

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**December 14, 2015**

Those present at 6:30 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  
Deputy City Manager Andrew Haines  
Deputy City Solicitor Paul Bilodeau  
Community Affairs Officer Ricky Nietubicz  
Finance Director Lou Vitola  
IT Director Joshua Brechbuehl  
Parks & Recreation Director Charlie Emerson  
Planning & Development Director Maureen Feeney Roser  
Planning & Development Planner Tom Fruehstorfer

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**EXECUTIVE SESSION**

- A. 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 6:30 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.

**02:52**

2. MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: TO REMOVE ITEMS 9-B, REQUEST OF UNITED RESTAURANT GROUP, INC. AND BPG HOTEL PARTNERS IV, LLC TO REMOVE THE EXISTING DEED RESTRICTION RESTRICTING FURTHER SUBDIVISION OF THE PARCELS LOCATED AT 650 AND 654 SOUTH COLLEGE AVENUE, AND 11-C, APPROVAL OF COUNCIL MEETING MINUTES – NOVEMBER 2, 2015, FROM THE AGENDA.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

3. 1. **PUBLIC PRESENTATIONS**

- A. Presentation of 2015 Construction Excellence Award to Parks & Recreation for the Curtis Paper Mill Remediation and Park Construction

**03:14**

Mr. Emerson reported that the Reybold Group was awarded a special contract construction excellence award by the State Office of Budget Management and the Delaware Contractor's Association. Bill Davis was present on behalf of Reybold.

Mr. Emerson explained the scope of the project was to turn a brownfield site into a passive park. There were some challenges, but Mr. Davis and his group and consultant Pennoni worked through those. It vastly improved the historical site and created an improved entryway into Newark from the north.

Mr. Davis said from its inception, Reybold wanted to work on this project with the City and Pennoni. Some of the criteria that had to be met with the DCA for the award such as design in craftsmanship, excellence in project teamwork, innovation in construction, technologies or materials and meeting the challenge of a difficult job. Mr. Davis presented a duplicate award to the City that Reybold put together in a booklet.

On behalf of the City, Mr. Emerson congratulated the Reybold Group for receiving the award and thanked them for sharing it.

**4. 2. ITEMS NOT ON PUBLISHED AGENDA**  
**A. Public**

**07:42**

Catherine Ciferni, District 2, spoke about bicycle safety and the fact that there were two serious biking accidents in Newark recently. She was concerned there was no apparent evidence of action being taken.

Regarding job postings in the City, she recommended that there be a clearer, more regulated process on the website for applications so they can be found immediately and that there be an anonymous questionnaire attached to insulate the City from any discriminatory practices similar to what the state and federal government offered. She also hoped the City would resolve to improve transparency in 2016.

Jeff Lawrence, District 3, referenced Bill 15-32 which was scheduled for second reading at the 1/11 Council meeting. He noted that the bill allowed people with concealed carry permits to continue to carry firearms into the buildings. He asked what would distinguish a concealed carry permit holder from bringing a firearm into the building and somebody who did not have a permit, intending to do harm, from sneaking a firearm in the building. He thought this bill would do nothing to improve safety but would actually make the buildings more dangerous. Mr. Gifford responded that nothing else in the building changed based on this ordinance, and the bill could not be removed since it was not on tonight's agenda.

Larry Laber, District 6, hoped before Bill 15-32 was voted on, the definition of a firearm, a component and ammunition would be provided because he did not want to be arrested for having a BB in his pocket.

Jean White, District 1, felt the original City logo should remain for reasons she gave in the past. She spoke about the logo decals for City vehicles and felt the proposed logo was inferior in a number of ways. She felt the present logo looked much better on City vehicles, not only in the tag line, "Committed to Service Excellence", but in the design. It was reported at the 10/26 Council meeting that new decals with a new logo had already been purchased for \$573. To that end, she offered to figure out a way to reimburse the City for money already spent for the new decals so that the City could purchase more of the decals with the original design. Therefore, no costs or loss of money would be incurred due to what already was spent. She asked to be contacted about this.

Donna Means, District 5, expressed concern that questions posed by a member of the Planning Commission regarding the budget were not answered at the last Council meeting. She was also opposed to the 9.5% tax increase.

**5. 2-B. ELECTED OFFICIALS WHO REPRESENT CITY OF NEWARK RESIDENTS OR UTILITY CUSTOMERS**

**20:56**

State Representative Paul Baumbach made the following comments:

- Thanked the City for all they do to make the community as wonderful as it is. He enjoyed the Winterfest event held in December.
- Supported appointment of Sheila Smith to the Conservation Advisory Commission.
- Regarding Bill 15-33, the water rate, he appreciated the work done by City staff on the concerns raised by the area legislators regarding Aetna Fire Company. They felt it was an inappropriate use of the utility's rights and asked that it be withdrawn.
- Referred to the 1/11 discussion on the prohibition for open carry in the municipal building. Among other things, Delaware Code defined firearm, and the last sentence in the definition was, "...it does not include a BB gun." Delaware Code would answer any of these questions. He encouraged Council members to reach out to him with any questions so they had the facts to make their decisions. He was part of the co-sponsor of the two laws passed to permit cities and counties to make reasonable limitations on open carry. They did not touch the concealed carry permit process which was a very in-depth process. For open carry, it was not for safety, but for the environment in the City Council chamber, and the environment that City staff had. Safety, the City police department was 100 yards or less from here and that was working, but the environment and comfort level of citizens and residents was one of the reasons for coming up with this law change. He wanted to address any issues ahead of time. He was looking to get some legal confirmation as to everything being "kosher" in the law. Before the governor signed any bills, his lawyers looked at them to make sure they would pass the State and the U.S. Constitution. He said that it was a good law and that the proposal on 1/11 was a good proposal.
- Mr. Markham believed Representative Baumbach was resubmitting the PILOT bill. Representative Baumbach said it was in. He thought it was still valuable for Newark and the state to raise this inequity and have a starting point to level the playing field.
- Mr. Gifford asked who else was involved in the Aetna discussions besides Senator Peterson. Representative Baumbach replied Representatives Osienski and Kowalko and Senator Townsend. When he reached out to the City Manager and others, all of them were included, and many came back and said they had the same concerns. He said there was a balance between rights and responsibilities – the City had the right to charge utility rates, and a responsibility to only charge things tied to delivering that utility.
- Ms. Sierer asked Representative Baumbach to share the resource summit project they were working on. Representative Baumbach said if someone needed state services, they call 211. On 2/11, from 9:00 until noon at UD's Clayton Hall there would be a greater Newark area resource summit. He and Ms. Sierer were two of the sponsors of this summit. It was to get people together who were helping those who were homeless or in danger of becoming homeless. A lot of organizations (government and non-profit) helped these communities but did not talk amongst themselves well. The United Way and others had offered to help with this summit to get everyone together to learn from each other and network. It was free to the public and registration would be available in early January.

**6. 2-C. UNIVERSITY**  
**(1) Administration**

**28:35**

Caitlin Olsen, Assistant Director of Government Relations, said it was finals week with the last day on 12/19. The students would come back for winter session 1/4. Spring semester starts 2/8. Basketball season started. The next women's game was 12/22 at 6pm vs. Vermont. The men's team was travelling for a few games but would be back at the Bob on 1/2 at noon vs. James Madison

Mr. Gifford said over the last few days he heard a lot of noisy construction activity on STAR Campus behind the Bloom lot. He asked for an update in the event that questions were raised by constituents. Ms. Olsen would provide a reply and would also try to schedule a complete update on STAR Campus by the University.

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

**8. 2-D. LOBBYIST**

**30:30**

Rick Armitage noted Representative Baumbach mentioned House Bill 223. He was candid as to how well that might be received in Dover. Mr. Armitage thought it was an issue the City needed to continue to push and, with permission from Council, was

something he would add to the list of things to pay attention to as well as push forward on. The majority of Council members agreed with Mr. Armitage's recommendations.

Next Monday was the next DEFAC meeting. The numbers were not expected to change significantly in either direction. Mr. Armitage would attend the meeting and send a follow-up email to Council as to what comes out of that.

The General Assembly would return on 1/12.

Mr. Gifford asked if there was no chance of HB 223 going through, should the City be wasting its time going after it. Mr. Armitage suspected the Director of OMB would not even suggest to the Governor that they fund this bill. If she had a choice, it would not have been funded last year for the \$3 million earmarked for the other three recipients. Mr. Armitage said after seeing the Governor's suggested budget at the end of January, there would be a sense as to whether or not he wanted to fund that. The chair of the committee was from Wilmington and somehow managed to find that money last year in a tough budget time. The other sense was that Wilmington was a larger City and people were willing to throw some money out to try to help it survive, and they do it through the Joint Finance Committee process. Mr. Markham's opinion was that Newark had to get the agreement from the other cities to build consensus, keep putting it out there and continue having conversations with them so when the money became available in the state, that Newark would not then have to go form the coalition. Mr. Armitage felt perseverance would pay off over time. He could not guarantee it would come to fruition but said Newark should keep reminding the legislature that this was a really important issue because of the large amount of property that was tax exempt and its impact on the budget.

Mr. Markham asked Mr. Armitage how much the state thought they were short right now. Mr. Armitage heard anywhere from \$150 to \$183 million. A lot depended on pension and health care costs. They underestimated the formula driven pupil count and what they had to give to education to match the enrollment in public K-12.

Mr. Markham referenced the clause in the Bond Bill epilogue language that said if the City ever annexed a particular property on Possum Park Road, that the City must pay back \$3.5 million for the reservoir property. He asked if it was worthwhile to request the state not to include that in the epilogue. Mr. Armitage did not think anybody had pushed that issue for a while and he would pursue it if directed to do so by Council.

**9. 2-E. CITY MANAGER:** None

**10. 2-F. COUNCIL MEMBERS**

**37:30**

**Ms. Sierer**

- Thanked Mr. Coleman and his staff for responding in the next few days to continue leaf pick-up which was scheduled to end last week.
- Met with Terri Kelly, the President and CEO of W. L. Gore & Associates. Ms. Sierer thought there were opportunities with Gore to get them re-engaged in sponsorships and activities that they do. Ms. Sierer will continue to meet with her and work through that.
- Prepared three statements to share and asked Council to consider giving direction to City staff on two of them.

The first one had to do with bicycling. Ms. Sierer very much enjoyed the extended mild weather and, as most of you remember, last year's inaugural mayor's bike ride was a lot of fun. Since then she had the pleasure of working with dedicated individuals from many local organizations in the community that have a particular interest in bicycling. It was inspiring to have so many dedicated cyclists in Newark from recreational riders to daily commuters. They are also very dedicated to improving our bike ability. Newark was not just a bike friendly community, but was the most bike friendly community in Delaware, the third most bike friendly state in the country. Whether it was the trail spinners constructing new off-road trails or the Newark Bicycle Committee working with stakeholders to bring long awaited improvements to the Cleveland Avenue corridor to fruition, it was hard to look around Newark without seeing cyclists or cycling amenities.

Ms. Sierer had confidence that by supporting the ongoing work of City staff and volunteers, that silver designation could be achieved from the League of American Bicyclists by the 2018 renewal period. She hoped that everyone would join her in setting this goal for Newark in the coming year.

The second item that she wanted to address was in reference to the property at 919 Rockmoss. Council was recently updated on that condemned property and the Codes Department and City Solicitor suggested that the City move forward with demolition. That probably would not happen until after the first of the year. Ms. Sierer had several requests for Council to consider giving direction to staff:

First, she thought it was important to have a more detailed description of the demolition as appropriate and necessary to facilitate a safer situation. Secondly, to work with the codes division and possibly an expert in the community on passive home development to bring the details and/or feasibility to build the state's first fully passive home on the site that would be resold upon completion. This research could include finding partners to design and develop it as well as help funding its construction and plans for ensuring tours were made possible. Ms. Sierer was in discussion with an individual in the community who was educated and an expert on passive homes. They were not very popular on the east coast yet but were becoming more popular on the west coast. She thought this property actually might be worth looking at as an opportunity to build a passive home and pilot that project in the state. It was an opportunity to take a condemned property and turn something unfortunate into something that could be considered a showcase. Other developers could use this as a model within the state and community. One of her goals was to get developers to build a passive apartment building. She thought this might be an opportunity to take that first step.

