly reviews with the current manager, as to the appropriateness and whether

the City's policy statement should be directing the City to restrict or advise against or limit the ability for a manager to be using all proprietary funds and indices as currently are with Russell. He asked if this was addressed in this document. Mr. Zimmerman stated it was not addressed in the document and he believed the Pension Committee would look at it first based on who replied to the RFPs. He did not think it was a problem as long as the City knew what the fees were and there was fee transparency.

Mr. Chapman agreed that it was not always a problem but sometimes it could be. He thought perhaps the Pension Committee could act as the liaison to help advise, direct and ask questions that Council had not in the past and closely monitor that going forward. Mr. Haines stated that had been the discussion. A dialogue was initiated with the committee members and there would be a score sheet and review of all submissions. Mr. Markham's concern about the benchmarks would be addressed as well and there would be the annual concept of reviewing the performance. Mr. Zimmerman's affiliation with the Pension Committee was to help it get formulated, then the committee itself would determine if the recommendation was to continue on or bid to professional guidance. His role was restrictive to not be engaged, as he was the City's professional guidance. That would be an annual process and would address both concerns of what the benchmarks are and challenges that were discussed in the past.

Mr. Chapman asked if the suggestion was to not limit the City's responses to RFP, possibly restricting out what would otherwise be a best option and filter through once responses are received. Mr. Haines stated they wanted to see who would respond. He said it would be prudent to know what the City's assets would represent for some bid, so the goal was to leave the table open to who would submit.

Ms. Sierer thanked Mr. Zimmerman for his presentation.

There was no public comment. The discussion was brought back to the table.

MOTION BY MR. CHAPMAN, SECONDED BY MR. RUCKLE: TO APPROVE BOTH INVESTMENT POLICY STATEMENTS FOR THE CITY OF NEWARK'S PENSION AND OPEB PLANS AND THE CITY'S CASH RESERVE ACCOUNT.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

Nay – 0.

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

- A. Recommendation to Award Consulting Services Agreement to Black & Veatch Management Consulting, LLC.

50:49

Ms. Houck stated as previously discussed there is a need for a refresh of the last water rate study in association with the staggering of the implementation of the study's recommendations. The update was delayed to permit the near completion of the Smart Meter Project and allow one year of measurement and verification. In addition to the Water Rate Study update based on current operation, the City has been engaged in discussions relating to the City's stormwater utility. Three public meetings were held resulting in a great deal of feedback. Staff had been exploring the best way to include the feedback and best practices in the final product to be returned to Mayor, Council and the community.

Ms. Houck reported there were overlaps to the water utility work and stormwater. The consultant designated by the City, Black & Veatch, had a great deal of stormwater utility experience, most notably with Wilmington, DE who currently operated a stormwater utility. Ms. Houck believed it would be appropriate to include all water related rates in one integrated review. The proposal outlined the costs associated with the services agreement and further provided information on how the City determined the costs from the current consultant and that those costs were appropriate. Additionally, the City of Wilmington, along with the City of Newark, used the county parcel data. Methods to use this data were currently in place and were put in place at the direction of Black & Veatch.

Ms. Houck stated staff requested the support of Mayor and Council to launch with Black & Veatch the full rate study and include the stormwater utility review as well. It would be one process that would result in a comprehensive review and recommendation that would provide detail to Mayor and Council related to water, sanitary sewer and stormwater. The total cost of the recommendation was \$100,000. She apologized for the late addition of the attachment to Mayor and Council. She stated if this were to impact Mayor and Council's ability to vote on the matter, staff understood.

Mr. Morehead stated he would appreciate the time to review the information in the RFP and would like to delay decision on the topic as he believed Mayor and Council had not been given the information it needed to make an informed decision at this time. Ms. Hadden concurred with Mr. Morehead.

Mr. Ruckle stated he was unsure of the need for an additional study, as the rates had been recently raised. Ms. Houck stated the previous rate study that was conducted was a five year study. It included the recommendation to raise rates in a certain sequence over the course of five years. That recommendation was not followed. Ms. Houck reported members from State Legislature spoke in reference to the fairness issue and whether inside City limits and outside City limits were being charged appropriately. This resulted in the removal of the suggested fire hydrant fee. Mr. Coleman stated reviewing all (water, sanitary sewer and stormwater) was important as some of the resources were shared between the water, sewer and stormwater utility. Some costs may shift if the City goes forward with the stormwater utility.

