

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

February 22, 2016

Those present at 6:00 p.m.:

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

Absent: District 2, Todd Ruckle
District 5, Luke Chapman

Staff Members: City Manager Carol Houck
City Secretary Renee Bensley
Deputy City Manager Andrew Haines
City Solicitor Bruce Herron
Communications Manager Kelly Bachman
Community Affairs Officer Ricky Nietubicz
Finance Director Lou Vitola
Planning & Development Director Maureen Feeney Roser
Development Manager Michael Fortner
Purchasing Administrator Cenise Wright

EXECUTIVE SESSION

A. Executive Session pursuant to 29 *Del. C.* §10004 (b)(9) for the purpose of the discussion of personnel matters in which the names, competency and abilities of individual employees are discussed.

Council entered into Executive Session at 6:03 p.m. and returned to the table at 7:00 p.m. Ms. Sierer advised that Council concluded its Executive Session.

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: THAT COUNCIL AUTHORIZE THE EMPLOYEE DISABILITY PENSION BENEFIT AS SET FORTH IN THE DEPUTY CITY MANAGER'S MEMO TO COUNCIL PRESENTED IN EXECUTIVE SESSION.

MOTION PASSED UNANIMOUSLY: VOTE: 5 to 0.

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

1. The regular Council meeting began at 7:04 p.m. with a moment of silent meditation and the Pledge of Allegiance.

2. 1. **PUBLIC PRESENTATIONS**

A. Bicycling Benefits All – Newark Bicycle Committee

01:57

Bicycle Committee members Mark Deshon, Karl Hassler and UD graduate student Kirsten Jones attended on behalf of the Newark Bicycle Committee. Ms. Sierer had suggested the Committee present to Council to report their goals and accomplishments as well as steps for Newark to go from bronze to silver status.

Mark Deshon, a long-time resident and a recreational cyclist saw bicycling as an integral component for an even better quality of life in Newark. He became involved in the

Newark Bicycle Committee about five years and was currently the chair. The Committee was a partnership of interested cyclists, agencies, and organizations working to improve bicycling in Newark. The Hall and Pomeroy trails were examples of the cooperation and support of Council and the City administration to enhance the cycling infrastructure. Newark was a bronze-level bicycle-friendly community in large measure due to the City's efforts, but he felt there was room for improvement.

Over the past eight months, a lot happened in the Committee and in coordination with its partners and significant momentum was building. The scope of work was broadening, and its pace was accelerating. The Delaware Avenue cycle track project was not on the radar less than a year ago for example. Thus the Committee thought it was a good time to provide input and asked for cooperation in helping make the City even better.

Kirsten Jones, a graduate student at the University of Delaware lived locally and was working towards her master's in Urban Affairs and Public Policy specialized in urban planning. A lot of her focus was related to bike planning, so she was pleased to share some of the research as well as the projects that the Newark Bicycle Committee, was involved in and partnerships they hoped to have with the City.

Ms. Jones explained that everyone benefited from living in a community with a large percentage of cyclists because when more people bike, fewer people drive, so there were safer streets, less congestion and pollution and more space on the road. Those who cycled were healthier because of the exercise they were getting and they were able to participate in more convenient and efficient routes throughout the City. They were able to interact with their neighbors and residents more easily which led to a stronger sense of place and more social cohesion. All of those things combined to create a place that was very desirable to live, work, and play, leading to economic benefits.

There were three types of economic benefits Ms. Jones discussed. First, cyclists themselves generated spending. Second, the community itself would see an increase in economic value. Third, overall costs to society were lessened in a lot of different respects. When discussing how cyclists spend money, Ms. Jones presented a graph showing when a shopper arrived by bike they were, per capita, spending more than other customers who arrived by different modes because cyclists tended to buy less per shopping experience but shopped more frequently. This was beneficial to local businesses.

Newark was in an excellent position to bring in tourism which was a large industry at the moment. The existing and planned cycling infrastructure led to a lot of people wanting to use Newark as a hub. In addition, properties in close proximity of trails were significantly more valuable. Studies showed that houses within 50 meters of a trail were worth, on average, \$8,800 more than an equivalent house located further from a trail.

When cities were willing to make the investment in bike infrastructure, the return was incredible. Cities like Portland, Lincoln and Kansas City showed for every \$1 invested in cycling a return of between \$3 and \$12. West Jefferson, North Carolina, a small town, spent \$300,000 on widening sidewalks, making a bike trail and slowing traffic down. They saw a return of \$2.7 million in their first year because of safer streets.

Indianapolis took a more extreme approach, creating the Cultural Trail. They spent over \$63 million mostly through private funds. The city was heavily involved, and the Cultural Trail became a destination that everyone wanted to be near. Businesses clamored to get on the trail, and over \$1 billion in private investment was seen in the first year of its opening.

According to Ms. Jones, transportation made up approximately 18% of a family's budget. For a low-income household, that generally rose to 55%. Making changes from riding a car to riding a bike could save a lot of money. When an infrastructure existed so that families felt comfortable cycling downtown with their children, everyone in that family would get a lot more exercise. Healthier citizens in the community meant fewer sick days, longer life expectancy and better physical and mental health leading to more productivity and achievement for adults in the workforce as well as children in schools. There were numerous studies showing that kids who biked to school outperformed their peers.