The third project Ms. Sierer wanted to prioritize in 2016 was an update to Newark's Ethics Code. The Ethics Code was put in place in 1988, with the last amendments being in 1997. The State Code required that the City Ethics Code be at least as stringent as the State Code. However, there had been changes to the State Code in the last 18 years that were not updated as part of the City Ethics Code. Additionally, since the City Ethics Code was an approved Ethics Code of the State, any amendments must be approved by the State Public Integrity Commission prior to being implemented by Council.

Ms. Sierer suggested that the path forward be three-fold and direction given to staff to complete this. Council should call for a meeting of the Board of Ethics in the second quarter of 2016. This would give the City Secretary and the City Solicitor time to research and prepare the appropriate documents and updates to bring Newark into compliance with the State Code. They would also have time then to provide Council benchmarks from other municipalities and how their Ethics Codes read and their best practices. It would also give time for the Boards and Commissions Review Committee to consider to be part of the process. Once the Board of Ethics meeting was completed, a report should be submitted to Council, a presentation should take place at a Council meeting, and then the amendments Council would like to see move forward could be forwarded to the State Public Integrity Commission to be considered. The State Public Integrity Commission must weigh in on the proposed changes and then an ordinance could be prepared for a first reading. If this path forward was amenable to Council, she would like Council to consider giving direction to staff to work on this project and call a meeting of the Board of Ethics for the second quarter of 2016.

With that, she requested potentially giving staff direction tonight for the Rockmoss property and the Ethics Code. Mr. Markham did not have any objection but was concerned that Council gave staff quite a bit to do recently. He thought ethics was the bigger one, but did not know what staff had to do for the Rockmoss property. He knew this could be done but stressed it should be done properly. Ms. Houck was more familiar with the Rockmoss property. She said staff owed Council more information on the demolition prices that came in. She thought that that information needed to come forward regardless of any other efforts taken about building a passive structure there because safety issues were raised and the house was a big concern. She also thought the neighbors deserved some decisions. In the new year, staff would come back with all this information so Council could make the first step of decisions. After the property was vacant, a committee

could be put together to work on the passive opportunity if Council was so inclined. She agreed it would be interesting to have the first passive home in the state and have the opportunity to showcase it. Ms. Sierer added research was needed as to whether it was even feasible. She thought it was something prudent for the City to review. Mr. Markham asked if this would be a good project for the CAC to look at since they had interests in this area. Mr. Ruckle asked for the definition of a passive house. Ms. Houck's understanding was that it was totally green. Mr. Morehead said there was an international standard it had to meet, much like LEED but with a different standard. Ms. Hadden thought it had a passive effect on the environment.

Mr. Gifford addressed the ethics question first. Usually the City's Code was updated to the State Code, so he asked how this was different and what the problem was as it existed today other than it was not up to date. Ms. Sierer replied in her discussions with Ms. Bensley and Mr. Herron, nothing would begin until the second quarter of 2016. There were outdated sections that had to be brought up to date with the state. There was also some benchmarking with other communities to see how their Ethics Codes read. Also, it was timely for the Board and Commissions Review Committee to take a look at it. A meeting with the Board of Ethics would need to be convened first, as their review process would take some time. It was her understanding that staff was available to do it.

Ms. Bensley said one of the reasons it went so long without being updated was because part of the charge of the Board of Ethics was to review the Ethics Code and offer recommendations, but they currently did not have a mechanism for regular meetings. They met at the call of Council or the City Manager or if a complaint was filed. Part of the reason this was brought forward was to kick it off and get a meeting called by Council of the Board of Ethics to start reviewing this, and part of the purpose for second quarter for 2016 was to give staff time to research, put together the issues, and have a presentation for them as to what they were looking at as far as updates that had to be done to bring Newark up to state code, as well as looking at other models for codes in other municipalities, not only in Delaware, but in other states as well for ideas to bring forward that they may want to consider and may want to move recommendations forward. Since Newark was an approved Ethics Code of the state, it was a bit more of an involved process than just recommending a code change to Council and Council considering it since it had to go through the state. This was about getting that process started. It would not be quick necessarily, but it was something that needed to be done. Ms. Sierer said in addition to an update, this would also be looking at updating it beyond what the state might have, examples from other municipalities and recommendations from the board.

Mr. Gifford addressed the passive home suggestion. While he might think it was a good idea, he did not know that he could support it or give staff direction on it because he did not understand the scope or what other ideas there were for the property. He wanted to have a more in-depth discussion as a separate agenda item, especially with property owners that neighbor this property. He thought it involved a much larger discussion and should be a separate item on the agenda. Ms. Sierer responded that would be part of the process. It would not be just getting research and putting a passive home there. It would be one of the options. She would like to give staff direction to research a passive home as one of the options for that property. Mr. Gifford said at this point he was not in support of that since he did not have enough context or information at this point.

Mr. Morehead noted that the Rockmoss property was in District 1. If someone drove past he thought they would find it hard to identify the house with knowing the address. The house was being cared for by the City as far as the grass and so forth. The property looked like every other property. It was not a threat. The windows were not broken and there were no gaping holes to fall into, etc. Certainly the inside of the property was uninhabitable and had been for many years. An article in a construction trade journal about a passive house stated a building cost of \$265 per square foot. This was a 2,000 square foot home, so he estimated a cost of \$500,000 for a house that was one bedroom, three bathroom, and a studio. Before committing to spending that kind of money, particularly in this neighborhood where the lots were small, he suggested thinking about this and exploring another location that would be more conducive to the number of visitors coming in and out because this was a very quiet residential street.

Ms. Sierer was asking for City staff to take a look at it and come back to Council with more information regarding whether this was even an option a) for that location, and b) period. It was important to get information to be able to have a discussion.

Regarding the Ethics Code, Ms. Hadden said the only investment by the City was staff time, and staff was willing to make that commitment. Based on that, and that she thought that it would be nice to know if Newark's ethics code was as efficient and comparable, or better, than other places, she would back that. Regarding the Rockmoss property, Ms. Hadden noted the details on demolition would come from staff. That was the only investment by the City, so she supported getting more information about the property. She felt detail should be included with that as to why this became a problem property to begin with, which would help to shape the use of the property for that future. She would be interested to see the cost associated with the passive home. She liked the concept. If the data supported the option it would be an interesting and worthy addition to the City in fulfilling green initiatives, lowering carbon footprint and showing that it could be done. Since Ms. Sierer was not asking for the City to spend additional funds on a contractor to put this information together, she saw no harm in pursuing the possible option of a passive home. She would back that initiative.

Mr. Ruckle agreed. He was big into ethics and integrity, and thought it was great idea, so he supported making sure the City was robust in that area. Regarding the passive home, Mr. Ruckle assumed at this point that the City owned the property and had the choice of what to do with it. He suggested staff should probably present the cost to do a regular home and the green option.

Ms. Sierer liked Mr. Markham's idea of involving the CAC.

Regarding the ethics discussion, Mr. Morehead was at the Boards & Committees Review Committee meeting discussion about the Board of Ethics. Since the Board of Ethics was responsible for reviewing State Code, it was suggested that the Boards & Commissions Review Committee would recommend to Council that the Board of Ethics review the State Code and bring it forward. Mr. Morehead thought it would be appropriate for Council to indicate that the Board of Ethics should meet since they have only met twice in the past five years.

As a point of clarification, Mr. Bilodeau advised that the City had equitable title to Rockmoss. The City bought it a sheriff's sale, but had to wait a year before getting the sheriff's deed to the property in September. It was in the City's Charter for a tax sale on property, there was a one year waiting period of redemption for somebody to come forward and pay all the past due taxes and all the liens. Given the state that this property was in, that was highly unlikely. Mr. Bilodeau believed it should be a former owner that came forward and redeemed. It was a strange situation, but he met with the people that technically inherited the property, and once they found out what they inherited, they all basically ran as fast as they could away from it.

Mr. Chapman asked for clarification regarding Ms. Sierer's request for commitment regarding biking that it was just to aim for the target of silver status for the City by 2018. Mr. Sierer confirmed that was for information purposes and between now and then hopefully the Bike Committee and other organizations and staff will bring things forward to work on achieving silver status.

Mr. Chapman asked if Council needed to provide consensus or direct staff one way or the other in regard to what they may bring forth as a feasible idea for Rockmoss. They bring ideas forward to Council all the time that Council may or may not like.

Ms. Houck understood that staff had to bring Council information about the demolition and explained that staff was getting price quotes, etc. and felt comfortable with giving some initial feasibility for a passive home with some comparisons (if it does appear to be feasible), of a regular home that could be built at the site as well as the possibility of how the CAC could be involved. She thought they could weave that all into the opportunity to provide Council with the demolition information.

Mr. Chapman imagined there was a range of options from selling it as a vacant remediated property, establishing a small park system, or building a passive home. His expectation was that staff looked at all opportunities in front of them and brought to Council any they felt were worthwhile. He thought it was an interesting idea. He knew Ms. Sierer was always looking forward, but did not know that Council needed to weigh in.

Ms. Sierer said part of the reason she wanted to share this information tonight was there were projects she had been working on over a number of months, and she wanted to make everyone aware that staff was working on some ideas brought forward.

Mr. Markham said if Council was going to call a meeting of the Board of Ethics, he wanted to make sure that the Review Committee had the opportunity to finish their work before the Board moved forward. Ms. Bensley reported that they reviewed the board at their November meeting. They were scheduled at their January meeting to review the draft of their final report to Council which they would typically approve at that time. That would give time for their comments to be included in the process. Ms. Sierer suggested Council wait until the second quarter of 2016 to convene a Board of Ethics meeting.

### **Ms. Hadden**

- Attended the New Castle County Police graduation ceremony where four new City of Newark police officers were welcomed to the force.
- Attended a half-day ADA workshop offered through the University of Delaware's Institute for Public Administration. Although the City of Newark does a lot, after attending the workshop, she thought there may be some things that could be done better.
- Attended the Women in Newark Women in Business luncheon for Delaware Today Magazine. She was one of the people who were honored, and it really was an honor.
- Had her monthly meet and greet. The next greet would be 1/7 at 5:00 PM at Pat's Pizza on South Main Street.

### **Mr. Chapman**

- Noticed the lack of communication from constituents since the last meeting which sometimes was the most telling sign of the way they felt. Aside from Ms. Means, he had not received a single negative comment regarding the increases in taxes and fees for some of the utilities that were addressed.

### **Mr. Gifford**

- Read the Planning Commission minutes and enjoyed them as it was a very candid meeting on 11/3. He acknowledged Bob Stozek, a member of the Planning Commission present and said he appreciated the honest dialogue. Mr. Gifford encouraged everyone to read those minutes. He liked the straightforward and simple work plan that came out.
- Thanked Alice Liechty for all her years of service on the Newark Election Board. Ms. Liechty's resignation from the Board was on tonight's Consent Agenda.