Mr. Ruckle asked if one rate could go down and another could go up. Mr. Coleman stated that was possible, but until it was reviewed, they did not know what was going to happen. There was going to be shifting of costs likely from water into stormwater. There would be a reduction in operating expenses covered by water rates on the water portion.

Mr. Markham stated he would like more time to read this as there were issues he needed to know had been discussed. He asked how water conservation was being addressed. If there were any stormwater efforts people were doing, would that be included in the form of a credit. He believed there was a study prior to the rate and property tax increases. These needed to be included. He believed when the electric rate study was done, a water study was done as well. One of his concerns was the City needed to be careful. When the electric rate study was done, the residents were very interested in the result, and thought it would be probably more fair to them, and in his opinion, the reverse happened. The City ended up having to give money back, or give credits to the University. He is very concerned about how the City restructured things, since they need the University contributing to the City's efforts.

Mr. Gifford believes more time was needed to review such a large document. He asked how many studies the City had done. Mr. Coleman stated he was not aware of any. Ms. Houck replied the City did not do them. An electric rate study was not done until 2011.

Mr. Gifford asked if it was possible the City could just do its own bottom up forecast for what needed to be charged for its utilities and was not sure a rate study was necessary. He asked what was the best reason do this study. Mr. Coleman stated the main reason for the water rate study was the experience of Black & Veatch. They had already built one for Wilmington, DE. Staff believed it was a very good example. They had expertise in proper rate setting practices. Mr. Coleman has the AWWA manual on rate setting, but he was not an expert. He believed having someone who knew what was appropriate to include in a specific utility and what was not was beneficial. The City was going to be looking at the cost share of the in-City versus out-of-City rate, which was something that he did not know if that had ever been reviewed in detail. The percentage was set and approximately 30 years ago, the percentage was reduced. Aside from those two actions, he did not believe any action was taken to justify or develop the cost differential between the two. He further stated considering the feedback received last year from Newark's state legislators, it would be nice to have a third party review it.

Mr. Gifford understood there is a certain amount of expertise in the rate setting piece that staff did not have. He asked if this was something the City was going to do

every five years. He was concerned because last time, it said the City needed to raise it a lot. Mr. Coleman believed it was something the City should do every five years. The study may indicate a rate increase is necessary. It was generally based on what the capital expenditures looked like. The only thing new in the water utility, specifically, was main replacement. Some of the projects' deferred maintenance had been completed over that five years. He noted a rate study had not been done for sanitary sewer.

Mr. Gifford asked if the CIP was not growing at a faster rate as it was before, which Mr. Coleman confirmed.

Mr. Chapman noted on the recommendation it requested Council approval of a small dollar amount from one line item to another. He asked where the money was coming from and the impact. Mr. Vitola stated it was a net zero impact. He knew the City had a study for review in 2016, with \$100,000 in the budget in the water fund, for a rate study. However, if this study covered water, stormwater and sewer, it was appropriate that sewer cover its share of the cost of the study.

Mr. Chapman believed whole heartedly that the City needed the expertise in a rate study. He completely understood the concerns it may suggest another rate increase. However, he understood the goal of the rate study was to over simplify. He wants to make sure the City did not focus on just the rates required to continue delivering this service, unless that methodology also included the projects down to the details that were going to be necessary in terms of capital improvement or complete redesign in some cases. He wanted clarity in the study. He asked if it would address infrastructure repair replacement. He wanted to make sure there was a clear understanding of what it was the City needed first and wanted the rate study to include this. Mr. Coleman stated in general, the guiding force for the rate study was what the City had determined in its capital budget and operating budget. The goals included in the five year capital budget were effectively what the rate study was going to obtain. If there was a comfort level with the five year CIP, one should be comfortable with the goals of the rate study and what would be included. There were still some unknowns with the City's inventorying of the storm sewer system. In general, there was a pretty good idea of what the money would be spent on for at least the next few years. Since it was a five year outlook on the rate study, there was a comfort level with the number obtained within that five years based on preliminary work City staff had done so far. Another reason why the City should have someone else do the study was to get it done. Staff might be able to do a lot in house, but assistance was needed.