Currently, the League of American Bicyclists ranked Newark the most bikeable City in Delaware and ranked Delaware as the third most bike-friendly State in the country. Ms. Jones noted, however, there was work to be done and referred to a chart that showed only 2.3% of trips were taken by bicycle. The Committee was looking for support in creating a more bike-friendly environment in Newark by increasing the amount of bike infrastructure throughout the City and promoting safe biking and driving habits so people felt more comfortable and would participate in programs such as Bike to Work Week. The Committee encouraged enforcement of current laws to protect cyclists.

Ms. Jones noted the Committee was partnering with multiple schools in the area to educate students on safe bike practices and would like to work with the City on creating a safe routes to school program. The Committee also requested assistance in promoting bicycling through hosting events and partnering with other organizations to encourage their participation in programs such as the Mayor's Bike Ride. The Committee would like staff and Council to create ordinances that support and protect bicyclists and would assist with generating ideas for those ordinances as well as doing the research on how to draft and implement such programs.

Mr. Hassler felt Ms. Jones' presentation was informative and helped form a context for how the benefits of cycling could translate into making Newark a better place through health, economic and social benefits, safety and overall quality of life. Towns with a vibrant and active cycling culture were good places to live. He said bicycling offered something for everyone – recreation, stress relief, exercise and transportation. The Newark Bicycle Committee met monthly to discuss strategies to advocate for cycling and had representatives from DeIDOT, Wilmington Area Planning Council, UD, the City and citizens. Newark cycling was a big factor in Mr. Hassler's decision to relocate with his family. In order to sustain the progress made, the Committee felt the time was right to consider options for establishing a framework for collaborating and communicating with Council. They welcomed the opportunity for ongoing dialogue to effectively align goals, strategies and tactics in order to make Newark a better place to live, work, and play.

Mr. Morehead noted that he had lived in Canberra, Australia, where the city had bike paths in all directions. The paths were paved and quite wide with a yellow line down the middle. When it came to major roads, they had a bridge or tunnel. The minor roads had a couple posts like the Hall Trail. The bike paths gave the city a completely different atmosphere in that people would commute to work and the sense that people could get to anywhere else in the city. This not only encouraged people to be out but built community and was a wonderful experience.

Ms. Sierer thanked the Committee for presenting steps to achieve silver status and looked forward to working with them to increase bicycling in the community.

3. 2. ITEMS NOT ON PUBLISHED AGENDA
A. Public

19:18

John Morgan, District 1, referred to an accident on the University campus when a student was struck by a bicyclist and suffered a serious head injury. Dr. Morgan suggested that the City collaborate with the University in revisiting its ordinances related to pedestrian safety from bicyclists and safety for bicyclists from vehicular traffic.

Dr. Morgan referenced the Bicycle Committee's presentation where it referred to the benefits on lower parking costs. He noted the figure of \$15,000 for the average cost of one parking garage space multiplied by 500 was \$7.5 million or half the cost of the proposed \$14 million dollar parking garage in Lot 1. He did not understand that difference, and wondered if it would make sense if the City issued its RFP for a parking garage to specify that the cost per parking space should not exceed \$15,000. Mr. Gifford said that number seemed a little different than the numbers discussed in the past. He said perhaps there could be follow up to see where that figure came from.

Mr. Morehead believed that the lettering on the "No riding on the sidewalk" signs on Main Street was being changed. Dr. Morgan said Chief Tiernan told him that larger signs were being installed. He pointed out that riding a bike on the sidewalk was only

prohibited on Main Street between South College and Tyre Avenue. He thought that area should be expanded to Delaware Avenue and South College Avenue. Mr. Morehead said that was something Council could take under advisement.

Donna Means, District 5, referenced several incidents regarding bicyclists which she felt emphasized the need for a bicycle education program. She enjoyed biking with her family and wanted bicyclists to be safe and secure. She also wanted to protect the City from lawsuits.

Dan Beaver, District 4, related a close call he had with a bicyclist who ignored a stop sign. He stressed the need for improvements and better education.

Ms. Sierer pointed out that education was a big part of this whole program, so hopefully that would be beneficial and starting with the youth was the first step.

Mr. Markham intended to ask about cycle laws but read the follow-up piece that said, "Ask police officers to target both motorists and cyclist infractions," so he thought that was a good balance understanding that bicyclists need to follow the rules too.

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

**5. 2-C. UNIVERSITY
(1) Administration**

28:13

Rick Deadwyler, Government Relations office, offered several announcements.

He acknowledged several members of City staff and Council who worked closely with his office to set up continued interaction with Camp REAL, a group of students the City worked closely with: Joe Spadafino and Sharon Bruen, Newark Parks and Recreation, NPD Sgt. Dennis Aniunas, Mses. Hadden and Sierer. Arrangements were made last week for them to attend a University men's basketball game where they were able to meet some of the players and have a good evening.

The University hosted several successful field days focused on introducing student athletes from the Delaware community to sports and clinics on campus.

The University was focusing on increased security at the library. This was not to restrict or eliminate access but rather encouraged access. Access cards would be provided to all those interested at the welcome desk.

The Black History Month program scheduled for 2/25 was postponed until 4/14.

Mr. Gifford asked if there were plans to roll out similar security measures at other buildings. Mr. Deadwyler reported the library was the most active building on campus with over 6,000 visitors per day. There were challenges they had to respond to because of the public access to become more aware of who was there. He said other buildings did not have the same level of access. Mr. Deadwyler said this was common and not unique to the University. Campuses at every level were instituting library security programs.

