

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

March 14, 2016

Those present at 6:00 p.m.:

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

Absent: District 1, Mark Morehead

Staff Members: City Manager Carol Houck
City Secretary Renee Bensley
City Solicitor Bruce Herron
Code Enforcement Supervisor Dave Culver
Communications Manager Kelly Bachman
Community Affairs Officer Megan McNerney
Deputy City Manager Andrew Haines
Finance Director Lou Vitola
Planning & Development Director Maureen Feeney Roser
Planning & Development Manager Michael Fortner
Public Works & Water Resources Director Tom Coleman

EXECUTIVE SESSION

A. Executive Session pursuant to 29 *Del. C.* §10004 (b)(4) and (6) for the purpose of a strategy session involving legal advice from an attorney-at-law regarding potential litigation 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 6:03 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 7:04 p.m. with a moment of silent meditation and the Pledge of Allegiance.

Ms. Sierer welcomed University of Delaware students from an advanced reporting class to the meeting.

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

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

02:53

John Morgan, District 1, provided an update on the issue of safety with bicycles, particularly on sidewalks. It was generally believed there was a law against riding bikes on sidewalks in the City of Newark only on Main Street between Tyre Avenue and South College Avenue. It was discovered by Lt. Nelson that the City of Newark already had in its Code a law prohibiting the riding of bicycles on sidewalks adjacent to bike lanes, such as on South Main Street, on North College Avenue or on South College Avenue south of the Morris Library. He hoped that the City of Newark Police Department would work with the University of Delaware Police Department in preparing regulations against riding bicycles on sidewalks in areas with heavy pedestrian traffic, particularly along South College Avenue between the Morris Library and Main Street and on Academy Street

where there was heavily congested sidewalks. Amstel Avenue would be another good place to not have bikes on sidewalks. He knew it would take bicyclists a little extra time to get from one point to another if they were walking their bikes on sidewalks as opposed to riding them, but thought that was much better than having another serious accident.

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

5. 2-C. UNIVERSITY
(1) Administration

05:45

Caitlin Olsen, Assistant Director, Government Relations, offered several announcements.

- UDance was last weekend, and the students put on a great event and raised \$1.7 million to help fight childhood cancer.
- Two professional continuing education opportunity fairs would be held on 3/17 at Hercules Plaza and 3/23 on the STAR Campus from 3-7 p.m. This was part of an effort to help support any professionals that may be in transition in their career. Representatives from several graduate degree in certificate programs would be there to offer assistance.
- Spring Break started the week of 3/28. The last meal in the dining halls was 3/25 and usually students skipped town after that. They would be gone that next week.

6. 2-C-2. STUDENT BODY REPRESENTATIVE:

07:22

Haley LaMontagne, introduced herself as the Student Government representative for this semester.

7. 2-D. LOBBYIST:

07:51

Rick Armitage sent a number of bills to staff that were introduced. One of the items moving forward was Senate Bill 178 which would expand the disqualifications for child-serving entities that was done under the Beau Biden law about a year ago. More parts of the State Code were being added where someone would be disqualified. It might have some impact in hiring, but would not have a hugely negative impact in Newark. He sent House Bill 255 regarding probation before judgement to Mr. Herron. That would include City and County violations, but he did not think it had a negative impact. Mr. Armitage asked for guidance from Council if they wanted these bills on the spreadsheet since they would not have much of an impact on Newark. Mr. Armitage was trying to curtail the volume of information that Council would have to sift through.

Since Ms. Sierer was involved in the Legislative Committee with the Delaware League of Local Governments, she wanted all of them to be listed because they might affect other municipalities. Mr. Markham was not sure how Mr. Armitage would determine what affected the City. Mr. Armitage replied if he saw a bill that he thought had an impact, he would send it to Ms. Houck to share with staff for their feedback. In the last two weeks he sent four or five different bills, but he would update the spreadsheet then for March to include many of those. Mr. Markham suggested having a column with his explanation about how it may or may not affect the City. Ms. Hadden added Council could give feedback if they felt a bill should be pursued.

House Bill 85 passed which was the tax intercept bill that the City had the most interest in. That moved to the House and the Senate. He did not see any problem where the Governor would not sign that bill. That had a positive impact for the City in allowing for tax collections as well as school districts to get back taxes also if there was an opportunity to intercept some of that.

House Bill 200 regarded accessible parking spaces for persons with disabilities. Mr. Viola promised there would be a substitute bill. He received a letter from the League that outlined all of the concerns from the municipalities.

House Bill 223 was the PILOT bill which was sitting in committee for months and had not yet had a hearing. Representative Baumbach who sponsored the bill asked Mr. Armitage for information about PILOT in the City. Mr. Armitage requested Council provide a strategy moving forward to direct funds that might be allocated for PILOT to public safety issues and the jurisdictions that would receive those funds. He thought that might be the best strategy to move the bill forward although there was no guarantee that it would.

Mr. Markham did not think Wilmington, Georgetown or Dover had any such restriction regarding PILOT. Mr. Armitage confirmed they did not. Mr. Markham said even if the funds available to Newark were restricted to public safety that was 100% more than the City was receiving now. Mr. Armitage said the strategy was to try to get this at least before the legislature, even out of the committee. Ms. Sierer asked if the City had any conversations with Representative Baumbach to see if he thought it was a viable strategy. Ms. Houck said not at this time as staff wanted to bring it to Council first.

Ms. Hadden asked if that public safety would also include any community outreach for the law enforcement public safety. Mr. Armitage thought it would be. His idea included whether it was Police Department outreach, the Fire Marshall's office, the Fire Department, all things that impact any public safety issue within the City.

Mr. Markham asked if this came out of the Wilmington delegation because they always seemed to be the lynchpin in moving this forward. Mr. Armitage replied this was really a conversation because of Mr. Baumbach's question – the intent was to redraft this information and look for the best opportunity to move this ahead. Mr. Armitage clarified to Ms. Sierer that Newark was proposing to seek additional funds, not take anything away from any of the municipalities.

Mr. Chapman agreed with Mr. Markham that anything the City could get was better than nothing, especially since it had not gotten out of committee and the last time it was even potentially considered, it did not escape from committee then either.

Mr. Ruckle agreed with the other Council members. The funds could be used for the City's K9 unit which currently was all donations.

Ms. Sierer asked if there were objections to this strategy. Ms. Hadden said the discussion as to where the funds would go if it were approved could happen at a later date. Ms. Sierer said that was correct. There were no objections expressed by Council.

Mr. Armitage said the other bill he updated Council on was the minimum wage bill which moved from the Senate, was in committee in the House, but no hearing was scheduled at this point. The current rate was \$8.25 an hour. If the bill passed next June it would move to \$8.75 an hour which would have an impact on the budget.

House Bill 255 regarding probation before judgement updated some of the violations that would be included either in county or municipal violations to allow for the solicitors to manage that process. He sent that to Mr. Herron earlier today, and if there were any concerns they would be added to the table. If Mr. Herron had long explanation or concerns, he would attach those as well.

House Bill 283 was introduced on Thursday. It turned the jobs world upside down as well as the union and the non-union workforces. There was a lot of concern by the non-union work people in Dover. It required any public works project with state funds in it to have some percentage of veterans, some percentage of union workforce, and required probably a lot more work on the administrative part of doing a contract like that. He was not sure in a state the size of Delaware, that the goal set out in that particular bill could be met. The committee hearing was scheduled on Wednesday. His concern was that it eliminated the exemption last year in the street money where prevailing wage did not have to be paid. Mr. Armitage requested Council's permission to ask at the committee hearing if the intention was to eliminate the exemption going forward around municipal street aid. Newark was exempted from that by not paying the prevailing wage. Mr. Armitage was not sure how this would sort itself out but wanted to ask that question to understand what the state was thinking about moving this forward.

Ms. Sierer pointed out that the City needed that information. Mr. Gifford said he would ask that question seeing what the intent was and then bring that back to Council.

Mr. Markham asked if this was the bill he saw in the paper from Representative Williams. Mr. Armitage said that was a different one. Mr. Markham saw one where it was a percentage of workers who resided in the district of the representative. Mr. Armitage said that was the same bill, but it was from Representative Mulrooney and some of the more union-affiliated legislators. Mr. Armitage said there was a bill by Representative Williams that would require every municipal and county jurisdiction at any one of the public hearings that happened, whether it was a council meeting, the traffic committee, or a working group to allow for at least one minute of public comment per person during those hearings. Staff had looked at that, and did not think that there would be a negative impact in Newark because that was allowed already throughout the boards and commissions as well as council meetings. He would add that to the watch list in order to know whether it moved forward.

Mr. Armitage said the last one he would add to the table that he was worried about initially – DNREC was updating its land protection act and already the municipalities were exempt from that. The counties were not in the current law. In the new law moving forward in these protection area maps, municipalities would continue to be exempt, and they would include counties. He was not sure it would pass, but it created some concerns for comprehensive planning. He would add that to the table to indicate it was moving around. So far, though, unless something changed, the municipalities were exempt from that.

The last thing Mr. Armitage mentioned was that DEFAC would meet again next Monday, and they meet again every month through June moving forward. This would give a better feel, hopefully, of where the budget may go. Joint Finance would not begin true bill drafting until late May, early June. There would be two more meetings between now and then that should provide a sense of what the State's budget would look like and what the revenue picture was going to be.

Ms. Sierer asked if the plastic bag bill was out of committee. Mr. Armitage would get that information to her.

Mr. Markham read there were campaign finance changes possible such as raising limits that did not affect the city as a whole but could affect the elections within the City. Mr. Armitage did not have a sense where that was going to go yet. He would add that bill to the table as well.

Mr. Ruckle read about a bill outlawing dog fighting in the House. He asked if there was anything hidden in there other than dog fighting. Mr. Armitage only read the synopsis, so he would go back through the bill and send a follow up about it to Council.

8. 2-E. CITY MANAGER

23:31

Ms. Houck introduced the City's new Community Affairs Officer, Megan McNearney, who started that day and was at the meeting.

On Wednesday some staff members would attend the Downtown Delaware Revitalize conference in Wilmington. The Taste of Newark event was slated to receive the Downtown Delaware Choice Award.