Mr. Chapman stated it was his understanding with regard to the CIP, there was some conversation around the City would be able to complete a certain level of study to determine how to address the issue including a more global picture and be able to plan more than five years and more accurately. It may be possible to spread out the adjustments. Hopefully, this rate study would address that, as well. Mr. Coleman stated they had discussed inventorying the stormwater system and specifically, the corrugated metal pipes. This work was under way. The first stage was identifying what was there. There had been crews out since the budget passed so staff could get the contract down for inspection.

Mr. Vitola stated it was true the study had a five year horizon, but there were different nuances that were going to change the CIP. The CIP was not going to be the budget and CIP plugged in. The study horizon was going to be 2017 to 2021 – the CIP was 2016 to 2020. Another issue was the debt service on the reservoir. That was going to be paid off in 2021. The study was going to have to build in debt service cost of approximately \$2 million a year, or so, for the five years of the study. Assuming no debt was incurred over that five years, there was going to be a drastic drop whereby expenses fell off. If the City was trying to address high dollar, high ticket items, or several medium ticket items that need to be addressed over 30 years, but were only looking at the five year rate study, the assumption could be that the City had the ability and the wherewithal to withstand a \$2 million debt service payment every year into the 20 year horizon. He further stated the study would be transparent. The figures that were used in the operating budget were going to be 2016 budget, maybe modified for the experience for the first half of the study. The CIP was going to start with the 2016 to 2020 CIP, but each item would be listed. Mr. Coleman said based on his reviews and studies of the different utilities,

things could be added or taken away to see what really and truly needed to be accomplished in the five year horizon with current utility rates.

Mr. Chapman thanked Mr. Vitola for his input. He would like to see how to achieve the CIP and what modifications need to occur or be suggested to achieve the five year goal. He wanted to see if the City would like to address the infrastructure problem at a pace that was in front of the decaying infrastructure. He felt the new five year plan was far better, but was not complete yet. He asked to have the number that would be required to logistically get a bigger project done, or at a faster pace just as an alternative.

Ms. Houck said some of the conversations that just took place will help staff to get more information before the next meeting before there is a vote.

The Chair opened the discussion to the public.

John Morgan, District 1, said the water rates in the City had gone up dramatically over the last 15 years, since the construction of the reservoir. He thought it would help a lot if residents if they could understand how the City's rate structure for water and sanitary sewer were set up. He stated stormwater is another issue. He expressed concern about the accounting for sewer usage and whether it took into account organizations that did large amounts of outside watering. Mr. Morehead stated they could apply and pay for a second meter for that consideration to be given. Dr. Morgan stated the University had a large amount of impermeable surface and felt it was important that the University pay an appropriate amount for storm water utility. He hoped all that was looked at in this rate set.

The discussion was brought back to the table.

MOTION BY MR. MOREHEAD, SECONDED BY MR. GIFFORD: TO POSTPONE CONSIDERATION OF THE AWARDDING THE CONSULTING TO BLACK & VEACH UNTIL THE NEXT MEETING.

After discussion, Mr. Morehead withdrew the motion.

Mr. Vitola apologized for Council not receiving the additional document. He understood Mayor and Council had not had a lot of time to look at it; however he wished to note the proposal was about a dozen pages. The rest was bios of the team. The sooner the study was done, the more time staff and he has to contribute to the project before his departure at the end of May.

Mr. Markham stated the rate study affects the entire city, and he would like more time to look at it. He would prefer to do the first meeting in March.

Ms. Sierer noted the March 14th meeting was a full meeting, which included the comp plan and the Traders Alley matter.

Ms. Houck wanted to address some concerns. Before there was a decision made about what exactly was going to be included, there were going to be public meetings. The approval of this was not going to set the course of what was in the rate study. It was going to start the process so that the City could make those decisions. Mr. Chapman noted historically he had never seen it come back in front of Council for further input past this stage for direction.

Mr. Morehead stated one of the things he heard was that not only the projects that are already identified in the CIP, but what about an option of doing more. That would be a significantly different study. The discussion was what was at the table, as well as some other things. In his opinion, this needed more time.