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

7. 2-D. LOBBYIST: None

8. 2-E. CITY MANAGER

34:02

Ms. Houck acknowledged that tonight was Ricky Nietubicz's last Council meeting and his last week with the City. She thanked him for his efforts on behalf of the community for the last four years and wished him well.

9. 2-F. COUNCIL MEMBERS

34:40

Mr. Gifford

- Villa Belmont on West Chestnut Hill Road was having issues with some individuals living across the street in a camp. He thanked Ms. Houck and Sierer and the Empowerment Center for their help with the situation. He hoped the residents in Villa Belmont would have fewer issues. He would follow up with the staff at Villa Belmont and respond to the resident letters.
- The weekly report contained information on fence height. One item not included was the definition of fence. He pointed out from his reading of the definition of fence that a chain link fence was not a fence because a fence had to have a certain opacity.
- In response to some of the bike conversation, he was also a cyclist. He was actually hit on a bicycle by another bicyclist when he was rolling to a stop and broke his frame in half while the other cyclist went skidding across the pavement. Riding on the sidewalk was generally a bad idea, so he thought providing better paths and moving cyclists to places that they will just naturally go to was probably the best solution. Education was good too, but it had limits. He knew the Hall Trail and other trails were helpful, but there were still a lot of issues with cyclists riding the wrong way down the street. He encouraged the additional paths focus to solve some of these issues.

Ms. Hadden

- Attended the Greater Newark Area Resource Summit at Clayton Hall on homeless issues which was well attended by agencies that provided a variety of services for the homeless in the State of Delaware. Some of the providers were not even aware that other people were out there doing certain things. She thanked Ms. Sierer and Representative Baumbach for their efforts and hoped the summit would be held again next year.
- Thanked Mr. Deadwyler and the University of Delaware for providing the opportunity for the Camp REAL kids to go to the basketball game.
- Regarding bicycles, she knew that in the past, the City worked with UD to provide bicycle safety and pedestrian safety workshops in particular with the English Language Institute students. However, those students were constantly revolving. She wondered if there could be a little bit more outreach and more frequent workshops throughout the year. It was an effort that would benefit the City and the students.
- Thanked the City for the new "No bikes on the sidewalk" signs she saw on Main Street. She encouraged discouraging skateboarding on the sidewalks also.
- The next Meet and Greet would be held on 3/3 at Pat's Pizzeria at 5 p.m. The guest speaker would be Code Enforcement Manager Dave Culver.
- Attended the graduation ceremony for the City's two new police officers in Dover. She welcomed the new officers to the force.

Mr. Morehead

- Expressed his appreciation to the Public Works Department for the work being done to keep the potholes under control.

Mr. Markham: None

Ms. Sierer

- Thanked the City and the Parks and Rec Department for nominating her for the Friends of Recreation award with the Delaware Parks and Rec Society. She also thanked Ms. Hadden for attending the conference in Rehoboth where the award was presented.
- Attended the Downes Healthy Night. Once a year they get the youth at the school together for a family night on heart healthiness. She was able to participate in playing tennis with some kids in the gym.
- The Empty Bowls event at the Newark Senior Center sold out and was a popular fund raiser for the Meals on Wheels program.
- On Saturday evening, the Newark Area Welfare Committee celebrated their 85th Anniversary Gala. She thanked Ms. Houck and Bensley and Donna Means for attending the event. This was a fundraiser to assist area families who were struggling to make their utility payments.

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

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

- A. Reappointment of Ed Wirth to the District 3 Position on the Election Board to a Term to Expire January 15, 2019

43:51

Mr. Gifford nominated Ed Wirth for reappointment to the District 3 position for the Election Board. Mr. Wirth was a long-time member of the community and faithfully served the Board for a number of terms. He agreed to continue his service on the Board.

Mr. Markham noted there were two copies of Mr. Wirth's application and asked if there was any difference between the two. Mr. Gifford replied there were no differences. Mr. Wirth was not aware his handwritten copy would be online and wanted a neater copy for Council.

There were no public comments.

MOTION BY MR. GIFFORD, SECONDED BY MR. MOREHEAD: TO REAPPOINT ED WIRTH TO THE DISTRICT 3 POSITION ON THE ELECTION BOARD TO A TERM TO EXPIRE JANUARY 15, 2019.

MOTION PASSED UNANIMOUSLY: VOTE: 5 to 0.

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

12. **4-B. APPOINTMENT OF FRED LENTZ TO THE VACANT AT-LARGE POSITION ON THE BOARD OF ETHICS TO A TERM TO EXPIRE FEBRUARY 15, 2019**
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45:29

Ms. Sierer nominated Fred Lentz to the Board of Ethics. He was a resident of Newark for eight years. Mr. Lentz lived in District 5. Now that he has retired he was interested in spending some time serving his community.

There were no comments from Council and no public comments.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT FRED LENTZ BE APPOINTED TO THE VACANT AT-LARGE POSITION ON THE BOARD OF ETHICS TO A TERM TO EXPIRE FEBRUARY 15, 2019.

MOTION PASSED UNANIMOUSLY: VOTE: 5 to 0.