9. 2-F. COUNCIL MEMBERS

24:16

Mr. Chapman

- Welcomed the City's new Communications Director Kelly Bachman and her family. They were now residents of the City, and he welcomed them as neighbors in District 5.
- There were questions about the upcoming Christina School District referendum in District 5. Two referendums were held last year and both were defeated. A community information session would be held at 7 p.m. on 3/16 at Shue-Medill Middle School.
- Regarding bikes on Main Street sidewalks, he thought the comments about broadening the scope to City-owned sidewalks throughout the City was important. Last

Friday night while at a restaurant on Main Street he witnessed seven different instances of bicycles going both ways on both sides of the street. He did not have a solution but thought it would be difficult to police in terms of having multiple officers on Main Street all the time for every sidewalk. He would like to see a plan presented or schedule time for Council to discuss the issue. Hopefully, the City would take a more proactive, tougher approach than the University in terms of violations. He would like to have stiff violations so the word got around. He thought primarily it was students who were violating. Word traveled fast with a stiff punishment, and hopefully, this would calm itself down.

- Wanted to discuss the snow removal plan, specifically the enforcement of sidewalk clearances along certain roads. He received complaints about invoices received for City-contracted clearances which Council was aware of because of the updated snow removal plan. He felt appropriate amendments should be considered or discussed. Ms. Hadden agreed as she received complaints as well. Ms. Houck reported a staff meeting was scheduled to review the effectiveness of this year's plan and report what was learned to Council. At that time, Council could voice their concerns. Mr. Chapman asked to have a public presentation (perhaps prior to a Council meeting).

Mr. Gifford

- Thanked Public Works and Water Resources staff for fixing drainage issues below a new driveway for a water tower in Arbour Park. That went well and the resident appreciated the City's efforts.
- Stopped by Villa Belmont to see if there were additional problems with the homeless camp across the street. So far there were no issues, but some of the homeless folks were seen returning to the woods. He did not know if there was any communication from the county about this situation. Ms. Sierer reported there was nothing new. Since the last meeting NPD officers went back and confirmed that they were still there. They reached out to the County police who again spoke to the pastor and gave them some sort of timeline or he was going to issue them a ticket. City staff needs to continue to follow-up. Mr. Gifford planned to continue going to Villa Belmont to talk with staff.
- On the biking issue, he felt there should be some allowance for families with children to be on the sidewalk so they were not being ticketed.
- A constituent asked Mr. Gifford to mention the good work that the late Dorothy Miller did for the area, in particular, for the White Creek State Park. She was a great person in the City of Newark, a member of District 3, and she would be missed.

Ms. Hadden

- Remarked that Dorothy Miller was a local environmentalist who was a very strong conservationist, well-liked and gave a lot to the community. A City park was named after her and she would be missed.
- Kudos to UDance who raised \$1.7 million to fight childhood cancer. This fabulous group continually raised the bar and were great members of the community.
- Attended to various constituent concerns.
- Had a meet and greet where Mr. Dave Culver, the new manager of the Code Enforcement Department, attended and spoke to the group.
- Attended the National Congress of Cities in Washington D.C. The conference was interesting, especially a panel discussion on the opiate epidemic in the U.S. There was an informative discussion on strategies that could be implemented by cities and states to help combat the epidemic. She brought back materials to review with the City Manager.
- Attended workshops on finances where information was shared on the FAST Act map from the National Transportation Board.
- Learned about orphaned earmarks which were funds that could be repurposed if they sat around long enough.
- Learned that the TIGER Grant deadline from the Department of Transportation was 4/29.
- Learned about the millennial mindset in regard to how they plan to travel and how communities that attract millennials usually had a multitude of transportation options because millennials were multimodal.
- Met, along with a group of Delaware policymakers, with Senators Carper and Coons, and their staff including a grant specialist who shared information about grant funding for projects and encouraged the group to reach to them as opportunities arose.

- Felt it was a very informative conference and provided the opportunity to exchange ideas with other cities as well as solutions to problems. She looked forward to the next conference in November. She encouraged Council to attend.

Mr. Markham

- Mentioned Dorothy Miller, since the White Clay runs through his district and her park used to be in his district but was now in Mr. Ruckle's.
- Also mentioned Mary Nardo, the wife of Val Nardo of Val's Needy Family Fund who also passed away. He believed Val's Needy Family Fund was now part of the Newark Area Welfare Committee. She was a constituent as well.
- Requested an update on the LED lighting, asked if it lived up to its expectations and what the expected completion date was. Mr. Markham commented to the members of the public that all the street lights in the City were being replaced with LEDs that would pay off in five years, last for twenty and provide more lighting. Mr. Vitelli reported that 1,816 were installed and there were 87 left, so the project was almost completed. All of them should be done this week except for about 12 which could not be installed while it was so wet. Six or seven were bad from the factory and would be fixed under the warranty. There was a ten year warranty on the lights, and they seemed to be working well. It was a lot of work, and there was more traffic control than he realized. The project would save almost \$1.5 million over twenty years. There were some complaints that Mr. Vitelli said were being addressed by tilting the lights or lowering the light level if needed. The residents were satisfied with the adjustments.
- Asked whether there would be additional police enforcement on St. Patrick's Day. Chief Tiernan responded the department had extra people out this weekend which was actually pretty quiet, and extra people would also be out next weekend. They reached out for assistance to the Delaware Alcohol and Tobacco Enforcement agency which sent officers to work with the department last week and would do so again next week.
- Chief Tiernan provided an update on the bicycles. There had been a lot of complaints regarding bicycles, and they were working with Dr. Morgan. When they first looked at Main Street, the signage was inadequate. They were replaced last week. Officers were out giving warnings for a few weeks and would be doing summonses very soon. Officer Shannon Craig was working with Switch on a pamphlet to educate people about the skateboarding laws on Main Street and locations for skateboarding. Once that was done, she would work on public education with the bicycle shops. They were also working with Public Works to look at Dr. Morgan's suggestion about putting additional signage up on other streets. There would also be education enforcement. Mr. Chapman thanked Chief Tiernan for the traffic and safety enforcement that was underway and said he received mostly positive reviews in appreciation for the work being done.

Mr. Ruckle

- Attended the Newark Country Club Open House. The club was looking to get new members, and they do have a social membership. That might be an option for people who want to support keeping that area as green space in the City.
- Attended the FOP/Aetna wing bowl in support of a local charity to build an inclusive playground for children with disabilities.
- Sandblasting was underway for the water tower in his district. Residents were happy this was taking place and wanted to know what color it would be painted and whether there would be any design on it. Ms. Houck said it would remain white for now.
- The Christina School District referendum on 3/23 was the third referendum in one year. It would be \$0.30 for every \$100 of assessed value. He recommended attending the Wednesday meeting at Shue Middle School for more information.
- Requested an update on Channel 22 now that the City had a Communications Manager. Ms. Houck said they had not finalized everything. They had some new opportunities with some new skills and planned to do more video. There may be some upgrades needed but it should be coming along. Efforts with the Comcast franchise agreement may also play into what could be done with Channel 22.
- Met with Mark Edelson of Iron Hill Brewery. They had a candid discussion about where his business was going to go. Mr. Ruckle would recommend getting this parking garage going as soon as possible and would make that motion at that time.
- Had a call from a senior in his district about the noise ordinance. Based on crime increasing in the City, she asked how the City could justify having any officer standing around with a meter from two to five in the morning.

- A debate was scheduled for 3/15 at the Senior Center for the four candidates running for the Newark City Council Election.

Ms. Sierer

- Regarding the National League of Cities Congressional Conference which she also attended in Washington D.C., there were some things she suggested taking a look at. One was a youth council. They spent a lot of time talking about community policing and there was a new city official's guide to policing in the 21st century. They talked a lot about a Vision Zero Network which had a goal of eliminating all traffic fatalities and severe injuries. She did not know if that was something Newark was participating in or was interested in considering.
- In the meeting with Senator Coons and Carper, they brought up items at the federal level that were interesting and explained why things were not getting done. The hot buttons were the Violence Reduction Network training, which was going on in Wilmington. They were hoping the program could be shared with other cities so it was not just a one-shot benefit to that community but could also benefit other communities in Delaware. They were working hard on veterans' healthcare and the timeliness of the availability.
- Nine cities in Delaware received eighty-six vests in the bulletproof vest partnership. Newark was part of that.
- This was the third conference Ms. Sierer attended. She encouraged Council to give the City Secretary direction for Newark to become a member of the National League of Cities. The fee was roughly \$3,300 and was included in the budget. The City had been a member a number of years ago when the fee was going to double but never did. She would be on the University Council, a committee within the organization which she thought would be helpful. She intended to be able to take the time to participate in the meetings and thought it was a great networking opportunity. Mr. Markham offered to provide some history as to why Newark was no longer a member. It was suggested to schedule this as a separate item under 10A on the Council agenda at the next meeting.

10. 3. ITEMS NOT FINISHED AT PREVIOUS MEETING:

- A. Recommendation to Award Consulting Services Agreement to Black & Veatch Management Consulting, LLC (*Postponed by Request of Council from the February 8, 2016 Council Meeting*)**

47:00

Ms. Houck explained the intent of the rate study was to provide a comprehensive look at the water and sewer utilities and possibly the creation of a new one, stormwater, and look at the rate structures. The study was meant to provide the necessary education that would allow Council to then make informed decisions about the three utilities in the future. She stressed the importance of a single integrated review, keeping in mind that the goal was setting the right buckets to where the monies go to for the right utilities. Some needs may go up in some utilities while others may go down.

She called Council's attention to the original recommendation dated January 27th, and it was recommended that this consulting engagement be awarded to Black & Veatch in the amount of \$98,080 for the water and sewer and stormwater rate study. It was also recommended that Council approve a transfer of \$21,840 from the water fund outside engineering budget, line item 8120 to the sewer fund outside engineering budget, same line item, to appropriately account for the sewer fund's share of the study's cost. Ms. Houck introduced Ms. Prabha Kumar, consultant from Black & Veatch.

Ms. Kumar began her presentation with a discussion about why municipalities like Newark needed a rate study. First, the water-sewer fund was an enterprise fund and an enterprise fund had to be self-sufficient for the present term and also for the future so that it did not have to borrow from the general fund. That was one of the important characteristics of an enterprise fund. Secondly, industry financial best practices for municipalities like Newark typically had a financial planning rate study every few years to have a reliable forecast of what was needed in the upcoming years. Associated with that, the important question was where the money would come from to meet those needs. A financial study helped forecast all of that. The financial rate study provided a roadmap for building financial stability, building resilience for the utility to meet all its known obligations but also to position the water and sewer utility for any unforeseen event. That was important for a utility as well to be self-sufficient.