MOTION BY MR. MARKHAM, SECONDED BY MR. CHAPMAN: TO POSTPONE CONSIDERATION OF AWARDDING THE CONSULTING TO BLACK & VEATCH UNTIL THE MARCH 14, 2016 MEETING.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

14. 6-B. RECOMMENDATION TO WAIVE THE BID PROCESS IN ACCORDANCE WITH THE CODE OF THE CITY OF NEWARK FOR SOLE SOURCE PURCHASES FOR THE PURCHASE OF SPARE SEWER PUMPS FOR THREE SEWER PUMPING STATIONS

01:25:02

Mr. Coleman stated the contract was for the purchase of a spare sewer pump for each of the three pump stations. As mentioned during the budget process, pump rental costs rapidly approached the cost of a new pump. The largest pump rental was \$5,000 a month, while the pump cost \$18,000. The price for a rental does not increase linearly with the cost of a replacement pump, so the Bellevue pump station replacement pump was \$3,800 for the rental costs which would probably be almost that much for that one station.

The project would pay for itself within a few years. It allowed staff to start more preventative maintenance on the pumps, because the City would not incur the large rental costs of the pumps. The pump could be pulled and the spare pump put in. This could be done annually, in accordance with manufacturers' recommendations.

Mr. Morehead believed the three different stations used different pumps which did not permit buying one pump and moving it around. Mr. Coleman noted on the second page, the pump price was almost \$18,000, one was \$7,000, and the third one was \$3,800.

Mr. Morehead asked if \$5,000 for a month, would allow for both pumps. Mr. Coleman stated it depends on what had to be done to the pumps. The Silverbrook pump station, where the rental was \$5,000 was an emergency repair. At the time they were told, it would take about a month to get the pump out, repaired, and back. It ended up taking almost four months. It depended on whether the parts were easily accessible. For basic preventative maintenance, one could be rented.

Mr. Morehead asked if the pumps were the same and the exact same pumps that are installed now, in each station. Mr. Coleman confirmed they were.

Mr. Morehead asked if there would be an option of switching out to a different pump manufacturer if needed, at a later time. Mr. Coleman replied that could happen, in theory. The pumps that were used were flight N series, which were top of the line pumps. They were used a lot of places. Mr. Coleman stated there were issues but they were very high performance. The way the pump stations were set up, at least two stations lower the pump down, and as the pump was lowered down, it went directly into place.

Mr. Morehead asked if stock parts that were typically failing could be stored. Mr. Coleman stated the failures were rare. The pumps and the stations were generally new. They has all been rebuilt since 2010. There had been two failures at the same station, and one of them was because a skateboard wheel got wedged in the propeller. He noted there was something called a "Muffin Monster" that was essentially a big grinder. As things went through it, they were smashed and fed into the pump. The pumps the City had were no clog pumps with openings large enough so most things passed through, but also had a cutting edge on the front.

Mr. Morehead asked Mr. Coleman when the pumping station went down if the liability was fairly extreme. Mr. Coleman stated there could be homeowner backups or discharge into the streams.

In response to Mr. Morehead, Mr. Coleman state he was satisfied with having only one spare pump because if another was needed, the rental company could be called.

Mr. Ruckle asked if one pump (retro fit) would work for all of them. Mr. Coleman stated the reason for three different pumps was that one station pumped into the other station, which pumped into the other station so they were of varying size.

Mr. Gifford asked if other brands of pumps would work. Mr. Coleman stated they would with minimal modifications. Mr. Gifford asked if the bid was being waived and pumps would be purchased from the one company. Mr. Coleman stated it was not as easy as buying one. One has be found that matched properly and the station has to be reviewed to ensure proper fit. It was a lengthy process. It is his opinion the pumps would not be significantly less expensive.

The Chair opened the discussion for public comment.

Larry Laber, District 6, asked if the pump parts would come from China. Mr. Coleman stated that an earlier reference was a figure of speech.

The discussion was brought back to the table.

MOTION BY MR. MOREHEAD, SECONDED BY MR. RUCKLE: THAT COUNCIL WAIVE THE BID PROCESS IN ACCORDANCE WITH THE RECOMMENDATION AND FUND THE TOTAL COST INCLUDING THE REBUILD OF \$49,277.44.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

15. 7. **FINANCIAL STATEMENT:** *None*

16. 8. **ORDINANCES FOR SECOND READING & PUBLIC HEARING**

A. **Bill 16-02** – An Ordinance Amending Chapter 32, Zoning, Code of the City of Newark, Delaware, By Amending the Definition of a No Impact Accessory Building or Structure to Include a Height Limitation

01:33:31

Ms. Bensley read Bill 16-02 by title only.

MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: THAT THIS BE SECOND READING AND PUBLIC HEARING OF BILL 16-02.

Maureen Feeney Roser, Planning & Development Director, offered the following amendment to the definition of no impact accessory structures, which was adopted by Council in September of 2015. At the November 9th, Council meeting, Council directed staff to consider an amendment to the Code in order to limit the height of accessory structures. The concern was raised because of the radio station recently proposed for Bent Lane. In that case, the matter was scheduled for City Council review for a special use permit, because the application to operate a radio station in the home was not considered a no impact home business due to the request to install a 50 foot utility pole operate this radio station.

The outdoor alteration, to accommodate the radio station, made it a home business with impact, and therefore, required a special use permit. The pole, itself, which caused most of the concern, met Code. It did not require Council approval, because the definition of accessory buildings and structures does not address height. In other words, the applicant can simply install the pole without the radio station, and he would have been permitted to do that with a building permit. By way of background, during extensive discussions with the community, and with the Planning Commission, the height of accessory structures was discussed at some length. At the time it was thought it could be too limiting or restrictive. Therefore, it did not include a height limit in the recommended amendments in September 2015.

However, the discussion about height took place in the outset of conversations about the issue surrounding accessory use and buildings, and well before a strategy was developed creating two separate and distinct categories of accessory uses; those with impact, and those without. The strategy provides an accessory use or building with impact to come to Council for a special use permit. On the other hand, no impact structures and uses are allowed by right. Therefore, if one adds a restriction that the accessory structure

cannot exceed the height of the primary building to the definition of no impact accessory building or structure, the height restriction does not prohibit the accessory structure from being taller, which was one of the Planning Commission's concerns when it was originally discussed. It would be simply not be considered a no impact. The applicant could come before Council and request review and a special use permit to exceed the height of the primary building. Therefore, staff recommended Council amend the definition of no impact accessory building or structure to add the restriction the accessory building or structure cannot exceed the height of the principle building in order to qualify as a no impact structure. Staff believed that the revised definition was easy for all to understand, and would address the visual impact of accessory structures, because if the structure was taller than the primary building on the same lot, Council would have the ability to either deny it, or approve the structure with conditions, such as aesthetic improvements or landscaping requirements through the special use process.

As with all proposed ordinances, the amendment was reviewed by staff, and there was no concern by the operating departments about the revised definition. The amendment was also reviewed by the city solicitor, who indicated the approach was a good way to address the concern and did not conflict with any other Code provisions. Therefore, the recommendation was forwarded to the Planning Commission, who unanimously recommended the amendment for approval at their December 2, 2015 meeting.

Mr. Ruckle asked if this would place a limitation on fence heights. Ms. Feeney Roser replied it would not. Mr. Ruckle confirmed any height fence was permissible in the city of Newark. Ms. Feeney Roser stated fences were not regulated.

Mr. Ruckle asked if something was put on the primary structure, like a TV antenna that may go up about 12 feet would that be limited. Ms. Feeney Roser stated that would fall under a height restriction, unless it would be exempt. She would have to verify this.

Mr. Gifford stated he read the Planning Commission notes and asked if there was any discussion versus the maximum height limitation for a primary structure. He believed it is 35 feet in his neighborhood. Ms. Feeney Roser replied it was her belief most of the conversation surrounded the visual impact was for a one story structure. This was one reason staff was hesitant to introduce a height limitation. Someone may want to put a two story garage, or similar on the back, and would not be permitted to do it. This way they were permitted to do it with Council approval and a special use permit. The issue was with the visual impact of having something taller than the primary building.

The Chair opened the discussion to public comment.

John Morgan, District 1, noted the final sentence, where it said, "A no impact accessory building shall not be used for commercial purposes, etc." He thought it would be better say "a no impact accessory building or structure" since the definition at the top in italics said "Accessory building or structure." Ms. Feeney Roser stated it would be fine but did not believe it changed the intent of the language. Dr. Morgan thought people could argue that what they may have is not an accessory building, but an accessory structure and it could be used for commercial purposes. Ms. Feeney Roser replied if Council would like to do that, staff had no concerns.