### **Mr. Markham**

- Echoed Mr. Gifford's comments about Alice Liechty. Her knowledge level in running elections was just incredible. He would miss her because if he had an election question, there was no question on who he would go to for assistance.
- On the Curtis award, Ms. Houck worked for years on that project when it was a small hope. He acknowledged all the effort that she and Mr. Emerson put into the project.
- There was discussion about lowering the pipe on Paper Mill so they could do the work. He asked that a schedule be made available on that.
- Regarding the LED light project, asked for a map or a plan on how that would be spread out throughout the City.
- The Police Department would be reviewing chronic issues with traffic and accidents. He asked if there was a way to see that information and include Council input. He wanted to make sure that certain areas (Cleveland Avenue) received attention.
- Met with Mike Fortner, the Newark Bicycle Committee and Bike Delaware about Cleveland Avenue and what could be done differently there for bicycles. He encouraged them to consider how the intersection could be made better for everybody and was sure Council would see that come forward. He thought they had a grant for the Chapel and Cleveland Avenue intersection.

### **Mr. Morehead**

- Echoed Mr. Markham's and Mr. Gifford's comments about Alice Liechty. He said not only did she know everything, but she was extremely trustworthy, which was very important for a person in that position. She would be missed greatly.
- Regarding Mr. Markham's comment about the LED lights, he was also interested to know how this would be implemented. In his neighborhood all the lights were done except the last two at the dead end. He noted the new lights had a large, deep bulb, and because of that, the light came out to the side and extended quite a ways between lamps. The new lights were also significantly recessed. He wondered if there was a contingency plan for the extra space created between lights in some situations.
- Attended the employee holiday luncheon where Council acknowledged the employees for a great job providing City services and achieving service excellence.
- Attended Winterfest, which was very well-done, and Santa arrived on a Harley. The kids loved it.
- Attended the Boards & Commissions Review Committee meeting. He suggested dropping in to observe a meeting. The members were all volunteers as were the committees they were reviewing.
- Wished everyone happy and safe holidays.

### **Mr. Ruckle**

- Attended the Christmas luncheon and said City staff did an amazing job and thanked them for their efforts on behalf of the City.
- Met monthly with Representative Ed Osienski and County Councilwoman Lisa Diller on the first Friday at the Senior Center at 9:00 a.m. The public was welcome to bring forward their concerns.
- Reported Aetna Fire Company was having a lot of issues with volunteerism for the free service they provided to the community. He thought Newark should be proactive and look at what it would cost to have a paid fire department. He would like to direct staff to determine the actual costs and present that information to Council and the community.
- Asked for further details about the sheriff's sale. Mr. Bilodeau reported it was done in New Castle County, but it was a tax sale brought by the City under the Charter. The Charter provision said there was a one year period of redemption from the date of the sale to get the deed. The sale was in September. Mr. Ruckle did not understand a Newark property not having a private entity bidding for it. Mr. Bilodeau explained with the lien being as high as it was and the condition that the property was in, there were no other bidders. Mr. Ruckle said the lien would be wiped off by a sheriff sale deed. Mr. Bilodeau said he was there, and there were no bidders.
- Thanked everyone who worked for the City for the great service this year. He looked forward to 2016.

11. MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: TO MOVE ITEM 9-A TO FOLLOW ITEM 2-F.

MOTION PASSED UNANIMOUSLY VOTE: 7 to 0.

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

12. **9-A. REQUEST OF CLARENCE AND WENDY ROBINSON FOR A SPECIAL USE PERMIT TO PLACE A HOT TUB IN THE FEMA DESIGNATED SPECIAL FLOOD HAZARD AREA (SFHA) ON THE RESIDENTIAL PROPERTY LOCATED AT 8 WRANGLER ROAD**

**01:20:51**

Tom Fruehstorfer, Planning and Development Department Planner, said that Clarence and Wendy Robinson were requesting approval for a special use permit to install a hot tub on their property at 8 Wrangler Road in the special flood hazard area.

City Zoning Code required Council approval with a special use permit to construct or place an accessory structure in the SFHA. The Zoning Code stipulated that Council may issue a special use permit provided the applicants demonstrated the use would not adversely affect health or safety, be detrimental to the public welfare, or be in conflict with

the purposes of the Comprehensive Development Plan of the City. In addition, Council was also provided guidance in considering a special use permit in the SFHA.

The Public Works and Water Resources Department and the Planning and Development Department indicated that while the FEMA Flood Insurance Rate map showed most of the property was in the SFHA with just a small section of the north side of the property outside the SFHA, Region III Flood Information Portal and the New Castle County GIS maps showed the hot tub would be located 2.25 feet above the base flood elevation. This elevation exceeded the requirements of 18" above the base flood.

Because the proposed hot tub would be located under an existing deck and anchored to a concrete pad approximately 2.25 feet above the base flood, the Planning and Development Department and the Public Works and Water Resources Department indicated the new construction would not increase the water surface elevation of the base flood, would not impede the flow of flood waters, and would not otherwise cause danger to life and property at, above, or below the location along the floodway.

In addition, the proposed hot tub met all RS zoning requirements. Mr. Fruehstorfer noted that the draft updated floodplain maps currently being considered by FEMA showed the proposed hot tub location outside of a 100 year flood plain. When the new floodplain maps were adopted, this location would no longer be in the SFHA.

The proposed hot tub met all applicable requirements and considerations of the Code. The natural ground elevation of the proposed hot tub was approximately 1.25 feet above base flood elevation. It would be elevated another 12" on a concrete pad, exceeding the 18" requirement. The new construction would not increase the water surface elevation of the base flood, and would not impede the flow of flood waters or otherwise cause danger to life and property along the floodway.

The Planning and Development Department recommended that Council approve the special use permit for the hot tub as requested at 8 Wrangler Road.

There were no comments from Council or the public.

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: TO APPROVE A SPECIAL USE PERMIT AT 8 WRANGLER ROAD FOR A HOT TUB IN THE SPECIAL FLOOD HAZARD AREA.

MOTION PASSED UNANIMOUSLY VOTE: 7 to 0.

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

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

14. 4. **APPOINTMENT TO BOARDS, COMMITTEES AND COMMISSIONS:**  
A. Appointment of Sheila Smith to the Vacant District 4 Position on the Conservation Advisory Commission to Expire March 15, 2017

**01:25:50**

Ms. Hadden reported that Sheila Smith reached out to her when she saw a vacancy. She was involved with the Delaware Nature Society and with the nature habitat done by the City this past year. She had the passion and the interest and was extremely articulate. Ms. Hadden thought she would bring a lot to the committee.

There were no questions from Council or the public.

MOTION BY MS. HADDEN, SECONDED BY MR. RUCKLE: THAT SHEILA SMITH BE APPOINTED TO THE CONSERVATION ADVISORY COMMISSION TO THE VACANT DISTRICT 4 POSITION TO EXPIRE MARCH 15, 2017.

MOTION PASSED UNANIMOUSLY VOTE: 7 to 0.

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

**15. 4-B. REAPPOINTMENT OF CARI ROGERS TO THE DOWNTOWN NEWARK PARTNERSHIP TO EXPIRE JULY 15, 2018**

**01:03:41**

Ms. Sierer said that Ms. Rogers' business was on Main Street since 2010 and she was on the Board for the past two years as well as on the Merchant's Committee. She was a significant part of the event planning process with the Partnership.

There were no questions from Council or the public.

MOTION BY MS. SIERER, SECONDED BY MS. HADDEN: THAT CARI ROGERS BE REAPPOINTED TO THE DOWNTOWN NEWARK PARTNERSHIP TO THE BANKING REPRESENTATIVE TERM TO EXPIRE JULY 15, 2018.

MOTION PASSED UNANIMOUSLY VOTE: 7 to 0.

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

**16. 5. SPECIAL DEPARTMENTAL REPORTS:**

**A. Special Reports from Manager & Staff:**

1. Report and Recommendation on Activities Proposed for 42<sup>nd</sup> Year Community Development Block Grant for July 1, 2016-June 30, 2017 and 2016 Revenue Sharing Program for January 1, 2016-December 31, 2016 – Planning & Development Department

**01:28:04**

The Chair was transferred to Mr. Markham since Ms. Sierer recused herself due to her involvement with three of the organizations requesting funding.

Mr. Fruehstorfer presented the report. On June 25th, the Planning Department conducted a public hearing to initiate the funding process for the 42<sup>nd</sup> year Community Development Block Grant, which runs from July 1, 2016 to June 30, 2017 and the 2016 Revenue Sharing Program, which runs through the 2016 calendar year. City staff was available at the hearing to describe the programs, and answer potential applicant's questions. Applications were accepted until Friday, August 7, and the department received 18 applications with a total of almost \$595,000 requested. With only about \$313,000 available, the Community Development/Revenue Sharing Advisory Committee had tough decisions to make.

The Committee met three times: September 24, October 8, and October 15. Their recommendations were included in the report. There were two separate funds to allocate. The larger fund, the Community Development Block Grant, was about \$250,000 of federal money transferred to Newark through New Castle County. Distributions of these funds must meet certain eligibility requirements. About 50% of the available CDBG funds were allocated to City-initiated programs, including children's programs and ADA infrastructure; about 20% were allocated to senior programs; and about 20% were allocated directly to housing programs. About 10% of the CDGB funds were allocated to childcare.

The second fund, Revenue Sharing, was about \$63,000 of City-provided funds. The revenue sharing funds did not have eligibility guidelines like the federal funds and could be distributed to organizations without restrictions.

About 50% of the available revenue sharing funds were allocated to food programs, about 20% were allocated to family and youth-related programs, about 20% were allocated to health-related programs and about 10% were allocated to arts programs which primarily benefit children.

This was very similar to the last year's distributions. Mr. Fruehstorfer also noted that while the Committee thought all of the applicants were deserving of the request and

they would have liked to provide more of the requested funds, they felt disappointed not to be able to provide more funds to the Newark Area Welfare Committee. If more funds were available, their first choice would have been to further fund their request. The Planning and Development Department recommended that Council approve the Community Development Revenue Sharing Advisory Committee's recommendations for the 42nd year CDBG and 2016 revenue sharing funds.

Ms. Hadden said it would be helpful to see what was allocated and what was spent of last year's funding as part of this report. Mr. Fruehstorfer would do that for next year. He noted that, as he went back to the Committee with initial recommendations, they did look at what was remaining in funds from the previous year, and adjusted some of their starting points based on that. What was used last year and what was left in funds was definitely considered in these recommendations.

Mr. Ruckle asked if there was any money left over from last year, or was it all spent. Mr. Fruehstorfer responded there was money left in many funds. It will be spent by those people it was allocated to.

Mr. Fruehstorfer said these programs were just about all repeats from last year. He thought one group from last year (a food program), did not come back, and there was a new food program this year, so essentially it was almost exactly the same as last year.

Mr. Markham asked what the allocation was last year and what the total amount available was to compare this year. Mr. Fruehstorfer noted a recommendation for revenue sharing based on CPI was recommended, and it was very close, essentially the same.

Mr. Markham seemed to remember almost every year there were places that asked for funding that the City said no to. Mr. Fruehstorfer said the Committee did not say no to anybody. That made Mr. Markham think less people applied or gave up, or something along those lines. He asked if anybody reached out to those who were denied previous years. Mr. Fruehstorfer thought there were only two that were denied last year that did not apply this year. In answer to the question, no, they did not reach out to the others, but there were not a lot. Mr. Morehead noted at the February 11th summit, the City could be advertising that this money was available for request.

Mr. Markham noted that the Newark Day Nursery had an excellent program and asked how many students would be affected by this funding. He felt that would be good to know because it showed how many kids were being helped. Mr. Fruehstorfer did not have that information available.

Regarding the Habitat for Humanity – A Brush with Kindness program, Mr. Markham asked if all the homes would be within the City. Mr. Fruehstorfer confirmed that all those homes would be in the City.