The next question was what the study entailed. A financial planning rate study entailed three things. The first part was financial planning. The financial planning essentially told what the utility needed in the next five years. Each year, what were its needs in terms of financial requirements? We look at that by looking at what the requirements are from an operating cost standpoint, from capital cost standpoint. We also look at what the utility was bringing in right now as revenues and was a funding gap likely and if there was going to be a funding gap, how should it be addressed? The financial plan essentially determined the size of the pie that the utility needed.

The next step in the process was to then say, "How do you take the pie and how do you slice it because the utility provided water services, sewer services, and storm water services?" All those buckets had to be self-sufficient so one utility was not subsidizing another utility. That was called cost of service. The consultant would look at that to determine the water source from water needs and then the next step associated with the process was to determine whether the group was paying the fair share. The group consisted of residential and non-residential customers, inside city customers and outside city customers. That was really what was called a cost of service.

The cost of service analysis provided the principal basis for designing the rates. This was the last step and was called rate design. It involved three fundamental building blocks: financial plan, cost of service, and rate study and that was what the study entailed. The next question was, who should do the study? Was outside support needed for a study like this? There were industry guiding principles from the American Water Works Association used by Black & Veatch in their study.

The rate study required a balancing act that involved three different things. One was all the utility obligations - what the utility needed to meet in terms of obligations. The second was to look at the financial market perspective because how the study was done, the financial situation and how the rates were established were being viewed by the rating agency for the credit rating and to go to the bond market. Those were the second stakeholders, the financial market. The third stakeholder, the most important stakeholder, was the customers. They were going to be paying the rates and charges, so their impact in terms of their bills and the mechanisms to mitigate their impact had to be considered. These three entities were looked at and balanced in order to do a meaningful study that was practical to implement.

That was the approach Black & Veatch would be using. They have done this study for multiple entities and do all the rate work for the City of Wilmington. They were currently finishing up rate work for the City of Philadelphia and have done the work for their water department for 30 years. They just finished a major study for Harford County. A key point of this was not only the water-sewer study but a stormwater fee that Newark was contemplating mainly for equity reasons to collect the fee in the right way from the right set of customers. Ms. Kumar was the lead of the stormwater consulting practice within the Black & Veatch organization. They helped Wilmington in 2007 establish their stormwater program and they have been managing it successfully, so she hoped to help the City of Newark.

Mr. Markham asked staff whether the large meters were installed so everybody was on the same footing and how much time the large meters were under our belt. Mr. Coleman reported that the vast majority of the meters were in. There was a handful left with the university, but significant progress was made over the last several months. He expected that all the large meters should be in by the summer. Mr. Markham remarked there was no history on those meters like with the rest of the city that had smart meters. Mr. Coleman said there would be a bit of a gap. Mr. Markham said that was his first question because that goes to the statistics that would be used. The large meters for the University would not have been running for the same amount of time so they would not be showing the same accuracy everybody else does. Mr. Coleman said they do have testing results for all the large meters so their historical usage could be taken and adjusted based on the accuracy data from the large meter testing.

Mr. Markham's next question was, when comparing industries and industry standards, were they separated by those which were for-profit, such as Artisan, Suez or

United, etc., and those that were public. There were different goals and different reasons for being in business. Ms. Kumar said that was true. The industry standard guideline she referred to by the American Water Works Association, how the rate study was done for a public utility differed from how rate studies were done for private entities like Artisan. The fundamental difference in a public utility was that it was done on a cash basis where everything was looked at as cash coming in and cash going on. That was the basis on which the rate study was done even though from an accounting perspective, all the accounting would be done on an accrual basis to meet requirements. The rate study and financial planning was typically done on a cash basis, especially for all inside city customers. Mr. Markham asked if this could be narrowed down to the college town with the unique situation with the University in terms of how they fund the City

Ms. Kumar said they in terms of cost (the numerator) they looked at the operating costs, the capital costs, what the capital program looked like and how it would be funded in terms of the mix of debt service versus the cash financing of capital. That gave the numerator for the study. Then the denominator became the total billing unit – water consumption, sewer flow, etc. In the case of stormwater which was based on impervious area, it would be looked at from a customer category basis, so the University would come under the educational category of customers. This was definitely a unique situation. Black & Veatch dealt with it when they did the financial planning study several years ago. When they do cost of service they would be looking at the large customer and there would be some policy decisions they will be working on with the City and Council in terms of rate making. The key thing was to make sure that whatever they recommend was defensible from an equity standpoint.

Mr. Markham noted there were two pieces in there. Regarding the stormwater fee, he was not sure there was a consensus yet to do this. He wanted to be sure that was clear. The other point had to do with the last rate study in terms of fairness and were surprised when it came to the University and the rates. He felt like there was not a lot of choice based on the facts that were presented there. That was why he was concerned about this particular rate and did not want to end up with a surprise for the residents and windfall for others.

Based on Ms. Kumar's perspective on the last rate study, the last rate study was only a financial planning study. The last rate study did not go to the next step of doing the cost of service, which was where the issues of residential versus non-residential would have been addressed. Mr. Markham pointed out that the City had cost of service for the electric. That was where his hesitation was because of how that ended up for the City and the residents.

Mr. Markham pointed out that the City's bond market rating was the City as a whole. They did not look at each individual enterprise fund so that was not a relevant point. Mr. Vitola said it was true that the City did not issue revenue bonds so the water fund alone was not rated and did not need to be rated. However, the double AA+ rating was predicated on the strength of the underlying utilities to generate a robust transfer into the general fund. Otherwise, if the general fund only was rated, it would not be investment grade with multimillion dollar deficits. So yes, it was all looked at together but electric, water, and sewer all do work together to support the AA + overall rating. Mr. Markham said the only reason we would want individual enterprise was if we were going to float bonds to do work in a particular, say water or sewer, then we would want to do that so we had the correct fund pay for the bond. Mr. Vitola said that was correct. The correct funds still paid for the bonds even though they were general obligation bonds of the City, so they were backed by the full faith and credit of the City's taxing ability although because, for instance the 2011 G.O.'s that supported the construction of the reservoir, that debt service was still charged to the water utility even though it was a G.O.

Although this item was not open to public comment, Ms. Sierer would do so if Council was in agreement. (There was no objection from Council.)

Donna Means, District 5, thought Mr. Markham's questions were very insightful and helpful and needed to be asked and answered.

Helga Huntley, District 1, did not understand why the City administration asked to waive the bid process and circumvent the intentions of our laws for this particular rate study which was four times the limit that our law had for putting things out to bid. She understood that Black & Veatch did the previous study and it was possible that they would be the winning bidder, but she recommended that Black & Veatch put in a proposal just like other firms.

MOTION BY MR. CHAPMAN, SECONDED BY MS. HADDEN: THAT THE RECOMMENDATION FOR THE CONSULTING ENGAGEMENT BE AWARDED TO BLACK & VEATCH MANAGEMENT CONSULTING, LLC IN THE AMOUNT OF \$98,080, NOT TO EXCEED \$100,000 FOR A WATER, SEWER, AND STORMWATER RATE STUDY AND TO APPROVE THE TRANSFER OF \$21,840 FROM THE WATER FUND OUTSIDE ENGINEERING BUDGET LINE 8120 TO THE SEWER FUND OUTSIDE ENGINEERING BUDGET LINE 8120 TO APPROPRIATELY ACCOUNT FOR THE SEWER FUND'S SHARE OF THE STUDY'S COST.

MOTION PASSED. VOTE: 4 to 2.

Aye – Chapman, Hadden, Ruckle, Sierer.

Nay – Gifford, Markham.

Absent – Morehead.

11. **4. APPOINTMENT TO BOARDS, COMMITTEES AND COMMISSIONS:**
A. Reappointment of Robyn Harland to an At-Large Position on the Community Development/Revenue Sharing Advisory Board to a Term to Expire March 15, 2019

01:06:01

(Secretary's Note: Items 4-A, 4-B, 4-C and 4-D were considered together.)

There were no Council and no public comments.

MOTION BY MS. SIERER, SECONDED BY MR. RUCKLE: TO REAPPOINT ROBYN HARLAND TO AN AT-LARGE POSITION ON THE COMMUNITY DEVELOPMENT/REVENUE SHARING ADVISORY BOARD, TERM TO EXPIRE MARCH 15, 2019.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Morehead.

12. **4-B. REAPPOINTMENT OF TED ELDER TO AN AT-LARGE POSITION ON THE COMMUNITY DEVELOPMENT/REVENUE SHARING ADVISORY BOARD, TERM TO EXPIRE MARCH 15, 2019**

There were no Council and no public comments.

MOTION BY MS. SIERER, SECONDED BY MR. RUCKLE: TO REAPPOINT TED ELDER TO AN AT-LARGE POSITION ON THE COMMUNITY DEVELOPMENT/REVENUE SHARING ADVISORY BOARD, TERM TO EXPIRE MARCH 15, 2019.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Morehead.

13. 4-C. REAPPOINTMENT OF KATHERINE SHEEDY TO AN AT-LARGE POSITION ON THE CONSERVATION ADVISORY COMMISSION TO A TERM TO EXPIRE MARCH 15, 2019

There were no Council and no public comments.

MOTION BY MS. SIERER, SECONDED BY MR. RUCKLE: TO REAPPOINT KATHERINE SHEEDY TO AN AT-LARGE POSITION ON THE CONSERVATION ADVISORY COMMISSION, TERM TO EXPIRE MARCH 15, 2019.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

14. 4-D. REAPPOINTMENT OF NANCY RICH TO AN AT-LARGE POSITION ON THE BOARD OF ETHICS TO A TERM TO EXPIRE FEBRUARY 15, 2021

There were no Council and no public comments.

MOTION BY MS. SIERER, SECONDED BY MS. HADDEN: TO REAPPOINT NANCY RICH TO AN AT-LARGE POSITION ON THE BOARD OF ETHICS, TERM TO EXPIRE FEBRUARY 15, 2021.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

15. 4-E. APPOINTMENT OF JANAKI RAM RAY TO A MAYORAL APPOINTMENT ON THE NEWARK HOUSING AUTHORITY TO A TERM TO EXPIRE JANUARY 15, 2019 AND TO THE NEWARK HOUSING AUTHORITY REPRESENTATIVE POSITION ON THE COMMUNITY DEVELOPMENT/REVENUE SHARING ADVISORY COMMITTEE TO A TERM TO EXPIRE MARCH 15, 2019

01:08:08

Ms. Sierer reported that Mr. Ray, District 1, moved to Newark to retire and was interested in serving on the Newark Housing Authority and being their representative on the Community Development/Revenue Sharing Advisory Committee.