Dr. Morgan stated there was a discussion at the planning commission meeting, what if there is more than one principle building on the same lot. He would suggest going with the highest principle building. Ms. Feeney Roser stated in the analogy of an apartment complex, the principle building was the building that included the office space.

Dr. Morgan stated it may not be the highest building on the lot if there was a separate office and gave an example. He believed that should be considered and perhaps say whose height does not exceed the height of the highest principle building or buildings or similar. Ms. Feeney Roser replied if Council thought that was important for the City to make sure that it would handle a situation like that, she did not believe it was a problem.

Mr. Laber, District 6 asked how the measurements would be taken if someone lived on a hill. Ms. Feeney Roser stated it was the standard height measurement, which took into account the grade. Being on a hill would not matter. The measurement is taken from the grade plane. Mr. Laber continued and said he could have a house that is 20 feet high, but because he may live on a grade, he could actually have a building 35 feet high as long as it is not above the primary building. Mr. Chapman stated the scenario Mr. Laber described was the when a special use permit would be needed under this amendment.

The discussion was brought back to the table.

Mr. Ruckle reiterated his concerns regarding the lack of a fence height restriction and TV antennas needing special use permits. Mr. Chapman suggested not getting off topic and Mr. Ruckle could bring the fence matter back at a later time. Mr. Gifford stated antennas are under a separate section, so that can be reviewed as well.

MOTION BY MS. HADDEN, SECONDED BY MR. CHAPMAN: TO APPROVE THE ORDINANCE AMENDING CHAPTER 32 ZONING CODE OF THE CITY OF NEWARK BY AMENDING THE DEFINITION OF A NO IMPACT ACCESSORY BUILDING OR STRUCTURE TO INCLUDE A HEIGHT LIMITATION.

MOTION BY MR. MOREHEAD, SECONDED BY MR. CHAPMAN: TO ADD THE WORD "HIGHEST" IN FRONT OF "PRINCIPLE BUILDING" AND THE WORDS "OR STRUCTURE" IN THE LAST SENTENCE.

Question on the Motion was called.

MOTION PASSED: VOTE: 6 to 1.

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

Question on the Motion as amended was called.

MOTION PASSED: VOTE: 6 to 1.

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

(ORDINANCE NO. 16-05)

17. 9. **RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:** None

18. 10. **ITEMS SUBMITTED FOR PUBLISHED AGENDA**
A. **Council Members:** None

19. 10-B. **OTHERS:** None

20. 11. **APPROVAL OF CONSENT AGENDA**

01:49:26

Ms. Bensley read the Consent Agenda in its entirety.

- A. Approval of Council Meeting Minutes – January 11, 2016
- B. Approval of Council Meeting Minutes – January 25, 2016
- C. Receipt of Alderman's Report – January 19, 2016
- D. Receipt of Planning Commission Minutes – January 5, 2016
- E. ***First Reading*** – **Bill 16-04** – An Ordinance Amending Chapter 10, Elections, Code of the City of Newark, Delaware, By Increasing the Per Diem Allowance for Election Board Members on Election Day – ***Second Reading*** – **February 22, 2016**
- F. ***First Reading*** – **Bill 16-05** – An Ordinance Amending Chapter 20, Motor Vehicles, Code of the City of Newark, Delaware, By Designating the South

Side of Bellevue Road as “No Parking Anytime” – **Second Reading – February 22, 2016**

- G. First Reading – Bill 16-06** – An Ordinance Amending Chapter 20, Motor Vehicles, Code of the City of Newark, Delaware, By Designating Tyre Avenue as “No Parking Anytime” – **Second Reading – February 22, 2016**

MOTION BY MR.MARKHAM, SECONDED BY MR. RUCKLE: THAT THE CONSENT AGENDA BE APPROVED AS PRESENTED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

Nay – 0.

- 21. A. EXECUTIVE SESSION PURSUANT TO 29 DEL. C.§10004(B)(2) FOR THE PURPOSE OF DISCUSSIONS ON SITE ACQUISITIONS FOR PUBLICLY FUNDED CAPITAL IMPROVEMENTS**

Council returned to the table at 9:21 p.m. Ms. Sierer reported that no action needed to be taken at this time.

- 22. Meeting adjourned at 9:23 p.m.**

Renee Bensley
Director of Legislative Services
City Secretary