Mr. Gifford addressed the Community Development funds. He noted the Homebuyer Incentive Program, was \$5,000 and was \$20,000 last year. He asked if there was any further dialogue around that program. Mr. Fruehstorfer's understanding was there were not a lot of requests for that program now. He thought primarily, that was because people who did not have a lot of money did not have the money for the down payments now, so it was pretty rare to come across someone who met the income eligibility requirements who was able to purchase a home. Mr. Gifford asked if there was any discussion about just putting \$5,000 in there. Mr. Fruehstorfer said they took it down but felt they should keep something available but did not want to sink a lot of money in there that could be used somewhere else. They thought it was a good program to maintain funding for but realized that it was not being utilized a lot right now.

Ms. Hadden was surprised to see the Newark Area Welfare Committee emergency cash and food was \$8,000 less than they had requested. She asked if that was based on usage last year, or was it just driven by "we just cannot afford it". Mr. Fruehstorfer said there just was not enough money available to give everyone what they asked for. He thought it was the same that was offered last year (the \$8,000). He thought they requested about the same amount last year and were granted about the same amount.

Mr. Markham said at the back of the packet, third from the back, there was a listing of the requests for the 40th year request, allocated for the 41st up to the 42nd, so the Welfare Committee asked for \$13,500 and got \$12,500. Last year, they asked for \$15,500 and got \$8,000, and then this year they asked for \$14,500 and got \$8,000.

Mr. Morehead referred to the summary of the Revenue Sharing Program, first page of attachment 5. His comment for Council to consider was that the first statement here was that this money was indexed to the Consumer Price Index which went down 0.2% last year. As such, the money was left the same. In all of the other areas where the City spends money, this one area was tagged specifically to CPI. The question for consideration was should this be indexed directly to CPI, or should this change with the typical 3% percent a year that other things expected.

Mr. Ruckle pointed out an error in the description under items 11 (Newark Bike Project) and 12 (Food Bank of Delaware). The text was incorrectly duplicated for both

Mr. Ruckle asked if an organization needed full funding for a project but were not allocated enough to do it what the disposition of the funds would be if they could not start the program. Ms. Feeney Roser explained the Committee would ask the question, "If we cannot provide for you the full amount of the funding, would you be able to continue?" Generally, they would say they could, and then it would be monitored throughout the year, so if they were unable to use it, the department would come back to Council unless there was a contingency budget plan already approved for where this money should go.

Mr. Gifford referred to some programs that were funded a long time and said these funds were intended to help new programs start up. If this guideline was still accurate, it was not supposed to fund things that would never become financially feasible on their own and provide funding in perpetuity. He said that was one of the program goals Council should consider when reviewing this information. Mr. Fruehstorfer said that was the way it was described to him when he started the program, but no one new came forward.

Mr. Markham noted the ADA ramps were in here again this year. He believed this amount was supposed to go away at some point in time and asked if there was any information on when that would occur. He knew it was being using to help fund the ramps, and the City had an obligation to the federal government to do the ramps. Mr. Nietubicz who formerly managed this program explained it was a 20-year plan assuming 100% funding at prices at the time it started. It was funded at roughly 50% for the time it was going on, so he expected the plan to exceed 20 years by the time it was completed.

The Chair opened the discussion to the public.

Catherine Ciferni, District 2, said she was certified by the University of Delaware in Community Economic Development. A large part of that certification was understanding the federal guidelines to this grant. Procedurally, she said the Committee met three times. Of those three times, there were repeated members consistently absent. This meant that the conversation was limited, and the input was limited to the people who showed up. Looking at the demographic of the people who showed up, they were mostly over the age of 65 where a large percentage of the funding was allocated. She would like to see more diversity on the Committee for more advocacy across the board. The CDGB funds were designed to help low-income to moderate-income persons work their way out of poverty or assist them. She thought the bike project gave youth opportunities to have bicycles. She also thought it assisted seniors. However, there were a lot of things that were nebulous. There was a disproportionate amount of money going to seniors. There was a lot of money going to the City for infrastructural management. She was concerned the City was using this fund to pay for ADA and ADA ramps to be repaired and that it was on a "whenever it gets done" 50-year payout plan. She would like to see something else restructured there. Also, she would like to see more diversity in how things were funded.

She saw a lot of programs being funded in perpetuity. To answer Mr. Ruckle's question, CDGB funding was an augmentation of funding, it was not supposed to be a sole source of funding for any projects. She thought some inaccurate information came out of the meetings by some Committee members.

Mr. Markham asked Ms. Ciferni to send him recommendations laying out suggested changes. He believed this board was also under review. Ms. Bensley reported the Community Development Revenue Sharing Advisory Committee was scheduled to be reviewed at the April 26 Boards & Commissions Review Committee meeting so the review could be completed prior to next year's funding cycle.

Mr. Fruehstorfer said the Committee process started in June, and the applications were due in August.

Mr. Coleman provided additional information on the ADA program. One change that occurred was the City was now required to replace all ramps on roads that were resurfaced, so Public Works was replacing ramps on their own and under that program. Based on the augmentation of the ramps as part of the street program, the program was now on track to come in before the 20-year program. Mr. Markham asked Mr. Coleman to send Council an estimated schedule for completion. Mr. Coleman could provide a map of all the ramps in their current conditions and whether they needed ADA and then could project out from there when they should be done.

With regard to the Homeowner Incentive Program, Ms. Ciferni asked if the Committee approached the YWCA first-time homeownership program in seeking people to purchase homes. She pointed out that the Rental Housing Needs Assessment Committee stated there was not enough affordable housing in the City.

Donna Means, District 5, understood that there were two different programs for homeowners in the City. One was \$5,000 for first-time buyers, and there were strict income guidelines associated with that one. There was also, a \$30,000 program with no income guidelines and was for a family purchasing a home that had a rental permit. If they agreed not to rent the home and live as a single family, the City would contribute \$30,000 for the down payment or settlement charges. Mr. Fruehstorfer said that was the POOH program promoting owner occupancy of homes and was not part of CDBG. Rather, it was a City program that was in effect.

Mr. Fruehstorfer reported one of the members brought up the same comment that it seemed like the bulk of the money was going to seniors. The Committee stepped back and took a look at it, and realized that there was a pretty good balance between the children-based programs, and the senior-based programs.

Mr. Ruckle did not feel the PAWS for People program was as important as the programs directed to helping feed needy people. Mr. Gifford noted that the PAWS for People program helped children, too. They have the opportunity to read to the dogs, so it makes reading a little bit more fun. They do other programs in addition to elderly.

MOTION BY MR. GIFFORD, SECONDED BY MR. RUCKLE: TO APPROVE ITEM 5-A-1, THE REPORT AND RECOMMENDATIONS FOR THE PROPOSED 42ND YEAR CDBG AND REVENUE SHARING PROGRAMS.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Abstain – Sierer.

17. **6. RECOMMENDATIONS ON CONTRACTS & BIDS:**
  - A. Additional Information Requested for Recommendation to Waive Bid Process and Authorize Feasibility Study for Municipal Broadband

**02:01:24**

Mr. Brechbuehl reported on 10/7, City Council took part in a public meeting where CTC Technology and Energy presented detailed information regarding the opportunity to provide municipal broadband to the residents of Newark. Many options and case studies were discussed, along with some funding opportunities. As a result of this meeting, Council requested a formal quote for a feasibility study which was presented on 10/26. At that time, Council requested additional information from CTC that pertained to some of

the following. They asked for a tiered service in parts of the City, alternate funding sources, expanded University of Delaware service levels, a centric process with businesses and residents, separation of tasks (the tasks outlined in the proposal), as well as expanding the feasibility study beyond a geographic study. Coming out of that request, he worked closely with Andrew Afflerbach of CTC Technology & Energy to rewrite the proposal. They included the detail that Council was seeking.

They wrote this into four tasks, they were not the same four tasks that were previously presented, so the numbers were different based on Council's request.

Task 1 was to develop a high-level technical model and cost estimates. To summarize, they were looking at three different scenarios. This included a fiber backbone infrastructure, essentially connecting the home/business directly to a fiber-optic network.

The second option was to utilize the existing Smart meter Wi-Fi Mesh and infuse fiber into that mesh and provide a potential City-wide Wi-Fi solution for public use.

The last option was one that Mr. Afflerbach brought to the table, which was a sub-millimeter wireless technology. It was a hybrid approach of the two. Fiber would be run down streets, but would not be connected to the home. They would actually beam a pencil thick beam to the home, it would be received via radio, so they would not actually connect anything directly to the home. It would be up to the homeowner to either to allow that to be installed or to purchase the equipment separately and have it installed in their home by someone else. It would be that they would simply send a very fast wireless signal from the utility pole, to the home. They would be able to ingest then a high-speed connection.

Also coming out of Task 1 was a few deliverables, including a map of the fiber routes throughout Newark, a bill of materials, cost projections for the network deployment and a brief written explanation of the designs and their functional capabilities.

Task 2 was to collaborate more with representatives from the University. The plan was to engage one group, for sure, with the possibility for a second group. The first group was to work with multiple groups within UD to talk about options for connecting UD buildings to this grid, if the City decided to build it. Also, working on some fiber sharing projects down the road in the future, with both the City and UD looking to pull fiber down the same street, maybe sharing that fiber and the cost of installation of that fiber.

Efforts to reach out to the University of Delaware Center for Applied Demography and Survey Research did not get very far. Mr. Brechbuehl proposed having them assist the City at no cost to widen the survey results throughout the City. CTC Energy was going to target a smaller percentage of Newark residents. Unfortunately, they were interested in only a pay-for service, and he did not get a quote for that pay-for service. Attempts were still being made to reach an agreeable term there.

Task 3 was to prepare a financial analysis. They broke this down into very specific keys mentioned at previous meetings, breaking down customer segmentation to residential, commercial, and governmental, doing a financial analysis for market penetration, as well as pricing, also looking at different tiered service options, including low-income residents and senior citizens, looking at operating fees, so continued cost to run the service, the bulk purchase of bandwidth. Then there was some construction in what this would cost in staffing levels.

Task 4 was to prepare a final report and implementation schedule. The schedule was specifically requested at the last meeting. An implementation schedule would be provided for each model, and a detailed, step-by-step implementation plan would be presented that included a phased-in approach to network construction, meaning street by street, neighborhood by neighborhood, targeted areas first, maybe business areas first. A phased-in approach would be part of this implementation plan.

Unfortunately, the cost went up to \$69,000 because of the extra detail provided. The funding was available in the 2016 Legislative Department's legal consulting services budget. It was therefore recommended that Council authorize the City Manager to enter

into an agreement with CTC Technology and Energy for the completion of a feasibility study for municipal broadband in accordance with the proposal at a cost of \$69,000.

Ms. Hadden said because the University stood to benefit, she asked if the City reached out to UD for any assistance with this financing, or have they indicated in any way that they would partner with the City at some financial level. Mr. Brechbuehl replied at this point, he could not say that the University offered money for this. They offered to meet and work with the City to help with the plan, so they would be heavily involved in the process of this, but he did not know that they were looking to help fund this study. Ms. Hadden suggested that perhaps the City should go back to the Center for Applied Demography and Survey Research and say while the City was not asking right now for any kind of financial assistance for the feasibility study, it would be great if they would offer their services at no cost. Mr. Brechbuehl said he had several discussions but kept hitting a brick wall for funding. That was how they pay for their studies, so they were a little bit leery of giving away their services for free. Ms. Houck reported she had an opportunity to have a meeting with the UD Representative to talk about this. She shared the interest of the City, as well as Mr. Brechbuehl's experiences and hoped to get some favorable information back about wanting to partner.

Mr. Gifford asked how the City would partner with them, whether with dollars or partnering with people. Ms. Houck said the conversation with the Center for Applied Demography and Survey Research was whether there could be an in-kind type of a relationship in order to get a more valid survey done with more information.

Ms. Houck said she did share everything. Dan Grim was present from UD. He was very helpful in working with the City to help facilitate getting this together, so there may be other opportunities for a partnership and that conversation would be ongoing.