There were no public comments.

MOTION BY MS. SIERER, SECONDED BY MR. GIFFORD: TO APPOINT JANAKI RAM RAY TO A MAYORAL APPOINTMENT ON THE NEWARK HOUSING AUTHORITY TO A TERM TO EXPIRE JANUARY 15, 2019 AND TO THE NEWARK HOUSING AUTHORITY REPRESENTATIVE POSITION ON THE COMMUNITY DEVELOPMENT/REVENUE SHARING ADVISORY COMMITTEE TO A TERM TO EXPIRE MARCH 15, 2019.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

16. 5. SPECIAL DEPARTMENTAL REPORTS:

- A. Special Reports from Manager & Staff:
 - 1. 2016 Revenue Stabilization Adjustment – Finance Director

01:09:31

Mr. Vitola reported that the City's revenue stabilization adjustment, or RSA, existed to ensure the City achieved its electric margin requirements regardless of wholesale

power cost fluctuations or the electric system's sales and operations. Last year Council updated the Code to more accurately and clearly reflect the intent of the original RSA legislation in 2011. The Code change was done largely for clarity, but the same calculations were followed since 2011 and followed it again this year with this recommendation which would result in a return to electric users of 3.35-tenths of a penny per kilowatt hour. The calculation was the result of three components. First was the wholesale power cost adjustment. Approaching the end of 2015 there were signals that the wholesale power cost would increase to the point of possibly tipping the RSA positive or an assessment to rate payers. Capacity and transmission costs were increasing at high levels but the energy-only component of the electric rate was being helped out by extraordinarily low natural gas costs. Fortunately, that wholesale power cost was still very low and resulting in a credit to that component of the calculation.

The second component was the adjustment in the rate required to meet the City's budgeted operating margin for the electric fund in 2016.

The third component was the under collection in the electric utility for 2015.

Approaching the end of 2015, weak electric sales were endured due to the mild summer. There were weak sales characteristic of the shoulder months in the fall, then the unseasonably warm weather through December was unfolding and impacting the sales at the time. It was expected there would be an under collection for 2015. Thankfully, though, the under collection was small. It impacted the calculation by only 1/10 of a penny.

The three components combined for a credit back to rate payers of just over three-tenths of a penny, or about \$2.60 per month for the average residential user in the City. This was less of a return than in the last two years, but Mr. Vitola was pleased that it remained a credit for at least another year. It was recommended that Council approve the RSA at \$0.00335 per kWh, effective March 15, 2016.

Mr. Gifford noted that last year there was a big discussion about the formula used to calculate this. He asked Mr. Vitola to elaborate on what was decided last year, because last year he provided the actual calculation. Mr. Vitola said because the Code was changed he showed the existing calculation in the Code and the new calculation. There was a combination of two things: (1) The RSA calculation was somewhat unclear and cumbersome; (2) Even though the Code changed in 2011, the old Purchased Power Cost Adjustment charge was left in the Code by accident. When the rate study was done in 2011, the rates were set at a level that would achieve a desired margin based on that year's operations and that year's cost of wholesale power which was 9.33 cents per kWh. Now, whatever the actual or expected for the upcoming years cost of wholesale power was expected to be, it was subtracted from the base and then scaled up by the expected losses because the purchases were always higher than the sales due to line losses. That delta, scaled up by the losses, was the main component of the RSA. Then the dollars required for the operating budget were spread over the expected kWh sales for the second component. Then the third component looked back to over or under collections for the year and again was spread out by expected sales. Mr. Gifford thought the piece around the wholesale power cost was the one Council had trouble with last year.

There were no public comments.

MOTION BY MS. HADDEN, SECONDED BY MR. RUCKLE: THAT THE RSA CREDIT BE ADOPTED IN THE AMOUNT OF \$0.00335 PER KWH FOR 2016 EFFECTIVE MARCH 15, 2016.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Morehead.

17. 5-A-2. RECOMMENDATION FOR INSURANCE COVERAGE 2016-2017 – FINANCE DIRECTOR

01:14:16

Mr. Vitola reported that after soliciting quotes from all of the City's incumbent insurance carriers, the brokers at Willis returned a reasonable renewal for this year and into 2017. The last two renewals were extraordinary going back to 2014, with two consecutive decreases in the total premium. He did not expect that every year, but even though the premiums were up this year, they were up very slightly, only 1.4% in total. This was a strong renewal for the third consecutive year.

The two most notable items impacting the renewal were the general liability coverage and the auto coverage. The City had no major negative general liability experience over the last two years which helped drive the premium down last year, but general factors, such as the population growth, the increasing size of the total budget and the natural growth in the personnel budget were driving up the liability premium. The increase in the liability premium accounted for almost the entire increase in the total premiums from last year to this year.

The auto coverage was down again this year after a small increase last year. There was higher exposure in terms of more drivers and newer vehicles with higher replacement values, so another increase was expected, but instead, the premium was actually down. That was a result of lower claims over the last four coverage periods and a higher deductible over the last three periods. Auto claims experience was great. Since 2011-12 coverage year, claims dropped from 25 to 11 the next year to an average of eight over the last three years. The dropping claims coincided with the installation of the GPS in the vehicles. Claims were down by about 66% for three years in a row. After the units were installed, there was a reduction of speeding incidents by more than 82% and almost immediately among other habits that reduce risk, like seat belt usage and less hard stops.

Aside from the liability in auto, every other insurance line either remained flat or increased marginally. Since the 2013-14 policy, the City's premium levels reduced to save a cumulative total of \$159,000. That's definitely rare to see from year to year in insurance.

This year, it was recommended that Council authorize staff to bind coverage with the carriers reported: ACE, now Chubb after the two merged and ACE acquired Chubb for the liability coverage; Chubb for property, crime, fiduciary and the inland marine floater, which covered the SmartMeter infrastructure; CNA for the auto coverage; Scottsdale for the umbrella policy, and SISCO and Willis to serve again as third-party claims administrator and brokerage firm respectively.

There were no Council or public comments.

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: TO ACCEPT THE RECOMMENDATION FOR INSURANCE COVERAGE FOR 2016-2017 AS OUTLINED IN STAFF'S MEMO DATED MARCH 2, 2016.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Morehead.

18. 5-A-3. BOARDS AND COMMISSIONS REVIEW COMMITTEE RECOMMENDATIONS REGARDING THE BOARD OF ETHICS

01:17:35

Ms. Bensley reported at the November 24, 2015 meeting of the Boards and Commissions Review Committee, they reviewed the Board of Ethics, with a final report to Council being approved at their January 26th meeting. The Board received an overall positive review from the Boards and Commissions Review Committee. They issued five recommendations overall which were outlined in Ms. Bensley's memo of March 2, 2016. They included the recommendation for additional training, potential expansion of the Board of Ethics from five members to seven, changes in the frequency and format of meetings, considering more clearly defining an appeals process for the Board's decisions, as well as removing the requirement for electing a secretary.

Staff supported the recommendations made by the Boards and Commissions Review Committee regarding the Board of Ethics being incorporated into the larger Ethics Code review underway that was requested by Council at its December 24, 2015 meeting. This would streamline the process by requiring a single meeting of the Board of Ethics, a single submission to the State Public Integrity Commission and would be a more efficient use of staff time. Specific staff comments regarding the Boards and Commissions Review Committee recommendations would be included as part of that process. The tentative timeline for the Ethics Code review would be a June Board of Ethics meeting to consider proposed changes, in late June or July, the submission of the Board of Ethics comments to Council for feedback prior to submission to the Public Integrity Commission, late July or early August, the submission to the Public Integrity Commission for comments of those proposed changes, and in late August or early September, Council consideration of the final ordinance updating the Ethics Code.

This was brought to Council at this time since the Committee did the review and staff wanted to make sure that their recommendations got in front of Council, but the recommendation was that action be delayed and be part of the overall holistic Ethics Code review that was underway.

The Chair opened the discussion to public comment.

John Morgan spoke in his capacity as the Vice Chair of the Boards and Commissions Review Committee, which looked at the Board of Ethics. From his observations in the last couple of years, all members of Council conducted themselves in a very ethical manner. Looking through the rules of ethics, in the City of Newark and more broadly in the State of Delaware, the State Ethics Code especially was very hard to understand. One simple case was there were regulations on what people were allowed to do if it concerned a private enterprise. He asked the question whether the University of Delaware was a private enterprise. It seemed there was no clear answer to that question which came up when employees at the University of Delaware served on City boards and what they were supposed to do or not to do.

Dr. Morgan thought it would be a good idea for Newark going ahead to have a clearly understandable Ethics Code which was at least as stringent as State law but much easier to understand. He thought that would be a good project in the months ahead.

MOTION BY MS. HADDEN, SECONDED BY MR. RUCKLE: TO SUPPORT THE RECOMMENDATIONS MADE BY THE BOARDS AND COMMISSIONS REVIEW COMMITTEE REGARDING THE BOARD OF ETHICS BEING INCORPORATED INTO THE LARGER ETHICS CODE REVIEW UNDERWAY THAT WAS REQUESTED BY COUNCIL AT ITS DECEMBER 14, 2015 COUNCIL MEETING.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Morehead.

19. 6. RECOMMENDATIONS ON CONTRACTS & BIDS:

- A.** Recommendation to Award Contract No. 16-01 – Furnishing Labor and Equipment for Aerial Line Reconductoring

01:22:27

Mr. Vitelli stated that the purpose of Contract No. 16-01 was to supply labor to install larger conductors on Nottingham Road, from South Main Street to Radcliffe Drive, in order to prepare for an upcoming voltage upgrade from 4,160 volts to 12,470 volts. Copies of the contract were advertised in the News Journal and sent to three vendors. There was a pre-bid meeting. Four vendors attended. The City received three responses to the contract. Tri-M Group was the low bid at \$82,500. NUI was \$119,000. Blue Hen Utility Services was \$129,980. Tri-M Group was awarded the contract in 2013 for upgrading South College Avenue at Main Street and did a good job. They were also the contractor who updated the City's main substation in 2008-2009. Funds to cover the work were available in the Electric Department Capital Project E1403, Conductor Upgrades, in

the amount of \$190,000. The funding was also going to be used for the material needed for the project, so it was recommended that this contract be awarded to Tri-M Group, Kennett Square, PA, in the amount of \$82,500.