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

13. **4-C. APPOINTMENT OF LAURA MEREDITH TO THE VACANT DISTRICT 5 POSITION ON THE ELECTION BOARD TO TERM TO EXPIRE JANUARY 15, 2017**
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46:42

Ms. Sierer reviewed Mr. Chapman's appointment. Ms. Meredith was a resident of District 5 and lived in the City for 46 years. She did a fair amount of volunteer work in the area with New Ark Chorale and other local arts non-profits.

Donna Means, District 5, said Ms. Meredith had been a cornerstone of the neighborhood. She was part of the civic association. She worked tirelessly for the kids Easter egg hunt and Halloween parade. She was honest and upstanding

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: TO APPROVE THE APPOINTMENT OF LAURA MEREDITH TO THE VACANT DISTRICT 5 POSITION ON THE ELECTION BOARD, TERM TO EXPIRE JANUARY 15, 2017.

MOTION PASSED UNANIMOUSLY: VOTE: 5 to 0.

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

Nay – 0.

Absent – Chapman, Ruckle.

14. 5. **SPECIAL DEPARTMENTAL REPORTS:**
A. Special Reports from Manager & Staff: None

15. 6. **RECOMMENDATIONS ON CONTRACTS & BIDS:**
A. Recommendation to Waive the Bid Process in Accordance with the Code of the City of Newark on Utilizing State of Delaware Awarded Contracts for the Purchase of Replacement Vehicles

49:08

Ms. Wright reported that each year the Maintenance Division of the Public Works and Water Resources Department evaluated the fleet. This year they recommended that two Police Department vehicles be replaced with some vehicles that were currently on the State of Delaware contract for police pursuit vehicles. The vehicles recommended for replacement were vehicle #917, a 2006 Dodge Charger with 88,055 miles and vehicle #930, a 2008 Ford Crown Victoria with 124,799 miles. There were concerns regarding the reliability of both vehicles for an additional year. The Police Department had the need at time to haul cones, barricades, bikes, etc., so it was recommended that vehicle #917 be replaced with a pickup truck which would also serve as a full marked vehicle.

Funds for the purchase of the new vehicles were available in the 2016 Capital Program's Equipment Replacement fund in the amount of \$71,277.20. It was therefore recommended that Council authorize the City Manager to purchase the following vehicles from the State contracted vendors in accordance with State of Delaware Contract No. GSS 15013: One 2016 Chevrolet Silverado SSV four wheel drive black and white as the replacement vehicle for #917. The vehicle would be purchased from Mall Chevrolet of Cherry Hill, New Jersey in the amount of \$32,567.95; and one 2016 Chevrolet Tahoe police pursuit vehicle four wheel drive, black and white replacing #930. It would be purchased from I.G. Burton and Company, Milford, Delaware, in the amount of \$38,709.25. In addition, the vehicles being replaced would be auctioned.

Mr. Markham was pleased these were four wheel drive vehicles because Chief Tiernan expressed concern about getting around in the snow, and the Tahoe was being used by the County and the State. His question regarded the Silverado because it was a little unusual as a police vehicle. He asked if the Police Department planned to adapt it for prisoner transport and whether the pickup truck was on the standard State contract as a police vehicle. Ms. Wright confirmed it was on the State's police contract. Regarding prisoner transport, Ms. Houck understood it would be equipped. Ms. Wright added it would be assigned to the Special Operations Division and was a crew cab vehicle which could be equipped with anything needed to transport prisoners. Mr. Markham asked if that was built into the price because usually the same vehicles were purchased to provide the ability to transfer the seats and the guards. Ms. Houck explained that some of the after-purchase add-ons such as the lights and the installation of the radios were always absorbed by the Capital Improvement Program because not everything transferred. Ms. Wright confirmed they were from different vendors and this contract was just for the purchase of the actual vehicles.

Mr. Gifford asked if the City was moving to all Tahoes as replacements were made. Ms. Houck replied there was no plan to purchase Tahoes exclusively. The vehicle choice was considered as needed at the time of replacement. Mr. Gifford asked if there was a specific car being considered in the future. Ms. Houck said it depended on what vehicle was being presented by the car dealers as a police vehicle on the State contract. As everyone was aware, the Crown Vic went by the wayside but the Caprices and the Chargers were still on the list. Mr. Gifford was concerned that the City might move to all larger vehicles. He was good with the decision to take it on a case by case basis.

Mr. Morehead commented that the Tahoe engine was smaller than the engines in the Charger and the Caprice. One of the things not shown in the mileage was that the cruisers spend a lot of time idling, and the larger engines obviously use more fuel. Mr. Morehead felt there were a number of other reasons why the Tahoe made more sense

than the sedans including more protection in the event of an accident. He wondered why the City was using two different vendors. Ms. Wright said that was the way the State contract was awarded. Ms. Houck added those vendors were the successful bidders.

Mr. Markham remembered that a few years ago the City's cars came from New Jersey and he asked about buying from a dealer in Delaware. He pointed out that at least half of this contract was from a Delaware vendor.

Donna Means suggested that the City purchase the vehicles locally. She thought the Dodge vehicle with 88,000 miles should be repaired rather than replaced. Mr. Morehead explained that the engines for the police vehicles were running at least twice as long as the mileage. He thought a 10 year old vehicle with the equivalent of 270,000 miles on the motor was not a bad choice for replacement at this point.