Mr. Brechbuehl reported that he sent this out to Len Schwartz and Ralph Begleiter who were instrumental in getting this brought forward to Council in the first place. He did not receive any feedback from them, at all. He also sent it to Mr. Grim for a quick review. He seemed to be okay with it. He and Mr. Grim had a good relationship so far with talking about ways that, if it was not a funding source, if it was not survey assistance, that the University of Delaware and the City might be able to partner in some of these things like shared fiber down a street or two and anywhere that maybe they have access they were currently not using and could let the City borrow them.

Ms. Hadden said that was exactly what she wanted to hear, because time was money, personnel costs, it all adds up, and if the University was willing to partner with the City on as many aspects of this project as needed, that was more than satisfactory.

Mr. Morehead noticed differences from Mr. Brechbuehl's summary versus the proposal, and assumed that when Council approved this as recommended, they would be approving the proposal. Mr. Brechbuehl said that was correct. Mr. Morehead asked Council to remember they had talked about possibly replacing the City's communication services currently paid to other vendors with its own system as one of the models – a very simplistic, "Let's help ourselves save money," rather than, the City's website was talking about a broadband utility similar to providing broadband in the model of water, electric, and sewer, where the City would be providing broadband to all residents. He was willing to get the information about the finances of such things, and those various models. At this point in time he was not at all interested in financing entertainment.

Mr. Brechbuehl wanted to be clear that the City municipal fiber needed to connect its assets, including safety cameras, buildings and some other police equipment – that was something that would be brought forward regardless of this initiative. He wanted to make sure to separate the two. One would benefit from the other if it was decided to go down that road, but there was a need now for municipal-owned fiber to connect City assets as they existed today. That was being discussed when talking about eliminating some of the ISP connections for which the City paid a monthly fee.

Mr. Morehead said all of the SCADA, for example, would be done in a project that IT would bring forward. Mr. Brechbuehl said that was correct. The goal was to start taking

piecemeal applications all over the City, unify them, and provide better data. That was not a proposal ready to present yet. Staff was still working on exactly where it was needed and on getting companies to help engineer what was needed before sending it out for bid.

Mr. Gifford asked if the result of this project was needed to do that project. Mr. Brechbuehl replied no, the result of this project would piggyback on top of anything else. The areas being targeted for Newark's municipal-owned assets were places this would be taken through anyway, so it would be infrastructure already in place that would then subtract from the cost of the municipal broadband.

Mr. Gifford noted there was a discussion in here about off-campus UD locations that were not connected. He asked Mr. Grim from UD if he could expand on that as he assumed everything at UD was pretty well-connected.

Mr. Grim reported there were a lot of locations around town that were not on University property – several locations on South Main Street, Library Avenue, and the old YMCA. He said one of the unintended outcomes of the new budget process at the University was that it was cheaper to get space off-campus than on-campus now, and so people of all sorts were buying space. In the new building at 1 South Main Street, the first two floors belonged to the College of Business and Economics. The University was allowed to run their own fiber into that building, but two or three buildings further south on South Main Street were not connected to their network, and they had to buy commercial service to connect to them. This was happening again and again. The College of Engineering owned several suites in the Washington House which was not on UD's network, and they had to purchase commercial service to connect. There were areas in town that were part of the University but not on University property they were supporting. Mr. Grim said some of the commercial services were not ideal. The cost-effective ones were more targeted to residential services, and did not have enterprise-type guarantees, and so the service was not typically what people expected to find in a University office.

Mr. Gifford referred to a discussion in the minutes where Ms. Sierer talked about breaking out the tasks in case the City did not want to do task four. He assumed there was no break-out. Mr. Brechbuehl said that was correct. The general consensus was there was no point in doing task three without doing task four, because it would almost be wasted dollars. It was rewritten to show it in such a way that it built upon itself, and that the final task would be the financial report. Mr. Gifford felt the final report was good. The implementation schedule was not needed for each one, because all three would not necessarily be done. He was curious if Mr. Brechbuehl had brought that back to Dan. Mr. Brechbuehl responded that they did.

Mr. Gifford asked if there was another way to partner with UD to do some of this work versus going in this direction. Mr. Brechbuehl's thoughts were UD did this many times before and were experienced. If Newark decided to go it alone, he thought the University would be happy to help. His concern was, there was a science to asking questions in an intelligent way to get a good read as to whether or not people would be willing to pay. Also, he did not believe UD installed and implemented their own fiber. He thought there was a level of engineering involved that these companies do on a day-to-day basis that Newark would not be able to provide or provide cost estimates to perform.

Mr. Grim stated that the University hired out their fiber installation, and they had hundreds of thousands or more miles of fiber on campus. In regard to the Smart Meters project, they were able to assist with that and provide some eight gateway points that were connected to their network and then fed back to here over the network they have. That was less than half of the gateway locations in the City, so they could reach certain areas, but their geography did not cover the entire City.

Mr. Markham said the previous contract was very generic with nebulous goals. He wanted to be sure the final contract would have actionable deliverables, not just action with a consultant. Mr. Brechbuehl spoke to their recent project for Western Seattle. He read the report which was lengthy, provided incredible detail and seemed to be well done. In fact, it was something that Western Seattle decided not to do based on the study. The fact that it was not approved indicated to Mr. Brechbuehl that it was a trustworthy source.

Mr. Markham saw many cases where the low bid and the technology wins, but the specifications were very loose and the client ended up with a poor product. That just recently happened in a small company he knew where they chose the low bidder, and they basically ended up with unusable product. They were out to bid again and would probably go with a much higher quality bidder. He looked for the expertise in a contract that said "I've done this before, and I have cities or groups that said I did it right before."

Mr. Gifford was concerned that there was no way the City could be cost-competitive for residential service or it would be the same. That was his concern with spending \$70,000. Mr. Brechbuehl was concerned about market over-saturation in Newark. He thought the tiered service with a lower cost option, maybe a 5MB service would appeal to municipal customers.

The Chair opened the discussion to the public.

Donna Means, District 5, had FIOS, liked the service and asked if it would be mandatory to buy service from the City and give up FIOS. Mr. Brechbuehl said other cities doing this were not forcing anyone to change services. They were providing an option.

Jeff Lawrence, District 3, questioned whether this was an important priority. He noted the recent increase in property taxes by almost 10% and the probable raising of water and sewer rates. While he was disappointed by that, he was pleased there was renewed focus on infrastructure recognizing there were serious problems with the water and sewer system. He suggested keeping a strong focus on those and pointed out the cost of the study was up to almost \$70,000, a significant chunk of the property tax hike.

Mr. Chapman was absent from the workshop where the initial presentation was made where several members of Council said some incredible things came out of that. He was skeptical about the feasibility of the City offering this type of service. For almost four years, he challenged the City and himself to look at opportunities to create new revenue sources for the future. While he was concerned about letting up on an opportunity to find a new revenue generating source for the City that would support future infrastructure needs, he was nervous of its priority right now.

Ms. Hadden said since the public's money would be used, it made sense to do a feasibility study to see if the investment would be worth it. The opportunity to provide low or no cost Internet to people who otherwise would not be able to get it any other way, to give children from low-income homes the same opportunities as children from higher-income homes, to provide it as an economic growth tool for the City, to incentivize businesses to come, were all reasons why she thought the City should do a feasibility study. While \$69,000 was a big investment, it was an investment in the community.

Ms. Sierer informed Mr. Chapman that the price increased because the City asked the consultant to go back and include these items that were currently in the proposal.

Mr. Morehead was impressed by this consultant because at the first meeting he said not to do this as a revenue source. Ms. Hadden added he said not to depend on it as a revenue source.

Mr. Morehead thought there was potential for economic development. However, he pointed out there was an ongoing cost to this in order to continue updating technology. He viewed this as a potential economic development tool for the community, but did not think the City could expect to make money or do it for free or could expect to take a lot of customers away from just the existing businesses. He guessed he was interested in getting the information but was struggling with that right now.

Ms. Hadden thought it was important to have the information to make a decision.

Mr. Markham commented there were several residents who were passionate about this who came to discuss it with Council. One of them was his constituent, and for years he was interested in some type of broadband for the residents. As stated by Ms. Sierer, the cost was up because of the requests made by the City, but he felt that was necessary

to come up with a proposal with solid information. He would like to see businesses be in the City, for the City, not just a UD client, and thought there was a possibility there. Maybe nothing would come out of it or that Comcast and FIOS would decide to lower the rates, and that would be a win across the City by itself. He felt this was worth knowing.

Mr. Gifford thought they did raise the penetration rate. At the first meeting, it was about 98.5% in the City, so, he wanted to reinforce that number. He thanked Len Schwartz and Ralph Begleiter for their interest and spending a lot of effort on this. They were passionate, and Mr. Schwartz was in his district and was one of his professors in college.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT ITEM 6A FOR THE BID PROCESS TO AUTHORIZE A FEASIBILITY STUDY FOR MUNICIPAL BROADBAND BE APPROVED AT A COST OF \$69,000.

MOTION PASSED. VOTE: 4 to 3.

Aye – Hadden, Markham, Ruckle, Sierer.

Nay – Chapman, Gifford, Morehead.

**18. 6-B. RECOMMENDATION TO AWARD CONTRACT NO. 15-15 – PURCHASE OF ONE CURRENT MODEL YEAR SEWER FLUSHER TRUCK AND ONE PORTABLE SEWER CRAWLER CAMERA SYSTEM**

**02:43:25**

Mr. Coleman said this project was a long time coming. The department identified a need for a piece of equipment they did not have as the current equipment could only clean mains up to 8" in diameter. After discussion, demonstrations and meeting with the county, the department decided the piece of equipment that would best suit the City's needs was a standard flushing truck with no vacuum. Something that Mr. Markham said earlier that was important on this contract was writing a spec that would get the equipment needed, not necessarily the one that was low bid. In this particular instance, the spec was written around the truck that New Castle County had. Their entire fleet was this one specific truck. Unfortunately, the manufacturer was not the low bidder. Mid-Atlantic was low bidder, and their truck had everything the other truck had. Mid-Atlantic sold the City a lot of trash trucks and carts, and had a good working relationship with Newark.

For the camera system, a lot of the manufacturers sell cameras built into the truck. In this instance, six bids were sent out to six different manufacturers – four of them were trucks, two of them were camera-only. The spec was fairly generic. Mr. Coleman said the low bid truck's camera system was just over \$100,000 when he had spoken to them previously. He felt the reason for the lack of bids was because realistically, they knew they were not going to stand a chance, and they did not want to compromise their chance of getting the truck. The bid package was set up so the contract could be awarded either independently, and variance was allowed from the spec but retained the right to deny the bid if they varied from the spec. One of the specs on the camera system was for a mobile unit that could be moved from vehicle to vehicle in case a truck went down. Mr. Coleman said the attempt was to mimic the contractors. Their camera vans run about \$300,000. He thought the City got a comparable camera system to what was in the van, just without the van and all the bells and whistles that go along with it.

Mr. Ruckle asked about the warranty on the camera. Mr. Coleman did not have the warranty information with him.

Mr. Markham expected the camera was built fairly rugged since it would be dropped down a sewer line. Mr. Coleman replied it was extremely rugged. He said the crawler camera was like a heavy duty, remote control car that drives down the pipe. It could inspect storm sewers and sanitary sewers and provided a full readout that could be uploaded into the GIS system. Mr. Markham asked what percent of time the truck would be in use as he thought about sharing equipment with the County. Mr. Coleman said the hope was the operators of this truck were in it flushing lines most of the time. It would be a workhorse, and the months that Newark want to use it would be the same months that the County would want to use it.

In comparison to having someone else do this work (as was done in the past because Public Works was unable to flush the larger pipes), Mr. Gifford asked how much more it was to do it that way. Mr. Coleman calculated if the City spent \$150,000 a year, all their lines could be done in three years, and it would take five years to go with a contractor. He said it was a pretty good savings.