There were no Council or public comments.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: TO APPROVE THE RECOMMENDATION TO AWARD CONTRACT NO. 16-01, WHICH FURNISHES LABOR AND EQUIPMENT FOR AERIAL LINE RECONDUCTING TO THE TRI-M GROUP FROM KENNETT SQUARE IN THE SUM OF \$82,500.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Morehead.

20. 6-B. RECOMMENDATION TO AWARD CONTRACT 16-02 – PURCHASE OF A 10/12.5 55 DEGREE RISE/11.2/14 65 DEGREE RISE POWER TRANSFORMER

01:24:41

Mr. Vitelli explained that the purpose of this contract was to install a 12,470 volt transformer at the West Main Street substation in order to split up increasing load on Cleveland Avenue. The transformer was needed to back up transformer 76 at West Main Street substation and transformer 80 at East Main substation. It would also back up units 45 and 41 at West Main and unit 88 at Phillips and unit 78 at Sandy Brae. The contract was advertised in the News Journal and posted on the City website. The bid documents were sent to 14 vendors. Ten sealed bids were received. They ranged from \$322,829 to \$470,976. Virginia Transformer, the low bidder, met all the specifications and had no exceptions to the bid. In addition, they were awarded the transformer contract last year and the City was very satisfied with the transformer that was delivered. The price last year was \$339,249, so this job was about \$17,000 cheaper for the same transformer.

Funds to cover the transformer and additional needed equipment for the upgrade at the substation were in the Electric Department Capital Improvement Program Project E1105, New Transformers and Circuit Breakers, in the amount of \$606,000. It was recommended that Contract No. 16-02 be awarded to Virginia Transformer of Roanoke, Virginia, in the amount of \$322,829.

There were no questions from Council.

The Chair opened the floor to public comment.

Donna Means, District 5, asked why this project needed to have bids, while the earlier project did not. Ms. Sierer noted that the bid process had been waived on the earlier project by Council. Ms. Means asked why the bid process was waived. Ms. Sierer requested that Ms. Houck follow up with Ms. Means regarding her questions after the meeting as they were not on the item being discussed.

The discussion was brought back to the table.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: TO AWARD CONTRACT 16-02 TO VIRGINIA TRANSFORMER CORPORATION OF ROANOKE, VIRGINIA, IN THE AMOUNT OF \$322,829 FOR THE PURCHASE OF A 10/12.5 55 DEGREE RISE POWER TRANSFORMER.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Morehead.

21. 6-C. RECOMMENDATION TO AWARD CONTRACT NO. 16-03 – PURCHASE OF ONE NEW 55' AERIAL LIFT, UTILITY BODY AND CHASSIS

01:28:25

Mr. Vitelli noted this contract was to replace Vehicle 122, a 2004 International 4300 bucket truck with 85,000 miles and 12,000 engine hours, which converted to 420,000 miles from a dealer standpoint. In addition to the high mileage and engine hours, this truck had hydraulic and engine oil leaks and sensor issues. There was concern about the reliability of the truck for another year. Contract No. 16-03 was advertised in the News Journal and posted on the City website. Copies of the bid documents were delivered to six vendors. Three sealed bids were received. Brian Hoskins Ford bid \$183,300 with an \$18,000 trade-in, so the final price was \$165,300. Beltway International bid \$197,637 with an \$18,000 trade-in. The final price was \$179,637. Bayshore Ford bid \$209,908 with a trade-in of \$18,000, for a final price of \$191,908.

The specifications for this vehicle were general in form. However, staff did specify that the truck needed to be either a 2016 Model Year Freightliner or International 4400 Series Truck Chassis with a Cummins Series diesel engine and an Allison New World 3000RDS five-speed automatic transmission for the following reasons:

- All medium-duty truck manufacturers used this combination of engine or transmission.
- The Maintenance Division was already familiar with the software and had adequate training to maintain vehicles with this combination of engine and transmission.
- This would allow the City's fleet to become more standardized, therefore, making it possible to quickly diagnose and repair units. Parts would be in stock and readily available.
- The City currently had 43 vehicles with the Allison transmission, 18 vehicles with the Cummins engine, and 29 International vehicles in its fleet.

Brian Hoskins Ford, the lowest bidder, did not meet the specifications of the contract for the following reasons:

- The truck chassis would be a Ford F750, which was an all new model year. Prior to this year, Ford used the Cummins engine and Allison transmission combination in their trucks.
- The truck was at the very top of its new gross vehicle weight rating. If the City were to purchase the vehicle, it would be operating at the maximum gross vehicle weight rating every day.
- The transmission max out on the Ford was 37,000 pounds. The Allison transmission worked all the way up to 80,000 and had been virtually ironclad in the City's entire medium- and heavy-duty fleet trucks. The Allison transmission was in every one of the City's Class 6, 7 or 8 trucks.
- The Ford engine did not meet the torque specifications of 750 pounds per foot. It was at its maximum at 725 pounds per foot.
- The contract stipulated an 84-month warranty. Ford only offered 60 months and Cummins offered 72.

For this reason, staff recommended the contract be awarded to Beltway International, the second-lowest bidder. They met all the specifications of the contract. Funds to cover the cost of the contract were available in the Electric Department Capital Improvement Program, under the Equipment Replacement Fund, in the amount of \$195,000.

It was therefore recommended that Mayor and Council award this contract to Beltway International, the second-lowest bidder, for a total price of \$179,637, after the trade-in of \$18,000. The City's Senior Mechanic concurred with this recommendation. Mr. Vitelli noted that staff did see if the vendor had made any bucket trucks with this Ford engine and transmission, and they had not made one yet. This one would be the first, which was one of the reasons for the recommendation.

The Chair opened the floor to questions from Council.

Mr. Ruckle noted that in his two years on Council it seemed like the high bidders on contracts were the local companies, such as Bayshore Ford, which were consistently 20-30% higher than the low bid. This meant that the City did not give local business to local vendors because they were so much higher. He asked if anyone ever went back to them and said that the City would like to keep their business local but the local companies were higher. Ms. Houck stated that the vendors got the results of the bids and that it was a sealed bid process. The expectation was that, when they were bidding it, they were taking it seriously and giving the City the best price they could give. Mr. Coleman added that the truck that Bayshore bid was the more comparable truck to the one that was selected there. It was from a Ford dealership, but it was their medium-duty truck class that was on a Western Star Chassis. It was a totally different truck. It would have met the spec. It was just a more expensive one.

The Chair closed the floor to questions from Council.

There were no public comments.

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: TO AWARD CONTRACT NO. 16-03 TO BELTWAY INTERNATIONAL LLC, DBA NORTH EAST INTERNATIONAL, FOR THE TOTAL PRICE OF \$179,637 AFTER A TRADE-IN OF \$18,000.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Morehead.

22. 7. FINANCIAL STATEMENT: (Ending December 31, 2015)

01:34:45

Mr. Vitola presented the unaudited financial statements for 2015, which were distributed to Council last week. The operating surplus rebounded to within 2% of the budget for the year, thanks primarily to the realty transfer taxes, or RTT, that were strong in December as a result of the sale of Rittenhouse property next door. Staff knew that was coming and that the money would not hit until December. Otherwise, the trends discussed in the last three monthly reports had not changed much at all.

While it was the governmental funds that rebounded thanks to the transfer taxes in December, the enterprise funds finished the year with a negative variance to budget. Weak electric sales were mentioned during the RSA presentation. The electric margins were down for the year as a result, which caused the under collection.

Water and sewer sales, likewise, remained behind budgeted volumes, which was driving down margins too. November's spike in usage helped but December water buying was down, compared to December 2014. Fortunately, expenditures in the enterprise funds continued to track below the budget for 2015. The City ended the year almost 8% under budget to help mitigate the impact of the lower margins. All department directors were aware of the revenue shortfalls, so they did a great job avoiding unnecessary spending through the end of the year.

Mr. Vitola noted that during the November presentation, Mr. Markham asked specifically what the City saved money on in the enterprise funds. Some of it was personnel, as Mr. Vitola reported at the time, but now he could confirm that all four enterprise funds showed a positive personnel expense variance. Plus, the City had lower than expected merchant processing and banking fees, lower water and sewer line maintenance expenses, and lower utilization of outside engineering services. Some of that was the result of the conservative estimation during the budget process. For example with personnel, full staffing would always be budgeted for the entire year. That did not always happen. Some of it was cost control on the part of the Electric, Water and Sewer funds. He noted that while some of it could be luck, in terms of lower than expected problems with water and sewer lines, he would argue that Mr. Coleman's team was putting infrastructure funding to good use and repairing the worst of the worst pipes first.

The other funds benefited from lower fuel costs all year and lower than usual insurance claims, that was impairment, disability and medical claims, not the claims experience mentioned earlier with the renewal of the commercial insurance lines.

The City's cash position was \$29.2 million at the end of December. That was made up of \$7.9 million in operating cash and \$21.3 million in the City's cash reserves. One of the City's current liabilities was the electric regulatory liability, which was flipped to a debit balance, representing the under collection through the end of the year, which was mentioned as part of the RSA discussion.

The Chair opened the floor to questions from Council.

Mr. Markham asked when the Green Energy Fund would have paid off all the obligations and go to the 25% reimbursement. Mr. Vitola noted that he still owed Mr. Markham that follow up and would get back to him. Mr. Markham suggested putting it on the McKees form for him with a running balance of what was owed or what was in the Green Energy Fund. He assumed it would be zero if the City owed money. Mr. Vitola stated net right now was zero, or soon to be zero.

The Chair closed the floor to questions from Council.

There were no public comments.

MOTION BY MR. MARKHAM, SECONDED BY MR. GIFFORD: TO ACCEPT THE UNAUDITED DECEMBER 31, 2015 FINANCIAL STATEMENT AS PRESENTED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Morehead.

23. **8. ORDINANCES FOR SECOND READING & PUBLIC HEARING**
A. 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

01:39:20

Ms. Bensley read Bill 16-07 by title only.

MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 16-07.