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: THAT THE BID PROCESS BE WAIVED TO AUTHORIZE THE PURCHASE OF THE 2016 CHEVROLET SILVERADO FOUR WHEEL DRIVE SSV AND THE 2016 CHEVROLET TAHOE FOUR WHEEL DRIVE PPV UNDER THE STATE OF DELAWARE AWARDED CONTRACT NO. GSS15013 AS DETAILED IN THE STAFF MEMO DATED 1-31-16.

MOTION PASSED UNANIMOUSLY: VOTE: 5 to 0.

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

Nay – 0.

Absent – Chapman, Ruckle.

16. 7. **FINANCIAL STATEMENT:** None

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

A. **Bill 16-03** – An Ordinance Amending the Zoning Map of the City of Newark, Delaware, By Rezoning from BLR (Limited Business Residential) to BB (Central Business District) 0.753 Acres Located at 249 East Main Street

01:03:44

(Secretary's note: Ms. Sierer clarified that based on the five Council members present tonight, four votes would be required to pass the ordinances – items 8A, 8B, 8C and 8D)

Ms. Bensley read Bill 16-03 by title only.

MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 16-03.

Hal Prettyman and members of his family were present representing Heavenly LLC. The 249 East Main Street property had been in the LeRoy family for some time. They operated their office out of it, and it was zoned BLR. When Heavenly LLC purchased the building, one office became available which was roughly 1,000 square feet. The two offices in the back that were also occupied became available as well. A local business person, Jeanne Kress wanted to put a carry out restaurant there. When she came into the Planning Department they learned that type of business was not allowed in the zone.

Heavenly LLC requested Council rezone the property to BB for the opportunity of a wider array of businesses. Mr. Prettyman referred to a zoning map on a PowerPoint presentation. The neighbor was zoned BB. Across the street was the Newark Shopping Center, also zoned BB. The muffler shop to the left was BC. The surrounding area looked as though it was a combination of the old zoning BC and some other BB zoning. This fit in and was compatible with the Comprehensive Plan. A positive recommendation was received from the Planning Commission and the Planning Department.

Mr. Markham asked if Mr. Prettyman mentioned drive through. Mr. Prettyman said if he did, he meant to say take out. Mr. Markham noted that typically there would be a plan going along with this. Although a redevelopment effort was not being discussed

today, he questioned what doors were now open once this rezoning was obtained. Ms. Feeney Roser responded that BB zoning was less restrictive for the types of commercial uses that might go there. The other salient point was that BB allowed the developer to apply for a parking waiver. There were no parking waivers in BLR. At this point Mr. Prettyman had all the parking he needed for the uses he had at this site. Should he wish to redevelop, he would have to through a subdivision and potentially a parking waiver in order to redevelop the site to do other than what was there now. Mr. Markham asked if BLR allowed ground floor business and residential above, or just BB. Ms. Feeney Roser explained the difference was that BLR required that a certain amount of the first floor be used for residential and BB allowed no residential on the first floor.

Ms. Feeney Roser verified that a drive through was not allowed under BB but a takeout restaurant with less than 24 seats was, so the majority of it would be takeout. Mr. Markham asked if the restaurant proposed on the first floor would take the whole first floor. Mr. Prettyman replied it would take half of the first floor. The other half was currently leased to Quest medical lab and their lease was still in full effect and Ms. Kress would have the other half of the first floor. The building behind that had space available.

Mr. Markham said he asked this question because Council typically knew what was coming with the zoning. If there were concerns about the zoning, they would then put restrictions at the time of the rezoning. They had that ability. That was what he was grasping with. Ms. Feeney Roser agreed it was unusual. Mr. Markham said if Council was going to do the restrictions he wanted to do them now, not when he found out what other businesses were going in there.

Mr. Morehead asked Ms. Feeney Roser whether parking waivers came to Council. Ms. Feeney Roser confirmed that parking waivers go to the Planning Commission, but if Council wanted to revisit that or by recommendation from the manager or staff and the applicant, Council could consider the Planning Commission's recommendation and reverse or confirm it. Mr. Markham added that the law was changed a few years back.

Mr. Morehead asked if Mr. Prettyman would be willing to add that as a condition that a parking waiver would come to Council automatically. It was Mr. Prettyman's understanding that anything he brought forward in the past always came to Council anyway. Mr. Morehead said this situation was different. Ms. Feeney Roser added it would come to Council if it was part of a subdivision or other development plan approval that was needed. Council would know that the Planning Commission had or had not granted a parking waiver, at which time the developer could consider whether they agreed with that. She thought as a condition of approval, if Council wanted the Planning Commission's decision on a parking waiver for this site to be only recommending it (as opposed to granting it), she thought that could be done. Mr. Herron confirmed that it could be done. Mr. Prettyman had no objections if Council wanted to place that restriction now.

Mr. Markham felt this was kind of an open door and since Mr. Prettyman had BLR, Mr. Markham asked if the City could make a requirement that things currently allowed under BLR, he did not have a problem with it going through, but new items that are under BB, somehow he wanted to have a review on that. Mr. Prettyman said it was the same as his neighbors. He did not know who would show up and apply for one of the spaces either, but BB allowed for a wider variety of commercial uses. The whole area there was surrounded by BC – he had one of the highest uses with the muffler shop alongside the property. Anything done there would be similar to the surrounding buildings.