There were no public comments.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: TO AWARD CONTRACT 15-15 FOR THE PURCHASE OF ONE CURRENT MODEL YEAR SEWER FLUSHER TRUCK AND ONE PORTABLE SEWER CRAWLER CAMERA SYSTEM, AS SPECIFIED MR. COLEMAN'S MEMO DATED DECEMBER 4, 2015.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

**19. 7. FINANCIAL STATEMENT:** (Ending October 31, 2015)

**02:51:48**

Mr. Vitola presented the unaudited financial statements for the period ended 10/31. The year-to-date operating surplus was close to budget through the first eight months of the year, but dipped to \$286,000 behind budget in the next two months through October.

Governmental funds continued to be off the pace of the 2015 budget, due to fine and permit receipt shortfalls, while expenses continued to track under budget, which was mitigating but not completely offsetting the impact of the lower revenue. Mr. Vitola was pleased to report that the realty transfer taxes should completely mitigate the revenue shortfalls, thanks to the development of the Rittenhouse properties next door.

In the enterprise funds, the electric utility was no longer propping up the water and sewer utilities as the mild summer pushed the electric margin down. This could persist through the year, because even though usage was decent in the shorter months, now this unprecedented winter weather was no doubt going to postpone consumption driven by electric heat which usually propped up December results. To determine over or under-collection in the electric fund for 2015, all the cycles had to be billed for the December volume. That should be done in January in time for the first February Council meeting.

Water and sewer sales remained behind the budgeted volume which drove down margins. He mentioned at the last meeting that the budgeting assumptions from last year were reviewed. In looking at Artisan's results, UD's water resources agency and some other municipalities, and all were reporting flat or slightly increasing volume, while Newark was observing a downward trend. The impact of Rodney and Dickinson was looked at and there was some impact there but not nearly enough to explain the total volume reduction. The investigation continued into commercial and residential cycles, but even though October was a little bit off the pace, it was okay, and November water consumption was much stronger. He expected to rebound a little bit heading into December.

Expenditures in the enterprise funds were still 6.5% under budget, so there was no change there since September. All department directors were aware of the revenue shortfalls, so they were avoiding unnecessary spending through the end of the year. The other funds continued to benefit from lower fuel costs and also lower than usual impairment, disability and medical claims. The cash position was \$31.5 million at the end of October largely unchanged from September's \$31.6 million. Operating cash was \$10.2 million, 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 million at the end of October. That was part of the Revenue Stabilization Adjustment being passed back to customers on the monthly bills and maintaining an adequate cash balance was an ongoing goal of the City.

Mr. Gifford referred to discussions at a recent meetings about some of the water meters not yet installed for some of the larger users. He asked if that would mitigate any

of the shortfall in revenue here, or was that revenue tied up in the whole cost of automated meters. Mr. Vitola said not for 2015, but as those meters get replaced in 2016, it would show a beneficial impact to the usage. Mr. Gifford asked when they would get installed and which meters these were. Mr. Coleman said they were tallying up the numbers today on the current install status. When the project ended, there were somewhere between 650 and 700 meters left out of about 10,000 that had not been changed out. That number was around 300 now. A lot of those were vacancies or houses that were demolished and needed to be removed from the list. There were 44 UD meters, down from around 130 when City personnel started doing them at the end of the project. There was a good response from the University over the last month, and were tackling a lot of them over winter break when the students were out. He expected having a large portion of the large meters installed that were still outstanding within the next month or two.

Mr. Gifford asked if those meters had a significant water volume. Mr. Coleman replied they had a decent volume. Manual readings were taken from some because part of the problem with the University meters was that they were not easy to change. It was either plumbing, or there was a lab based on them. There was a lot of scheduling required. Mr. Gifford commented that they were not necessarily accurate but if they did not have a lot of volume, it did not matter because there would not be a big impact. Mr. Coleman said with some of them, the larger volume users were not actually that old of a meter, so there were some meters in place that were replaced not that long ago. There were some old ones, so on average, he would expect 12% on the old ones when they come through, but on the revenue, the bills were being estimated as is, so it was not missing revenue.

Mr. Vitola added that he was comparing volume to the 2015 budget, as established in 2014 and 2014 volume. The 2014 volume also did not feature new meters, so it was not like the meters not yet replaced were the cause of the lower volume. Volume expectations were lowered after such a strong 2014 and were still just short of the 2015 results. That was the reason for investigating meter to meter and going to try cycle by cycle, development by development, as Mr. Markham suggested at the last meeting.

Mr. Markham said something he did not think he saw before was RSA under collection. What would be done in that case? Mr. Vitola said it would be exact opposite of an over collection. If there was a missed operating margin in the electric utility by virtue of below volume sales, the amount of the under collection would be added to the RSA calculation for the next year, and it would almost be like a reassessment rather than a give back. That would be at Council's discretion, but if there was an under collection, it would be built into that component, just like any other year, and Council would have the option to make the call to pay for it.

Mr. Markham pointed out it was a lot easier call when giving back money than having basically a surcharge to make up for a shortage. He asked the time frame for that decision to Council. Mr. Vitola said the target for now was early February or the second February meeting at the latest for consideration. Mr. Markham noted this could affect bills but thought the cost of living charts had to be adjusted because he was sure the electricity rates were adjusted down so for up a little bit it had to show what it costs to live in the City. Mr. Vitola said if there was an under collection, he did not expect it to be material in the calculation and there were only two months of activity left to report.

There were no public comments

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: THAT THE FINANCIAL STATEMENT ENDING 10/31/15 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

- A. **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

**03:01:26**

Ms. Bensley read Bill 15-33 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 15-33.

AMENDMENT BY MR. MARKHAM, SECONDED BY MR. GIFFORD: TO STRIKE AMENDMENTS TWO AND THREE FROM ITEM 8-A, AN ORDINANCE AMENDING CHAPTER 30, WATER, CODE OF THE CITY OF NEWARK, DELAWARE WITH THE INTENT TO GIVE CONSIDERATION OF A FIRE PROTECTION SURCHARGE OR OTHER OPTIONS FOR INCREASED SUBVENTION LEVELS TO AETNA HOSE, HOOK AND LADDER TO BE CONSIDERED ALONG WITH THE WATER RATE STUDY THAT WOULD TAKE PLACE IN 2016.

AMENDMENT PASSED. VOTE: 6 to 1.

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

Mr. Vitola reported that the 2011 water rate study and the sometimes modified rate actions taken pursuant to it were well publicized and thoroughly documented over the last several years. He did not think there was a need to cover the circumstances leading up to the 11/16 memo that Council received in advance of the first reading.

If approved by Council tonight, the additional \$300,000 generated would be added to project W9308, the water main replacement and renovation program. The notion of it was approved and worked into the budget. Ms. Houck mentioned at the second budget hearing on 11/30 that the additional funding would be used to rehab the 460 feet of lines under Flora Circle and about 1,000 feet of line under DeIDOT roads in advance of any of the department's road rehab projects.

The increase would result in a bill about \$2.62 higher per month for the homeowner consuming 167 gallons a day. For smaller households (less people, not less acreage or square footage) that consumed less, perhaps 135 gallons a day, the increase was about \$2.00 a month. For households with more people consuming something like 235 gallons per day on average, the increase would be about \$3.82 a month.

Mr. Vitola strongly encouraged Council's support for the water rate increase as prescribed by the water rate study.

Mr. Gifford noted in reading the document attached to this item it said, "In preliminary discussions with Black & Veatch, the City's rate consultant commented that a diversion of any prescribed rate increase in an outgoing study would likely result in at least that level of rate increase requirement in the new study." He asked what kind of conversations were held, who was there and staff's thought process about those questions because there was a lot discussion about this last year.

Mr. Vitola stated in the discussions last year, the thought was to get rid of the fire protection surcharge and pass the fourth year of five prescribed rate increases in the study to be in a position to defer the rate increase until after a rate study refresh. Mr. Coleman, Mr. Vitola and Ms. Houck talked with Black & Veatch, and described this plan. The consultant highly discouraged staff from taking that action. She said the reason to put forth rate studies was to hit revenue targets for the years of the study. Any diversion, even the movement from 7.2% to 5% which was implemented nine months late in 2013 and the little fire hydrant elimination fee for the out-of-towners, were enough to derail the rate study completely. By not doing the 7.2% immediately, the rate consultant confirmed that the first year of the refresh rate study, at least a 7.2% increase would be required. Knowing that, the 7.2% increase was put in the budget for July which would have been

after the rate study. However, at the 11/2 budget hearing, it was recommended to find a way to close the budget gap for the underground water. The one common sense item that came to mind was restoring the 7.2% increase back to where it was intended on 1/1. That was the thought behind that message.

Mr. Gifford asked what reasoning the rate consultant gave for why it would automatically be more in the next study. Was it because of the underlying budget items that she was looking at? What information was she using as that basis? What was she making a judgement on? Mr. Vitola said she was making an assumption that the projects were done and the operating expenses grew accordingly, and the City was continuing on the same path originally contemplated in 2011. The City demonstrated over the last couple of years that expenses were even higher than contemplated in the study. The City could be doing more capital but had budgetary constraints. The study was going to prevail. The consultant was pretty high in her confidence level that the 7.2% increase needed to be re-instituted for the fifth and final year of the outgoing rate study.

Mr. Gifford asked if she was provided information to review about performance prior to that discussion. Mr. Vitola said his point was that he shared with Council a demonstration that the City exceeded that, and yes, she reviewed the reports and Council's actions of the rate implementation. Ms. Houck reported that the consultant was familiar, did the previous rate study, and it was decided not to enact all of them. Then she was provided with all the information about what was done with the rates over the course of the five years and a lot of other information. She then came up with this recommendation to try to move forward with it now.

Mr. Gifford had one more comment related to the fire protection fee, even though that was taken out. The one thing that came up in a discussion with a constituent was a suggestion to try a voluntary donation that would be included on a City utility bill or the property tax. It was not clear as to how well Aetna reached out to the communities. That way, the burden would not be put on residents who were facing a 9.5% tax increase and potentially other increases.

Mr. Ruckle thought the public should be made aware of the cost to have a paid fire department and what the financial impact would be for the City.

Mr. Markham addressed the Aetna situation. He knew the City talked about doing things on their own, but it seemed like doing this County-wide might be a better approach.

Mr. Markham noted that discussions with Black and Veatch were before the Smart meter study. No information was included about how much would be saved or what the increase in revenue would be. He asked what comments they made about the Smart meter system and the accurate volumes and how that fit against the rate charges. He did not feel it fit together. Mr. Vitola said they would address it even though it was going to be a rate refresh. They still would do a full financial study which would include not only the debt service on the Smart meters but a look at the revenue and where it was trending. The thought was that additional revenue from the water volume was supposed to exactly pay for the debt service. That was roughly the case. Revenue and expense were added. They offset and the rate study still held water. That was the feedback they received.

Mr. Markham said it seemed that the meters were performing better than expected or better than what was guaranteed, so there must be something in there he was not hearing. Mr. Vitola said that was true. They certainly seemed better in 2014. However the M&V that just came back indicated an accuracy of 100.04% which was 1.5% better than the guarantee. They were performing a little bit better, and the cost control was better than expected. There should be a little bit of a margin associated with the Smart meter install that dampened what would have otherwise been a higher rate increase required. The study would have to bear that out – he thought it would.

Mr. Chapman said in thinking about the impact to the study that everyone was working off of and referring to, that the Smart meter project was designed to be net zero in terms of paying off the debt service. There was that 1.5% extra efficiency. However, he thought it was decided to underfund the Black & Veatch recommended increases at least

twice. The City was behind even with that 1.5% interest, and he could not imagine picking up the gap. Mr. Vitola did not have the numbers on that but would agree.