Mr. Herron reported that the State's drug laws were recently amended to create a civil penalty for certain marijuana offenses. Currently, Newark police had to bring these citations in State Court pursuant to State law because the City's Code had no comparable provision. The purpose of this bill was to allow Newark and University of Delaware officers to cite civil marijuana offenders under the City Code in Newark Alderman's Court.

The Chair opened the floor to questions from Council.

Mr. Markham asked if this bill was taken straight from the State law. Mr. Herron confirmed that it was. Mr. Markham asked if there were any significant differences that he wanted to point out. Mr. Herron said there were none and that the purpose was to take what the State had done and to give City officers the ability to bring the citation in the Alderman's Court, rather than have them go to State court. Mr. Markham noted it was not just City police traveling but also the residents or anyone living within the City could go to Alderman's Court rather than downtown Wilmington for their court case, which Mr. Herron confirmed was the case.

The Chair closed the floor to questions from Council and opened the floor to public comment.

Jeff Lawrence, District 3, understood the intent of the bill, but felt the City could elect not to impose a fine for the consumption of a plant. Mr. Chapman noted that the City needed to not be in conflict with the state law and code, and so Newark Police Department was not in a position where they could just not enforce a state law. They were just in a position where they could not bring a violation in front of the Alderman's Court. Mr. Herron confirmed that was the case. Mr. Gifford asked if the City was required to enforce the State law, which Mr. Herron confirmed they were. Mr. Herron noted that the City's laws could be more restrictive than the State's, but that they could not be less restrictive. Discussion ensued regarding the purpose of the bill and the amendment process. Mr. Lawrence felt that Council could give direction to the police to not enforce this law and that enforcing laws was a choice of the police and they could choose not to enforce it.

John Morgan, District 1, noted that in the 1970s, the Berkley City Council asked the police to make marijuana enforcement their lowest priority, however, he was not suggesting that for Newark. He felt if someone received a ticket for marijuana possession, it would probably be a lot easier for everyone involved to go to Alderman's Court than to the state court.

The discussion was brought back to the table.

MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: TO ADOPT BILL 16-07, AN ORDINANCE AMENDING CHAPTER 22, POLICE OFFENSES, CODE OF THE CITY OF NEWARK, BY ADDING A NEW ARTICLE XVIII, MARIJUANA, AND CREATING A CIVIL CITATION FOR POSSESSION OF MARIJUANA.

MOTION PASSED. VOTE: 5 to 1.

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

Nay – Gifford.

Absent – Morehead.

(ORDINANCE NO. 16-11)

24. 8-B. 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

01:49:51

Ms. Bensley read Bill 16-08 by title only.

MOTION BY MR. RUCKLE, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 16-08.

Mr. Fortner noted that there was a matter of concern from DNREC in their PLUS Review letter that had been received that day that may be an issue with their final certification of the Plan. Therefore, the Planning & Development Department, in consultation with the City Solicitor, recommended postponing the adoption of the Comprehensive Development Plan V as an ordinance until after City staff had an opportunity to review the matter with DNREC and address the concern. Instead, staff was recommending tonight that Council only review the recommended changes and edits from draft Comprehensive Plan from Council members, the Planning Commission, City staff and public comment, and give direction to staff.

Mr. Fortner reviewed the history of the development of the Comprehensive Plan V through community outreach, Planning Commission meetings, public hearings and City Council workshops. On October 5, 2015, Council voted to send the Plan back to the Planning Commission for final review, which they completed on January 5, 2016. Mr. Fortner reiterated the request for Council direction regarding the January 5, 2016 Plan draft and the February 10, 2016 memo with the Planning Commission's comment. He noted that on February 24, 2016, as required by State law, the Planning and Development Department presented the revised draft of the Plan to the Preliminary Land Use Service (PLUS) to review at their regularly scheduled meeting.

The memo, dated March 14, 2016, regarding comments from the PLUS review meeting in February and follow up discussions with state officials. The memo outlined recommendations and suggestions from State agencies intended to improve the document through their suggestions. The Planning & Development Department reviewed these suggestions and provided recommendations in bold for review to give direction to staff. Also, as Council reviewed this revised draft, Mr. Fortner received suggestions via email from Messrs. Gifford and Morehead for edits. Those were in a memo dated March 14. These were non-substantive edits recommended by councilmen Gifford and Morehead. The Planning & Development Department reviewed each of the edits and concurred with the changes.

Finally, there was the PLUS review letter, which was sent to the Planning & Development Department this afternoon by pdf. The PLUS review letter had a concern on page 3. At the meeting and follow up discussion, there was no indication that a State agency had any issues that would have any potential bearing on certification, but when staff got the letter, there was a concern identified. Because of the PLUS review letter with the potential certification issue, the Planning & Development Department, in consultation with the City Solicitor, recommended that Council postpone the adoption of Comprehensive Development Plan V as an ordinance until City staff had the opportunity to review the matter with DNREC and address the concern. Instead, staff was recommending Council only review recommended changes and edits to the draft Comprehensive Plan from Council members, the Planning Commission, and City staff to give direction to staff. These changes would be incorporated into the revised draft Plan.

Staff would work to address certification concern. Once the issue was resolved, staff would resubmit the plan to the Office of State Planning. The Office of State Planning would issue another letter within 20 working days of submitting that Plan and would determine all certification issues had been addressed, and, at that time, the Planning & Development Department would place the draft of the Comprehensive Development Plan on the Council agenda with changes from this meeting for adoption as an ordinance.

The Chair opened the floor to questions from Council on the memo with Messrs. Gifford and Morehead's comments.

Mr. Gifford asked in reference to the second bullet on page three, action item 4, if staff was removing the entire reference or was the information below what it was being changed to. Mr. Fortner stated that he recommended deleting the entire sentence, which was a reference to Center Street and did not need to be in that action item. Mr. Gifford asked Mr. Markham to confirm that he had wanted the New Center Village references removed, which Mr. Markham confirmed.

Mr. Gifford asked for clarification on page 2 of the memo, regarding the energy conservation reference on page 84 of the Plan draft, it said staff changed it from \$0.21 to \$0.36 and 50% to 33.33%. He asked if that energy conservation program was still in place. Mr. Fortner noted the percent had not changed. Mr. Gifford asked if it was a State program. Mr. Fortner confirmed it was, but that the residents paid for it through their utility program. Mr. Gifford noted that one was still in place, but another program listed above it was gone. He asked if it was now only McKees Park where credits could be purchased, which Mr. Fortner confirmed.

Ms. Sierer asked for any objections from Council regarding directing staff to make these changes. There were no objections.

The Chair opened the floor to questions from Council on the letter from the Office of State Planning.

Mr. Gifford asked which comment on page 3 was the recommendation that caused the need for the approval process to be paused. Mr. Fortner stated it was the three bullets in the middle of page 3. The paragraph before those included the comment, "The applicant has not met this requirement. This could be a certification issue." It was reviewed with Mr. Coleman and it was determined that the City did have a map with the

requested features, but staff needed to clarify with Kevin Coyle, the reviewer, regarding what the State wants because staff thought the City had met this.

Mr. Markham asked for clarification that the "Division of Water" reference was to the State, not the City, which Mr. Fortner confirmed was correct. Mr. Markham asked if this issue was publicized to the municipalities, so the City would have known to expect it. Mr. Fortner stated he did not know, but that he was not expecting a certification issue in the PLUS letter as he did not get any indication at the PLUS meeting that there was a certification issue with this. He noted there was previous correspondence but staff thought this was addressed during that review.

Mr. Markham asked when the City's last Plan was approved. Mr. Fortner noted it was 2008.

Ms. Sierer stated that the plan was to make the necessary changes and/or have the discussion with the State and then send the Plan back to the State for review. Mr. Fortner stated that was correct and restated the steps of the process. Ms. Sierer asked if they could anticipate the Plan coming back to Council in May. Mr. Fortner stated it would probably be in May.

Mr. Gifford noted that he liked the recommendation in the PLUS letter regarding the mid-block Library Avenue crossing and the suggestion of looking at having the bus stop moved. He thought the City maybe should look into that even though it was not part of the WILMAPCO and Newark Transportation Plan. He felt that was a lot of lights and crossing signals for that area. Mr. Markham and Ms. Sierer both stated they were fine with that suggestion.

Mr. Markham noted that on the Planning Commission document, page 1, it talked about the Newark Shopping Center being approved and that the project was completed in May 2015. He thought it was still going on and noted the date or the wording needed to be changed.

The Chair closed the floor to questions from Council and opened the floor to public comment.

Helga Huntley, District 1, appreciated how much effort had gone into making this document as good as it currently was and thanked Council and City staff for their work. She asked for information regarding the objections in the PLUS review. Mr. Fortner gave her a copy of the letter to review. Mr. Markham asked that the letter be posted on the website. Ms. Huntley asked for confirmation that these were items that DNREC told the City today would keep them from approving the Comprehensive Development Plan if it were passed, which Mr. Fortner stated that the issue may keep the State from approving the Plan. Ms. Huntley asked for the memo referring to Messrs. Gifford and Morehead's comments also to be posted on the website. She also thought it would be a good idea for Council to go over all of the action items in the Plan prior to final approval to make sure everyone was on board with all of the action items as they had changed over the course of the Plan development. She thought they were very important, very specific and were the direction being given to City staff and should be reviewed again prior to approval.

Mr. Gifford noted that another comment made during the meeting was that Chapter 12 used to refer to all of the action items. The State wanted to see that chapter expanded and some dates put around their action items. He thought it would not be a bad idea to look at those actions and see if they were still what Council wanted and try to put some dates on some of them, if possible. Mr. Fortner noted that staff thought it best not to include dates just because the dates then become law and things become urgent issues sometimes, for example, accessory use. Staff decided to keep the Plan flexible. The Planning Commission had a work plan, and every year they would review that. They would have a quarterly report with all the action items on it, while giving an update on each of those action items. Mr. Gifford suggested that could be expanded and put in Chapter 12.

John Morgan, District 1, endorsed Ms. Huntley's suggestion about reviewing individual action items to make sure Council really wanted to do them, and endorsed the concept of keeping flexibility in the Comp Plan since it had the force of law, and the City did not want to accidentally lock itself into having to do something by a certain date because it was in the Comp Plan. He felt it was much better to have flexibility and change plans, especially if this was going to be effect for the next 5 to 10 years.

Jen Wallace, District 3, asked for the updated version of the Plan chapters to be posted on the website. She suggested doing some prioritization of action items instead of specific dates such as what was done with the Capital Improvement Plan. This would not lock the City into things by a certain date and a caveat could be added that those priorities could be changed as emergencies arise, but it would give staff direction as to where they should put their energy.