Mr. Markham asked when BB was established since that was the downtown zoning. Ms. Feeney Roser said she was with the City for 30 years and it was in the Code when she came. Ms. Feeney Roser said the Code was amended since then. The uses for BLR and BB were listed in the Planning Department report. Mr. Markham said his concern was that someone could have this brand new zoning which gave a developer different rights that Council could not stop if something changed in the future. Mr. Herron understood Mr. Markham's concern but said if Council were to grant the rezoning, he did not believe they could grant the rezoning in part and say these uses permitted in BB could not apply to this property.

Mr. Morehead asked if Council could approve the rezoning, yet restrict any further development to come back to Council (meaning a new building). It would come under BB now which tied Council's hands. Ms. Feeney Roser said it depended on what was proposed for the building and there was the special use permit with conditional uses in BB. Council would still have an opportunity to determine whether, or not it was in the best interest of the community to grant the special use permit but where the use was listed as permitted, Council would not. Mr. Morehead's point was BB allowed a maximum lot coverage of 100% and setbacks and so forth whereas BLR was 40%. There were significant differences other than just the uses. Mr. Morehead thought the problem was in giving carte blanche for anything. That was where he and Mr. Markham had the same issue. He would like to allow the restaurant if there was a way to legally do that. He planned to be able to allow the restaurant, because that made perfect sense. He did not plan to allow Mr. Prettyman to be able to build to the lot lines. That was not something he was comfortable with without seeing the plan. Mr. Prettyman said if he was going to come back with a redevelopment plan then Council would still have to approve the plan. Ms. Feeney Roser said that was correct but Mr. Morehead's point was that Mr. Prettyman would be able to cover the lot in its entirety as a by-right plan as opposed to requesting a rezoning at the same time. Council had discretionary approval of the rezoning but if a developer met Code and had the right zoning and was not requesting a special use permit for anything, then there was no discretion that Council had.

Ms. Hadden asked how much parking was currently available at that location. Mr. Prettyman said there was plenty of parking. He did not have the specific number of spaces but the lot behind the building was sizable and the municipal lot was behind it, so parking was not really an issue at that part of town.

Ms. Hadden asked in order to allow the business to go there could there be a special use and leave the zoning as is. Ms. Feeney Roser explained that would require a use variance and they would have to go the Board of Adjustment for that. It was rather rigorous – it was not like an area variance.

The Chair opened the discussion to the public.

John Morgan, District 1, commented about the parking waiver issue. According to the Code, an applicant could go to the Planning Commission with a request for a certain number of parking waivers. If the Planning Commission granted those parking waivers, that was the end of the matter. Council had no say. If, however, the Planning Commission rejected the applicant's request, then the applicant could come to Council and ask them to grant the parking waivers. It was not as though Council could overturn a grant of parking waivers made by the Planning Commission.

Dr. Morgan thought a take-out restaurant made sense at this location and asked why the City's Code did not allow take-out restaurants in BLR Zoning. There was plenty of room. He would not mind if this was built to the lot line as long as most of the area on the first floor was for parking for customers and/or tenants. Ms. Feeney Roser said the Code actually said that within 45 days of the Planning Commission approval or rejection of a particular parking waiver, Council may reconsider it. The second part of the question was that BLR was supposed to be a less intense commercial zone. At the time it was created, folks thought that restaurants were a more intense use than should be permitted in something that was a residential business limited.

Mr. Prettyman said this property had been in the family that owned it for many years and it may have been neighborhood when they owned it. The bottom line was today it was downtown Newark. There was no plan for development at this point. As mentioned earlier, Mr. Prettyman had been in front of Council many times with plans, so his plate was full right now. They had the opportunity to buy the property but for the current time they were going to manage and maintain the buildings "as is" while trying to get them full.

Donna Means, District 5, would support a business that would be quick, nutritious and locally owned.

The discussion was returned to the table.

Mr. Gifford knew the applicant probably requested BB, but noticed that there was BC surrounding his property as well. He asked if that was not as good a choice. Ms. Feeney Roser explained it was a more intensive commercial use than BB. It would allow a restaurant and did not have parking waivers associated with it. Mr. Gifford asked the negatives of the BC. Ms. Feeney Roser noted it was the most intense commercial zone.

MOTION BY MR. GIFFORD, SECONDED BY MS. HADDEN: TO APPROVE BILL 16-03 AMENDING THE ZONING MAP FOR THE CITY OF NEWARK, DELAWARE, BY REZONING FROM BLR TO BB 0.753 ACRES LOCATED AT 249 EAST MAIN STREET.

Ms. Hadden said because the zoning was not in conflict with the Comprehensive Plan IV and because it would not have a detrimental impact on the surrounding area, she was voting for the ordinance.

Mr. Gifford said for the first two reasons Ms. Hadden stated and the positive recommendation of the Planning Commission, he would vote for this as well.

Mr. Markham said because this property already had a zoning business which fit the current area and because a by-right development could have a detrimental effect on the area, he voted against the rezoning.

Mr. Morehead said due to the positive recommendation by the Planning Commission, the fact that some surrounding properties were BB, he thought eventually this property would end up BB at some point in the future anyway just from a natural effect of building in town. He would support the rezoning.

Ms. Sierer would also support the ordinance. It did not conflict with Comp Plan IV and did not conflict with the zoning in the surrounding area and it was in the downtown business district, so she would be supporting it.