Mr. Markham believed this rate increase was not coming back to the General Fund. Mr. Vitola said the additional revenue associated with moving it forward from 7/1 was absolutely not going into the General Fund. Otherwise, the General Fund transfer in 2016 was expected to be slightly higher than 2015 for the first time since 2012. From 2012 to 2015, the General Fund transfer decreased every year down to \$1.3 million in 2015. It should go up to \$1.4 million in 2016 but that was by virtue of the rate increase starting in July. If it was moved to January, the extra revenue would all go right to the fund.

Mr. Vitola stated the budget currently contemplated a 7/1 start date. If this was approved, the extra \$300,000 generated would all go right to W9308 so no change in transfer and no change in surpluses, but an improvement in infrastructure would be done.

Mr. Markham asked Mr. Vitola if he adjusted for the revenue for this past year or an average for 2014. Mr. Vitola said 2015's budget contemplated 5.2% lower volume, understanding that 2014 was strong and there could be a down year in 2015. Then 2016, despite the fact that there were large water meters coming on and some growth, contemplated another 1% percent decrease resulting from conservation.

Mr. Markham said if the increase passed, he did not think the City would get the funds forecasted because people would conserve.

The Chair opened the discussion to the public.

Donna Means, District 5, did not support the water rate, sewer rate or tax increases. She thought Council should consider a 1% percent City wage tax modeled after Wilmington. It would remove some of the burden from property owners and would provide "unlimited" money for infrastructure.

Mr. Ruckle wanted to make sure these increases were going strictly to infrastructure. Mr. Vitola would add \$300,000 directly to project W9308, take it from \$1 million to \$1.3 million and then proceed with the project accordingly.

Mr. Markham said that was only the money that started 1/1. On 7/1, those funds were still eligible for transfer to the General Fund. They were not going directly to infrastructure. Mr. Vitola said the vast majority was. Mr. Markham remarked that not 100% of it was going to infrastructure. Mr. Vitola said that was correct.

Mr. Ruckle felt if it did pass that 100% should go to infrastructure. That was the main goal. Ms. Houck explained the budget was developed and staff outlined the \$300,000 and where it would go during the budget hearing process. Ms. Sierer added Council already approved that process. Mr. Ruckle agreed it was approved but Council was saying some of the money is not going to go to that. Ms. Houck said it would go to the Water Fund to fund the operations. Some of it would go to the margin transfer which is what was done every year. Mr. Vitola said it was essentially a co-mingled pot of funds supporting the top line of the Water Fund. If that action was taken, staff would have to increase the transfer to the General Fund anyway with other funds generated from base rates not including the 7.2% increase. The net effect would be zero on the budget as approved on 11/30.

Mr. Chapman said the net effect would be something gets underfunded, and if Council approved a budget where everything was intended to be funded, the money would have to be raised another way. Mr. Vitola said the General Fund currently had an \$87,000 surplus. If the Water Fund transfer was cut by the last \$100,000 of the difference between 2015's transfer and 2016's transfer, there would be a \$13,000 shortfall in the General Fund and a \$200,000 surplus in the Water Fund. It did not make sense, and the City could not legally pass a budget that way.

Mr. Gifford noted the City had a two-tiered system and asked when Black & Veatch did their study, if they looked into where the cut-off was made between the lower price

and the higher price of water. This was why he wanted to see the rate study to see if they would recommend actually raising the secondary tier only or something like that where the City would discourage water use. It falls into his next question which is, did the City actually save any money if people use less water? The City was charging more for it. They're using less water. Did the City save anything in variable costs? Most of the costs were fixed. Mr. Vitola confirmed that most of the City's costs were fixed. While the City had an inclining block rate structure with no minimum charge which was the most effective way to encourage conservation, from a revenue standpoint, the City did not benefit from the conservation. The question of leaving the base rate as is and only increasing the second tier rate, was a function of rate design. That could absolutely be addressed as part of the new rate study. Mr. Gifford asked if we would get this study before 7/1. Mr. Vitola thought it would be a little bit later but sometime during 2016. Mr. Gifford would like to see that addressed if and when the City did that study.

MOTION BY MR. CHAPMAN, SECONDED BY MS. HADDEN: THAT BILL 15-33 INCREASING THE WATER RATES BY 7.2% EFFECTIVE JANUARY 1, 2016, BE APPROVED AS AMENDED, REMOVING AMENDMENTS 2 AND 3.

MOTION AS AMENDED PASSED. VOTE: 5 to 2.

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

Ms. Sierer wanted to bring something up with regards to the Aetna Hose, Hook and Ladder. She believed early on in the budget process staff looked at a potential 10% increase to the current subvention that came out of the General Fund. She wanted to see if there was an appetite at Council tonight to consider directing staff to place a modification on the 2016 budget and bring it back to Council on 1/11 facilitating an increase to Aetna at 10% which was roughly \$6,200. It would increase their funding level to \$68,200.

Mr. Gifford asked if the City was going back to its old funding mechanism using the money saved from the General Fund. Ms. Houck said there was no money currently in the budget for it. Mr. Gifford said the City saved some money from items last meeting: \$60,000 from the retention benefits, \$12,000 from bike share and \$10,000 in an error with Finance. Mr. Vitola said the General Fund surplus did increase from \$10,000 to \$87,000 so there was room to accommodate the \$68,200 requested by Aetna. The problem with the budget right now was that it was actually passed with a zero in that line, not the base amount of \$62,000 but zero. Council had to restore either the \$62,000 or meet the 10% increase which would take it to \$68,200 which staff would have recommended in the budget had they gotten the letter in time.

Mr. Vitola confirmed there was money in the General Fund.

It was the consensus of Council for staff to modify the 2016 operating budget for the Aetna subvention and increase it to \$68,200. Ms. Bensley said it should be advertised on a future agenda as a report from staff for Council to approve the actions they proposed.

**(ORDINANCE NO. 15-29)**

**21. 8-B. BILL 15-34 – AN ORDINANCE AMENDING CHAPTER 25, SEWERS, BY INCREASING THE CITY SEWER RATE EFFECTIVE JANUARY 1, 2016**

**03:26:52**

Ms. Bensley read Bill 15-34 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 15-34.

Ms. Houck reported this ordinance represented a rate increase to Chapter 25, Sewers. The ordinance supported the budget approved on 11/30 and facilitated the personnel and operations and maintenance improvements contemplated during the financial workshops and public hearing.

Mr. Vitola said he and Mr. Coleman were available to answer any questions about the increase itself and how the funds would be used in 2016.

Mr. Gifford said he used the comprehensive tax and utility comparison chart. It looked like Newark was one of the highest for sewer and he asked for an explanation so he could understand why the rates were the highest on the chart of comparables.

Mr. Vitola thought whereas the City of Newark treated all enterprise funds as self-supporting with the transfer to the General Fund, there was a requirement that the revenue be strong enough to support the entirety of the operations and with enough surplus to make transfer to General Fund. From his experience in Middletown their sewer fund, at least back in the mid and late 2000's, lost over \$500,000 a year. Not only was their electric fund supporting the General Fund, but it was also supporting other utilities which was unique. He did not have intimate knowledge of the City of Dover's finances, but their sewer rate alone was extraordinarily low. It suggested that they were doing the same thing, treating it more of a commodity and like a General Fund operation than as a utility. It was noted that Wilmington was a third of what the City charge, but that they were closer to the treatment plants and it was their treatment plant.

Mr. Markham asked why this was 1/1 for the sewer fund? Mr. Vitola said it was the same rational to generate funding for the sewer fund. Mr. Markham asked if the difference between 1/1 and 7/1 would also be set aside to a particular project. Mr. Vitola responded the sewer rate was always proposed in the budget for 1/1. There was no extra revenue, there was no advancement.

Mr. Markham asked what happened (and the County did this before), where they have told us there would be no increase and then they come back in May or June and say, "Sorry, your increase is this," and the rate was already set. Mr. Vitola said this year the letter was already in hand that said there would be no increase. Mr. Markham replied there was a letter last time and they just threw it away. Mr. Vitola said staff would just have to be prepared for it. He had a good relationship with a couple of people in financial services at the County and would be checking with them in February, March and April. Because of the Smart water meter volume increases, Newark's sewer bills were higher. The County noticed and enjoyed that sewer increase. Mr. Vitola made it clear to them that he expected the rates would continue to stay flat for an indefinite period in the future. Newark had two years now of no increases, and Mr. Vitola hoped that had something to do with it. Mr. Markham asked if Newark could be treated differently than anybody else because everybody sends their sewage to the county. Mr. Vitola said they could.

There were no public comments.

MOTION BY MR. CHAPMAN, SECONDED BY MS. HADDEN: THAT BILL 15-34 AN ORDINANCE AMENDING CHAPTER 25, SEWERS, BY INCREASING THE CITY SEWER RATE EFFECTIVE JANUARY 1, 2016, BE APPROVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(ORDINANCE NO. 15-28)**

**22. 8-C. BILL 15-35 – AN ORDINANCE AMENDING CHAPTER 2, ADMINISTRATION, CODE OF THE CITY OF NEWARK, DELAWARE, BY AMENDING THE MANAGEMENT SALARY PLAN**

**03:32:35**

Ms. Bensley read Bill 15-35 by title only.

MOTION BY MR. CHAPMAN, SECONDED BY MS. HADDEN: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 15-35.

Ms. Houck reported that Bill 15-35 provided for the recommended 3% wage increase for all levels of management staff from the dedicated directors to the mid-level managers and field supervisors.

Ms. Houck reported the approved 9.5% tax increase of 11/30 contemplated 3% to address increased costs associated with all operations and 6.5% that will be directed towards projects. However, the first 3% mentioned should not be confused as a mirror to the 3% management wage increase because that was not the case.

To be clear, the 3% tax increase portion was equal to \$175,000 annually to the General Fund. The 3% wage increase for management staff which this ordinance provided for was equal to \$79,700 in total. Again, that was all directors, mid-level managers and field supervisors. Of the \$79,700, \$22,500 was funded from the enterprise fund, electric, water, etc. Only about \$57,000 was in the General Fund. Again, of the \$79,700, only \$21,700 represented the 3% wage increase to department directors. She shared this to address comments made by the public in previous meetings.

Ms. Houck shared a few accomplishments and highlights. The Finance Department consistently earned the certificate of achievement for excellence in financial reporting and worked diligently with all the departments to improve the budget process, including the outstanding budget central. The City's bond rating was maintained as well as positively impacted the segregation of duties hit on the annual audit that was a concern of Council for years.

Public Works and Water Resources was leading the charge, statewide, in the MS-4 permitting process and were being held by DNREC as a model for permit holders. Likewise, efforts of this department and earlier decisions continued to provide efficiency savings.

The Newark Police Department again achieved the CALEA accreditation and continued to maintain high quality community relations in a difficult time for policing agencies. Manageable crime statistics and incident closure rates were great.

Planning and Development successfully managed an unprecedented level of Council approved development projects in recent years, taking them through the full process to certificate of occupancy. They also tackled very complicated and involved Code issues in recent years.

Parks and Recreation continued to bring home awards such as Tree City U.S.A. designation and many others and beautifully maintained the most heavily used trails in the state, the Pomeroy and the Hall all while generating hundreds of thousands of dollars in grant funding over the years.

The Electric Department boasted a tremendously low outage record and managed system growth seamlessly, especially in recent years. These things and much more were achieved while controlling human resources despite what she could attest to be increased demand for time from management personnel during their workday and otherwise. There were roughly 100 fewer full-time equivalent positions in Newark than that of Dover which was the best in-state comparable. Management had no union representation. Tonight, right now, with Council in the public domain was the only time and place to make an argument to support this recommendation for management increases.

Ms. Houck thanked Council for consistently sharing their awareness and appreciation for the level of commitment, responsiveness and dedication of our management team and how they value management's work on behalf of the community. She could not agree more.