Mr. Fortner noted that he would be creating a new draft of the Plan and would post it online. The Planning Commission work plan referenced earlier would be part of the prioritization.

The discussion was brought back to the table.

Ms. Sierer asked if Mr. Fortner had sufficient direction, which he confirmed he did.

Discussion ensued amongst Council, Ms. Bensley and Mr. Herron regarding when Bill 16-08 should be brought back before Council. It was determined that the date could not be chosen at that point as the course of action would be based on the response from the Office of State Planning regarding whether there was a certification issue.

MOTION BY MS. HADDEN, SECONDED BY MR. RUCKLE: TO POSTPONE THE VOTE ON THE COMPREHENSIVE PLAN UNTIL SUCH A TIME THAT THE STATE APPROVED DOCUMENT CAN BE REVIEWED BY CITY STAFF AND SUBMIT TO COUNCIL FOR FINAL VOTE AND APPROVAL.

Mr. Chapman asked for clarification that verbiage around a specific timeline did not need to be included around the motion. Ms. Bensley stated that there were two potential timelines that could need to be followed based on what response came back from the State regarding the certification issue. Mr. Chapman stated he was fine with that if Council was in good order. Ms. Sierer assumed that staff would be prudent in bringing back the item to Planning Commission, if needed, and Council.

Mr. Markham asked if Ms. Feeney Roser had any concerns with the open time frame. Ms. Feeney Roser stated she did not have concerns with the postponement. She was concerned about voting it down because she thought that meant staff would have to go back to Planning Commission and have them review the Plan. She felt the open time frame made sense.

The Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Morehead.

- 25. 9. RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:**
- A.** Request of Trader's Alley, LLC for a Special Use Permit for Eight Apartments in the BB Zone at the Property Located at 147-163 East Main Street

02:19:57

(Items 9-A and 9-B were heard simultaneously)

Richard Abbott, Esq., represented the applicant, Trader's Alley, LLC. Mr. Abbott was joined by project engineer, Joe Charma, Angela Tsionas, owner of Traders Alley, LLC, and Kerry Haber, project architect.

The request was for a major subdivision plan and a special use permit. The project was located at 147 through 163 East Main Street, the rear area behind the Iron Hill Brewery site. The proposal was to modify the existing rear area to put an addition on the existing building for a four-story building. The first two stories would be structured parking. The third and fourth stories would be a set of eight three-bedroom apartment units.

Mr. Abbott referred to a series of PowerPoint slides during his presentation.

The parcel was zoned BB, and was located in the downtown core area under Comprehensive Development Plan IV. There were 69 total parking spaces in the two levels with 37 parking spaces on the ground level. This was a parking structure, not a traditional urban parking garage. The first or ground level of the parking structure was at the same ground level elevation as the existing surface parking lot unlike the average parking garage. For the first level, there were two separate parking sections so drivers could come in one direction, go all the way down to the end, make a U-turn, come all the way back down just like in the parking aisles on the surface parking lot.

The installation of structural elements would help to regulate the flow. There would be one-way traffic signage to ensure that vehicles going down the parking aisle would not meet head on and one or both of them having to back up which occurred in the current surface parking situation at this site.

Mr. Abbott displayed the architectural renderings which showed the existing building and the new structure that was juxtaposed to the Campus Edge building fronting on Delaware Avenue. The structures would be two story apartments with the main living area on the third story and bedrooms on the fourth story.

Mr. Charma prepared and evaluated a detailed turning template maneuverability analysis from an engineering perspective based on standardized software. The first was for passenger cars to show how vehicles could come in from Main Street and access all the way through the Campus Edge structure to Delaware Avenue. The right side showed some of the maneuvering and the U-turn capability on the parking structure. The medium-sized truck analysis showed how those trucks could access the site while the bigger truck analysis showed how maneuvers could be made through the site and backing maneuvers could be made for purposes of deliveries. Mr. Abbott noted an issue was raised at the Planning Commission about deliveries. He explained there were a number of different ways that deliveries could be made, and one of them was shown in a picture on a weekday morning to a business on Main Street.

Mr. Abbott referenced a summation of the Code compliance points and highlighted the Planning and Development report which concluded that the major subdivision plan was fully Code compliant. He showed examples of similar projects approved by Council within the last three to four years including Astra Plaza, Madeline Crossing, Pomeroy Station and 136 South Main Street, so there was prior precedence established. According to Mr. Abbott the end result of the Planning and Development Department's report on this project recommended that Council approve both the plan and the special use permit subject to all Subdivision Advisory Committee comments and conditions which his client was amenable to.

The standards for architectural design and review provisions were vetted by the Downtown Newark Partnership Design Review Committee. They positively recommended the design. The next set of standards was for the special use permit. The issues of safety, health and other adverse effects were fully reviewed and found to be satisfied under this plan and project. There was prior precedent for projects of this nature with other mixed uses and apartments in this downtown district, and it had all of the proper setbacks.

For the comprehensive development plan purposes, the project was right on point with those purposes. In the more general provisions, Planning Section J, the downtown Main Street area, described multi-family uses such as apartments as an appropriate use designated for that area of the City.

Because it was located in the downtown core, there was a second set of recommendations that applied to this area of the City. Those provisions were satisfied based on apartments on upper floors with parking below, sufficient parking, appropriate building design and contribution to the economics of the downtown area. Those were all satisfied under these circumstances. The project would bring additional benefits because more residents meant more foot traffic, more consumers, more downtown Main Street customers and enhancing the overall economics of the downtown core.

An issue was raised during the course of the process about specific benefits to the City that would be reflected by this project. A project of this magnitude had an estimated construction cost of \$4 to \$5 million and would generate additional revenue in the form of property taxes. It would also be utility customer.

Mr. Abbott pointed out that the parking situation was an improvement at the site because the circulation flow was now going to be regulated. He heard all kinds of negatives about the existing surface level parking lot which was nothing other than aisles with no direction and also because there was a constant trespasser parking problem. He was confident that a separate building would send a message to potential parkers that this might be a place where they would not want to park. A surface lot looked open, it looked available, and it looked immediately usable. A parking structure, however, tended to dissuade people from illegally parking.

The last advantage was that these were large three bedroom apartments of about 1,900 square feet and could be readily converted into condominium ownership. In addition, it opened up the opportunity for rentals to families and young professionals which is something the comprehensive plan encouraged.

Mr. Abbott addressed the subject of the sole objector to the project which was the adjacent property owner. Mr. Abbott reported that they had a whole litany of objections that could be boiled down into three categories. They were Code-based arguments that Mr. Charma and the Newark City staff reviewed and concluded that Code compliance was met.

Objections were also raised about non-code arguments based on other source materials. As Mr. Abbott noted earlier, those issues did not really affect the adjacent owner. The only thing heard from the adjacent owner was the parking situation which Mr. Abbott explained was, if anything, improved.

The other objections were based on a private cross-access and cross-parking easement agreement that was entered into many years ago when his client's property was owned by different owners. (He believed Schlosser and Dennis was the owner at the time.) Schlosser and Dennis had 24 parking spaces. The existing parking lot on his client's property had 45 parking spaces, 8 of which were dedicated to the eight apartment units above Iron Hill. There was a net of 37 parking spaces available. Either owner could park in the other's parking spaces under this cross easement agreement.

Mr. Abbott's client also had its sole means of access from Main Street, which was the lifeblood of the access for this site. The access was also required for a fire lane and was needed for proper circulation flow to go back and forth between Delaware Avenue and Main Street.

As to this agreement, Schlosser and Dennis already sued Mr. Abbott's client in the Court of Chancery. They were claiming there was a violation of the private easement agreement. That issue would be adjudicated in either the Court of Chancery or in the Superior Court. The issue of who had what rights under private easement agreements was not a matter for Newark City Council to debate and to decide.

Lastly Mr. Abbott noted that the main basis for opposition was parking. He felt it did not make sense for the abutting property owner to object because his client would prefer to be able to donate the 37 parking spaces on the ground level of the parking structure to the City of Newark. Because of the easement agreement, they were not at liberty to do that. They proposed on multiple occasions to extinguish the cross-parking agreement so his client would be able to make that donation. That was rejected on multiple occasions. He felt it was counter-intuitive, because this would enable Schlosser and Dennis to have exclusive use of 24 parking spaces that they complained they cannot ever use because of trespassers using those spaces. The proposal would give them 24 exclusive spaces and, if the 37 spaces become available to the City, then they were available to anyone, including Schlosser and Dennis. Today, they had 24 and 37 spaces they had to share.

Mr. Abbott concluded that his client successfully satisfied Code Section 27-21, Chapter 27, Appendix 13 and City Code Section 32-78. He therefore requested that Council vote to support this project and vote in favor of the plan and the special use permit application.

Shawn Tucker represented Schlosser & Dennis, LLC. His client spent several years focused on Code issues related to this project and consulted with experts in the area. He said the reason this drug out so long was because the issues had not been fully addressed.

Mr. Tucker highlighted the fact that the Planning Commission recommended against this application about a month ago because they found that it did not meet the Code. There were also comments in the report and in Planning Department letters from other departments where there were still open issues and the Code was not fully addressed. He respectfully disagreed with Mr. Abbott in that regard.

Some things were put off to a later date, such as the CIP process, but there were issues that go to safety. Safety was one of the critical factors before Council this evening. Mr. Abbott spoke for about 20 minutes and it would be difficult for him to respond fully in 10. He did want Council to hear from the consultants, because they studied this very carefully.

The testimony that the parking was going to be made better was not accurate. Today, there were 41 spots available on the Trader's Alley site. If this was approved there would be 37 on the first floor. The ones on the second floor were not going to be available to customers. They would be available to the residents, not to folks coming in to shop and frequent the businesses. He felt this was going in the wrong direction since there would be fewer parking spots.

He knew Iron Hill's concerns were reported. His client's tenants had concerns as well. The Planning Commission figured that out. Two cars were being provided per unit. With 1,900 square feet per unit, he thought it was far more likely that additional parking spots would be needed but that was in the Code and was met on the second floor.