MOTION PASSED: VOTE: 4 to 1.

Aye – Gifford, Hadden, Morehead, Sierer.

Nay – Markham.

Absent – Chapman, Ruckle.

(ORDINANCE NO. 16-07)

18. 8-B. BILL 16-04 – AN ORDINANCE AMENDING CHAPTER 10, ELECTIONS, CODE OF THE CITY OF NEWARK, DELAWARE, BY INCREASING THE PER DIEM ALLOWANCE FOR ELECTION BOARD MEMBERS ON ELECTION DAY

01:31:11

Ms. Bensley read Bill 16-04 by title only.

MOTION BY MR. GIFFORD, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 16-04.

Ms. Bensley stated that at the 1/11 Council meeting, the Board of Commissions Review Committee recommendations regarding the Election Board were presented to Council. One of those was to consider increasing the Election Day per diem. Council directed staff to prepare this ordinance for consideration at that time and the wishes of Council were reflected in this bill.

John Morgan, District 1, believed it was important that the members of the Board of Elections be compensated appropriately for the long days which typically go on for 14-18 hours on Election Day. He thought raising this level of compensation was important.

Donna Means, District 5, stated at the last election there was an incident where the voting machine was still not plugged in at 11:00 a.m. She wondered what the voting officials were doing that they did not notice that the machine was not plugged in. Ms.

Sierer did not have an answer for that at this time and said it was not part of this agenda item, but Ms. Bensley would respond at an appropriate time. Ms. Means felt the board members deserved to be paid because they spend a lot of time at the polls and the work was labor intensive. However, she said they needed to make sure that everything was operating the way it was supposed to.

Dan Beaver, District 4, asked if this group was supposed to plug the machines in because when he went in to vote and the machine was not working he called it to the attention of whoever was working the machines. They said, "Hold on, I'll plug it in." He assumed that was reported to members of the Board. Ms. Sierer pointed out this was off topic. Someone would be glad to get back to Mr. Beaver and Ms. Means with a response. This agenda item was to vote on increasing the pay for the Election Board. Mr. Beaver asked if it was appropriate to talk about their duties before giving them a pay raise in light of what he witnessed at the last election.

(Secretary's note: An investigation was conducted regarding this allegation. Election officials verified that there was no report of the machines being unplugged on the day of the election and that voting machines were battery operated, meaning that if a machine was unplugged, it would not affect the vote tally. A count also was conducted of the voter signature cards versus the votes registered on the machines at the polling place in question and no discrepancy was found.)

Mr. Markham reported that the Boards and Commissions Review Committee reviewed the Election Board and made suggestions. Further, he knew the Election Board met to review their procedures and ensure that these things were taken care of. He believed there was now going to be training that goes along with that.

The Chair brought the discussion back to the table.

MOTION BY MR. GIFFORD, SECONDED BY MS. HADDEN: TO APPROVE BILL 16-04, AN ORDINANCE AMENDING CHAPTER 10 ELECTIONS, CODE OF THE CITY OF NEWARK, DELAWARE, BY INCREASING THE PER DIEM ALLOWANCE FOR ELECTION BOARD MEMBERS ON ELECTION DAY.

MOTION PASSED UNANIMOUSLY: VOTE: 5 to 0.

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

Nay – 0.

Absent – Chapman, Ruckle.

(ORDINANCE NO. 16-08)

19. 8-C. BILL 16-05 – AN ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLES, CODE OF THE CITY OF NEWARK, DELAWARE, BY DESIGNATING THE SOUTH SIDE OF BELLEVUE ROAD AS “NO PARKING ANYTIME”

01:36:06

Ms. Bensley read Bill 16-05 by title only.

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 16-05.

Ms. Houck reported a concern was raised about delivery trucks that park on Bellevue Road and block a crosswalk. Two responses were received in favor of the request. The Traffic Committee voted unanimously in favor of the parking restriction.

Mr. Morehead asked if the delivery trucks had anywhere else to park if the restriction was implemented. Mr. Haines, a member of the Parking Committee, said from an aerial survey and information from the businesses in the area, it was a choice versus limitation. Mr. Morehead said Bellevue was a dead end road, so he could understand there was difficulty turning around, but they had to do that anyway regardless of where they parked.

There were no public comments.

MOTION BY MS. HADDEN, SECONDED BY MR. MOREHEAD: THAT THE SOUTH SIDE OF BELLEVUE ROAD BE DESIGNATED AS “NO PARKING ANYTIME”.

MOTION PASSED UNANIMOUSLY: VOTE: 5 to 0.

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

Nay – 0.

Absent – Chapman, Ruckle.

(ORDINANCE NO. 16-09)

20. 8-D. BILL 16-06 – AN ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLES, CODE OF THE CITY OF NEWARK, DELAWARE, BY DESIGNATING TYRE AVENUE AS “NO PARKING ANYTIME”

01:39:28

(Secretary’s Note: Discussed with Item 10-A-1.)

Ms. Bensley read Bill 16-05 by title only.

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 16-05.

Ms. Houck reported that the Traffic Committee voted on this on 1/19 and it was unanimous to approve the special residential parking district in response to the request to designate the whole west side of Tyre Avenue as a special residential district.

The Chair opened the discussion for public comment.