Mr. Markham asked Mr. Haines to clarify that ranges were being set with this bill. Mr. Markham said typically, salaries were set based on their performance and they fall within this range. Mr. Haines confirmed that was correct. Mr. Markham asked if anyone would automatically get a raise because of this range setting. Mr. Haines said anyone who had a positive employee review. He had the last quarter of the calendar year for

employee reviews, including department directors and all management staff. There were scenarios during his time here where steps were delayed or denied based upon performance improvement plans. It was not an automatic. People had to earn it and had to earn a positive review.

Mr. Markham asked if someone was at the bottom of the current range and the range was changed they would not automatically get a raise. Mr. Haines explained that was the only one exception. Should anybody be at the bottom, by Code, they would not be below the range. Because of the tenure of most of the management team or where they came in, they were either at the middle or at the top. Mr. Haines said there was no one at the very bottom right now that would get that de facto guarantee because of the Code requirement.

Mr. Gifford agreed with Mr. Markham that it was confusing when reading the summary and it said that it effectuates a proposed 3% salary adjustment for management employees. It just looks like management employees were getting a 3% raise. They might be, and that was fine. He thought it should be made clear that this vote was to adjust ranges and raises were based on performance. Within this range, this helped those that were at the top of the range and cannot move forward. Mr. Haines said that would be correct, and if anyone was at the top, their max would be 3% because that would be the maximum range adjustment. Mr. Gifford added it looked like ranges on the first page and then on the next page it just states, "3% for management."

The Chair opened the discussion to public comment.

Donna Means, District 5, said when she spoke at the last meeting about the 3% wage increase she was not saying that management did not do a good job. She thought instead of calling it a 3% across the board wage increase, the budget should have been worded differently. Mr. Morehead explained to Ms. Means that she was confusing the percentages with the dollar amounts. Employee costs were roughly 2/3 of the total budget. The tax increase was a small part of the revenue coming in, so 3% here and 3% here were completely different numbers. For the 9% Council earmarked specifically the difference to go to infrastructure. The 3% base on the tax was a piece of the overall budget, but electric utility, water utility, sewer utility, all those other things make up the total revenue. Of that total revenue, 60% roughly was employee costs and 3% was for management only. The unions, also roughly 3% according to contracts that were set years ago. He suggested looking at the numbers that they were actually percentages of.

Carol McKelvey, District 4, said she and her husband were very much in favor of this choice to raise this range so management employees were paid commensurate with their skill, dedication and ability. She cited comments from their financial manager about Newark being the best run city. She said that was how they felt too.

MOTION BY MR. MOREHEAD, SECONDED BY MR. RUCKLE: THAT SECTION 2-92.2, THE MANAGEMENT SALARY, PLAN BE AMENDED BY DELETING THE STRICKEN TEXT AND ADDING THE CHART PROVIDED EFFECTIVE JANUARY 1, 2016.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(ORDINANCE NO. 15-29)**

**23. 8-C-1. 2016 RATE FOR CITY SOLICITOR AND DEPUTY CITY SOLICITOR**

**03:47:30**

Ms. Bensley reported that item 8-C-1 was a proposed increase in the hourly rate for both the City Solicitor and the Deputy City Solicitor by \$10 per hour. The hourly billing rate for the Solicitor was currently \$130 an hour and the Deputy Solicitor was \$115. These rates remained unchanged since early 2011 when both were appointed to their positions. City Solicitor Herron submitted the request for an increase of \$10 per hour for both of

them during the budget process. It was incorporated into the Legislative budget proposal for 2016 which was approved at Council's 11/30 meeting. A request was sent out for comparables from other municipalities within the Delaware Municipal Clerks Association. Even with this increase, the Solicitor would be paid less than any of the other respondents anywhere from between \$10 and \$60 an hour.

Mr. Chapman said there was some conversation in the last item that he thought was a terrific segue into this next which was pay for performance and a process of review and opportunity to assess the job being done. Since his time on Council that process was not done with relation to the City's regular legal counsel. He recognized that especially in a search of comparables of the municipalities and the state that the City was underpaying to the market. Though before he approved or wanted to consider a 7.7% increase he would like for Council to initiate a review process. He did not know exactly what that would include. In light of the conversations had tonight, it seemed that it would not be prudent for Council to take this action tonight. Ms. Sierer did bring that up with Ms. Bensley, and she had some information she could share on Council's ability to be able to review both Bruce and Paul. Ms. Bensley explained that since the City Solicitor and Deputy City Solicitor were both contractors, they were not employees of the City. That meant that the personnel exemption in FOIA did not apply, so any review or evaluation that included Council as a whole would have to take place on the public floor of Council. There was no mechanism to do a personnel review per se for them since they were contract employees.

Mr. Chapman asked when the last time was that this went out to bid. Ms. Bensley's understanding was the last solicitation for contracts was in 2010, 2011 when they were both appointed.

Mr. Chapman guessed that was the process used in the past and maybe if by design the opportunity to review more or less the City opened up the bid, received bids, got an idea of who the City was talking with, who was soliciting for the job and then Council compare that to what the City had now so maybe the City needed to move forward with a bid process in order to initiate the public forum opportunity to have the conversation.

Ms. Bensley's understanding of the history was, that the last time this happened it was precipitated by the retirement of Roger Akin for another position. At the time that this was opened there was also the consideration since there was going to be a transition anyway of whether or not the City Solicitor should be a full time employee of the City as opposed to a contract employee. That was part of the reason why at that time some of the initial evaluation and interview process did take place in executive session because there was a consideration that Council may move in the direction of that being a full time employee. Whether that was something that Council desired was another topic but with the current position, this was the proposal that was submitted by the City Solicitor.

Ms. Sierer said she did have similar concerns as far as no review process of any form for four years now. She said Council did essentially hire counsel to perform an important function in the community and the city. She thought there were two options – review them at the table or go out to an RFP.

Ms. Hadden said as she dealt with vendors a lot in her job, she did not see the harm in going out to RFP, getting competitive prices and shore up a job description while doing it to ensure the description was correct in what Council expected from the position.

Mr. Chapman was also interested in the analysis of a full time employee. He thought it was something he had spoken about in the last several years. Since being on Council it seemed like it had possibly been a full time job depending on what the City's needs were and the person that could fill that position and their scope of experience.

Ms. Hadden said it was not a reflection of how anybody was doing their job. It was just a contractor being asked to submit again. They were more than welcome to apply.

Ms. Sierer felt that Council had fiduciary responsibility with the employment of the City Solicitor and Deputy City Solicitor. She thought it was prudent to do one of the two.

Mr. Gifford said maybe Council should have a discussion in public first to get a feeling on where they were all at, how they felt the performance had gone and if they wanted to go out for bid again. There were some benchmark items here. It seemed to be a very reasonable rate, but did they feel they were getting everything they wanted. Just because they were paying a little money did not make it a good deal.

Ms. Sierer said the thing she liked about the RFP was to be able to assess whether a full time attorney was needed and what rates the City should be paying with other benchmarks and that kind of thing. She thought it provided a greater opportunity to get a larger scope of what we needed to review.

Mr. Gifford asked who would have the job description. Ms. Houck said it would be on file from the last effort. Mr. Gifford said maybe Council should just review the history – he had no clue of what was done back then.

Mr. Markham reported the conversation about whether the position should be full time occurred several times. There should be documentation about which way to go. The previous mayor was in favor of having someone internally as he thought it would save money. It would come down to what the person's expertise was. There would not be a person to cover everything. One advantage to having a law firm was that they had other depth available to them. He remembered the last time a search was done only a few people were interested, and it was not a large candidate pool. There were several well established but there were also several very young, unestablished lawyers. There would be a mix, and the younger ones would be less expensive but would have less experience. He felt the City had to be sure to find somebody who kept the City out of trouble (because that was their job) but internal would allow them to do more than what they do today.

Mr. Markham was not sure what the other departments used the City Solicitor for right now, but there may be competition too. He recommended pulling out the old documents to see what the review process was and see if there was any information about how the previous Council made a decision.

Ms. Sierer thought it was an education process for those at the table who had not been through the process. She thought it was probably smart to go through the process. Council may determine to keep it as is but at least it provided the process to evaluate. Mr. Markham said that was pretty much what the last Council did. They went through the process, interviewed people and ended up with the protégé to the previous City Solicitor.

Mr. Gifford asked what the contract looked like. Ms. Bensley reported there was no actual contract. It was basically an appointment motion, similar to how she was appointed as City Secretary. There was no term date, it was an at-will contract.

Mr. Ruckle asked how many hours Mr. Herron worked a week. According to Ms. Bensley it varied – she thought it was more than 30. Mr. Ruckle requested a yearly amount for Mr. Herron and for Mr. Bilodeau. He was surprised at the number of hours and thought it was less than that. This was almost full time and was about \$270,000 for a full time person. Mr. Ruckle said it might make sense to go to a full time person with a lot of knowledge. Ms. Sierer thought it was worth looking at.

As far as this agenda item, Mr. Chapman thought the conversation spurred what seemed like directions to do something else but he did not think Council could enact anything tonight. It was that the conversation was going to lead Council to likely have additional agenda items in the future.

**MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: TO POSTPONE ITEM 8-C-1 TO THE JANUARY 25, 2016 COUNCIL MEETING.**

**MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.**

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

Ms. Bensley asked for clarification as far as the direction from the motion. She had that Council wanted a report on the historical background of the appointment process for the City Solicitor in past years and the average hours and payout.

24. MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: TO CONTINUE THE MEETING PAST 11:00 P.M.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 1.

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

Nay – Chapman.

25. 9. **RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:**  
A. Request of Clarence and Wendy Robinson for a Special Use Permit to Place a Hot Tub in the FEMA Designated Special Flood Hazard Area (SFHA) on the Residential Property Located at 8 Wrangler Road

(See Item #12)

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

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

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

**04:02:36**

Ms. Bensley read the Consent Agenda in its entirety.

- A. Approval of Council Meeting Minutes – October 26, 2015
- B. Approval of Council Workshop Minutes – October 28, 2015
- D. Approval of Council Meeting Minutes – November 9, 2015
- E. Receipt of Alderman’s Report – November 24, 2015
- F. Resignation of Alice Liechty from the District 5 Position on the Election Board
- G. Cancellation of December 28, 2015 Regular Council Meeting
- H. **First Reading – Bill 15-36** – An Ordinance Amending Chapter 20, Motor Vehicles, Article XVIII, Code of the City of Newark, Delaware, By Requiring Photographs of a Towed Vehicle to be Made Available at the Place and Time of Redemption of the Vehicle – **Second Reading – January 11, 2016**
- I. **First Reading – Bill 15-37** – An Ordinance Amending Chapter 22, Police Offenses, Code of the City of Newark, Delaware, By Increasing the Amount of Time Individuals May Claim Found Property from Six Months to One Year – **Second Reading – January 11, 2016**
- J. **First Reading – Bill 15-38** – An Ordinance Amending Chapter 10, Elections, Code of the City of Newark, Delaware, By Clarifying the Procedure for Appointment to the Election Board – **Second Reading – January 11, 2016**
- K. **First Reading – Bill 15-39** – An Ordinance Amending Chapter 14A, Floodplains, Chapter 27, Subdivisions, and Chapter 32, Zoning, Code of the City of Newark, Delaware, to Ensure Consistency of the Floodplain Regulations with Federal Requirements and Language and to Provide More Clarity and Property Assign Responsibilities and Powers Related to Floodplain Regulations – **Second Reading – January 25, 2016**
- L. Receipt of Planning Commission Minutes – November 3, 2015
- M. Receipt of Planning Commission 2015 Annual Report and 2016 Work Plan

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

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

**29. Meeting adjourned at 11:05 p.m.**

Renee Bensley  
Director of Legislative Services  
City Secretary