A resident of Tyre Avenue was confused by Ms. Houck’s mention about the west side of Tyre Avenue. Ms. Bensley reported that the east side of Tyre Avenue and a portion of the west side of Tyre Avenue were already a no parking district according to the Newark City Code. This would just make all of Tyre Avenue both sides their entire length, including the remainder of that western side that was not no parking. It would all be no parking. If the subsequent resolution was approved, it would then be made a special residential parking district for its entire length on both sides.

The discussion was returned to the table.

Ms. Hadden knew a resident who lived at the end of Tyre who used paratransit services on a regular basis. If it was special permit parking, did that mean people could park in front of his house with a permit because he was having difficulty with paratransit getting close to his house. Ms. Sierer suggested putting no parking here to corner so there was adequate space for the DART bus to pull in. Ms. Houck said that had to be addressed separately.

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: THAT BILL 16-06 BE APPROVED BY DESIGNATING TYRE AVENUE AS NO PARKING ANYTIME.

MOTION PASSED UNANIMOUSLY: VOTE: 5 to 0.

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

Nay – 0.

Absent – Chapman, Ruckle.

(ORDINANCE NO. 16-10)

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

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

A. **Council Members:**

1. **Resolution 16-__**: A Resolution Designating Tyre Avenue as a Special Residential Parking District

(Secretary's Note: Discussed with Item 8-D)

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: THAT THE RESOLUTION DESIGNATING TYRE AVENUE AS A SPECIAL RESIDENTIAL PARKING DISTRICT BE APPROVED.

MOTION PASSED UNANIMOUSLY: VOTE: 5 to 0.

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

Nay – 0.

Absent – Chapman, Ruckle.

(RESOLUTION NO. 16-C)

23. 10-B. **Others:** None

24. 11. **APPROVAL OF CONSENT AGENDA**

01:44:38

MOTION BY MR. GIFFORD, SECONDED BY MR. MOREHEAD: TO REMOVE ITEM 11-E, FIRST READING – BILL 16-07, FROM THE AGENDA.

Ms. Bensley responded that a First Reading could not be removed from the Consent Agenda to be considered on its own. It could only be removed from the agenda as a whole, so there would be no First Reading this evening, and that would require a vote of Council to remove it entirely.

Mr. Morehead asked Mr. Herron if this was housekeeping aligning the City with the State Code. Mr. Herron responded that this bill would allow Newark to adopt an ordinance which mirrored the State Code and would allow NPD officers to bring a civil citation for marijuana use or possession in the Alderman's Court which would result in great convenience to NPD officers. It was not changing anything because the Alderman's Court currently had no jurisdiction over any drug-related offenses. This would be giving it jurisdiction only in this limited fashion for civil citations.

Mr. Gifford said the reason he pulled this off the agenda was not because he was for or against this particular bill, but Newark's current Code did not have an entire section for this. His thought was to pull this because he thought Council should have a discussion so that they would not get wrapped up in a second reading – if they wanted to make any changes, they could be larger changes because there was no discussion on this prior. It was almost a three page item. He knew that it followed State Code fairly clearly, but he had some concerns about adding this entire section to the City's Code. He felt it would be one thing if this was already in Newark's Code for enforcement and it just changed how it was enforced, but it was a whole new section. He wanted to have a discussion up front, not necessarily arguing for or against the contents of it. He did not want to get to a second reading and make changes. He did not feel that he could do that second reading process properly so he wanted to bring it back to a discussion before it got to first reading.

Mr. Morehead asked Mr. Herron if currently these laws as written would be enforced by the Newark Police on behalf of the State Court and then they would have to go to the State Court to actually testify. Mr. Herron said that was correct. Mr. Morehead asked if this was effectively the State law enforced. Mr. Herron confirmed it was.

Question on the Motion to remove item 11-E from the agenda was called.

MOTION DEFEATED: VOTE: 1 to 4.

Aye – Gifford.

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

Ms. Bensley read the Consent Agenda in its entirety.

- A. Approval of Council Meeting Minutes – February 8, 2016
- B. Receipt of Alderman’s Report – February 11, 2016
- C. Approval of Polling Places for April 12, 2016 City Elections
- D. Cancellation of April 11, 2016 City Council Meeting
- E. **First Reading – Bill 16-07** – An Ordinance Amending Chapter 22, Police Offenses, Code of the City of Newark, Delaware, By Adding a New Article XVIII, Marijuana, and Creating a Civil Citation for Possession of Marijuana – **Second Reading – March 14, 2016**
- F. **First Reading – Bill 16-08** – An Ordinance Adopting a New Comprehensive Development Plan to be Known as the Comprehensive Development Plan V for the City of Newark – **Second Reading – March 14, 2016**
- G. **First Reading – Bill 16-09** – An Ordinance Amending the Comprehensive Development Plan by Changing the Designation of Property Located at 47 West Cleveland Avenue – **Second Reading – March 28, 2016**
- H. **First Reading – Bill 16-10** – An Ordinance Amending the Zoning Map of the City of Newark, Delaware, By Rezoning from BN (Neighborhood Shopping) to RM (Multi-Family Residential – Garden Apartments) 0.31 Acres Located at 47 West Cleveland Avenue – **Second Reading – March 28, 2016**

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

MOTION PASSED UNANIMOUSLY: VOTE: 5 to 0.

25. Meeting adjourned at 8:55 p.m.

Renee Bensley
Director of Legislative Services
City Secretary