The first level which was open to customers, that number was going down, not up. This was a real parking problem. More importantly his client is truly concerned for his business and for his tenants because of the impact of the parking structure itself. Mr. Tucker referred to a truck currently parked where the parking structure was proposed to go. This truck would not be able to park there anymore if this project's approved. Today, that truck could come in off of Main Street, park where the parking structure was proposed today and then after unloading, travel through CampusEdge and out to Delaware Avenue. After the parking structure was built, it could not. Vehicles, like the 18-wheelers who deliver to this site would no longer be able to get through from East Main Street to Delaware Avenue or vice versa. They would have to park in the fire lane, back up on Main or park out into Main, which was illegal. He noted there would be testimony tonight of tenants who were ticketed when their deliveries came in that way. That was the issue and the safety issues that naturally followed that. He asked Bill Conway to offer some testimony who is with Century Engineering, and had a lot of experience with traffic and traffic analysis.

Bill Conway, Century Engineering, noted he had about 18.5 years of experience in transportation and traffic design. He noted they were approached about two years ago by Mr. Dennis and he thought the concern was safety. He was asked to perform an independent review of this project not knowing what this project was about. The problem in his expert opinion was that there really was a safety concern with this proposed plan. The concern was directly related to Mr. Dennis's property. What Council saw earlier actually in some of the turning templates up on the screen, those were trucks of WD30 going through the parking lot, going through the garage, and what happened was they actually had to cross over into somebody's lane, so yes, they could make it through if everybody was parked perfectly, but it was going to go against opposing traffic.

He noted the key was the Cisco truck down below. He mentioned earlier, a truck could drive over stripes. It could not drive through a wall in a building. Once this structure was put up, what happened was these larger delivery trucks were not going to be able to maneuver through it. He thought the bigger concern was the deliveries.

Now in the morning they could come in the site and go through, vice versa, and what happened now was with the structure there they could not make it through, so the only access through this building was to physically go in and it was one way out or vice versa so it was one way loop around. The concern was not just the deliveries, it was fire apparatus. The Code said that the most restrictive truck from the City of Newark fire department had to be able to get through this building and that was actually a 2010 Pierson. That truck would now not be able to go in and circulate through the building.

Another point would be the trash disposal. Mr. Conway thought a concern would be how to actually maneuver the garbage truck in. What happened now, they had to come in off Main Street, pull in the building, come in and then with the front loader they would actually have to back out because they could not raise it because they did not want to hit the top of the building. So hopefully, they remembered early in the morning when to get the trash that they had to do something different which was back out.

Mr. Conway noted that one key thing that was especially interesting for the City was the pedestrians and the bikes. One thing that was forgotten with all of these movements, was that these movements could be made through the parking garage if stuff was parked perfectly, but the concern was the backing up, the pedestrians walking. Council heard tonight that the pedestrians had to go on the street not the sidewalk, so now the bicycles had to be on the street, not the sidewalk. It was the concern of multi-point backing up to get in and out of the site.

He thought those were just some brief concerns and they related directly to the access to both parcels. He reviewed an exhibit that showed superimposed the existing parking lot today that was mentioned, and how it would look in the future. The white outline was where the building would be constructed. He pointed out that the vehicle actually would have to come in and go around to come out. This was the circulation where it was one way. What happened was one would just go in and get out. If there was a truck or delivery truck parked there, one was not going to have access. The concern would be if there was a parade on Main Street, there would be concern regarding access to the whole site as a whole, which was one of the safety concerns overall.

Mr. Tucker noted that they had one more consultant they would like to speak if they had time to quickly touch on the special use standards that Mr. Abbott clicked off. It was clear under the special use standards, which were like a mini rezoning, that these were discretionary standards Council needed to apply. Three critical standards:

- Would there be adverse safety impact? Mr. Tucker stated there would be with this plan because of how the deliveries were now going to be cut off. Before the trucks had historically been able to get through there; an 18 wheeler was not going to be able to do that anymore.
- Would there be a detriment, or would this be injurious to property or improvements around the City of Newark. Mr. Tucker noted it would be for his client. That was how his tenants got deliveries now from trucks. There would be less parking available now. The easement, this parking structure was going

directly over top of that easement. He felt the City was here prematurely over this. He felt the Court of Chancery should be allowed to consider this and resolve that issue, otherwise Council was being asked to approve a parking structure on top of an easement, notwithstanding the code issues.

- The Comprehensive Plan, they had heard about tonight. Mr. Tucker stated that the Comprehensive Plan, even the new one that was not adopted just yet, talked about pedestrian friendly and how important that was. He noted it was not pedestrian friendly when trucks were backing up onto Main Street.

Mr. Tucker noted that his ten minutes were up and that it was obviously tough to respond to all that in ten minutes. He noted they had another consultant on fire safety who would like to offer testimony. He asked to move Exhibits A through I into the record. Although he had not been able to go through them all, he thought they were important for the legal record. He noted if he could have more time, it would be appreciated but he understood. Ms. Sierer asked roughly how long the next consultant was going to speak. Mr. Tucker indicated two to five minutes. Council agreed to permit the additional consultant to speak.

Jim Davidson was a fire protection engineer who practiced the discipline of fire protection for over 40 years. He was registered as a professional engineer in the state of Delaware and was going to talk about two of the Code issues, the most important ones. The first one was in the 2012, 2013 and 2016 edition of the Delaware State Fire Prevention Fire Regulations as formulated by the Delaware State Fire Commission. They required a fully sprinklered building with a four story residential to have a perimeter accessibility. That was a clear space 15 feet from the exterior walls of the building, without any interferences with the fence or any other obstruction, clear from the building to the end. Their Table 5-2 requires 75% fire department access, perimeter accessibility.

Mr. Davidson referred to an exhibit that he requested be entered into the record. The regulations were 75% and, with what they had presently, accessibility was 42%. 58% was not accessible and what they were showing was the fences were an impediment to fire department accessibility. Those regulations were put into place by the Delaware State Fire Prevention Commission through the Delaware State Fire Regulations to provide both public/civilian/building and emergency responder safety during an emergency operation or an emergency incident.

He noted his second item was the garage building would affect Schlosser's property and clients by eliminating the required second fire apparatus access road. This was modified by the City of Newark when Council adopted the International Fire Code. It was Paragraph 53.1.2.1 under the paragraph, Additional Access, it stated "a minimum of two points of fire department access shall be provided to all new major and minor subdivisions as defined by Chapter 27 of this Code." By putting the parking structure up, the second fire department apparatus access to Schlosser's property was eliminated.

Mr. Tucker noted that Steve Dennis, the owner of the neighboring property would like to speak. Mr. Dennis requested that the tenants of his building be permitted to speak first. Ms. Sierer noted they were signed up under public comment and they would be permitted to speak at that time and indicated Mr. Dennis should go ahead and make his comments.

Mr. Dennis thanked Mayor and Council for hearing their concerns on this matter. This had been going on for five years. They brought in Mr. Tucker when they realized that there were issues with the applicant's plan that affected their property adversely and they spent quite a bit of money over the past five years voicing their concerns. Most of those concerns were still on the table today. They had a lot of issues with safety and concerns with deliveries from trucks for his tenants. Things like their trash truck backing blindly onto their fire lane and their property when there was a great deal of pedestrian traffic going through this area. He did not think it was a good situation for anybody in that area.

They had concerns about their tenants being able to continue their operations. Most of their tenants depended on truck deliveries coming in almost every day, and currently they could safely do that by accessing the property from either Main Street or

Delaware Avenue, unloading in a safe situation in a parking lot and proceeding off the property the other way. If this parking structure was placed there, they would not be able to do that. They would have to back into their fire lane off of Main Street or pull in and back into Main Street blindly, and he just did not think that was a safe situation. He thought it was something that ought to be addressed.

They did have a private easement and it had been talked about a lot. Mr. Dennis noted that the applicant's counsel said that they would love to extinguish the cross parking. Mr. Dennis had offered to extinguish the entire agreement and separate his property from theirs. One of the conditions that caused the free for all was that because they had cross parking, he could not police and his tenants could not police the lot because they were not allowed to tow their tenants and their customers. They were not allowed to tow his tenants and his customers and so it was very difficult to tell who was in this parking space. That was something he thought they needed to work on. He really just would like to ask the Council to consider these Code issues and to deny this application in this form at this time. Thank you very much.

The Chair opened the floor to public comment.

Dain Simons, owner of Cameras Etc., noted that he had parked in this parking lot for over 20 years. His concerns about this project at this point were how long was it going to take, because for as long as it was going on, they were not getting anything on that side of the building so they were losing 40 some spots in that parking lot for everybody. Most importantly for the tenants in the front building, Iron Hill restaurant, Red Bull, the yogurt place, they were all Tsionas buildings, the people themselves besides his customers, Subway and the other Ramen House on his side.

The other thing he worried about was that the fire engines did show up. Iron Hill had a wood fire oven. Mr. Simons claimed the chimney alone had caught on fire at least five times since he had been there. He would call and the fire engines showed up. Also with the new parking spaces, there were eight tenants in the original Iron Hill building. Mr. Simons asked where their cars could be and were they on the second floor with the other new construction spots or were they going to be downstairs on the first level taking up some of the spots. He had not heard much about the parking for the eight units in the original part of the Iron Hill structure and where that was going to be. He was concerned that would end up in his lap.

Mr. Simons also referenced the original floor plans that were cited at the beginning of the PowerPoint presentation like Astra Plaza, the south Main Street location. He did not think many of those were hidden in the back away from flow and they averaged four units not eight units as far as the Astra Plaza addition, so they seemed to be a lot smaller than what this thing was. Those were his concerns.

John Morgan, District 1, followed up on some comments that Mr. Ruckle made earlier in the meeting with regard to this project and consequences of it and noted he had distributed a handout at the table, which included a printout of the Newark Post article "Frustrated by Parking, Iron Hill Considers Leaving Newark", excerpts from the meeting of the Planning Commission on February 2nd consisting of the testimony of Mark Edelson, one of the co-founders of the Iron Hill Brewery, in which he was making some specific comments about the parking issue and a map of City parking from the Downtown Newark Partnership website. Dr. Morgan referenced several quotes from Mr. Edelson regarding the parking situation for Iron Hill and its customers in Phoenixville, Pennsylvania and in Newark, as well as concerns regarding the effect on Iron Hill's business if Main Street parking access were removed. Dr. Morgan continued regarding the location of the proposed parking garage at Lot #1, the distance to Iron Hill from Lot #1, and his doubts that a parking garage in Lot #1 would mitigate the Iron Hill parking situation as he felt that did not make sense.

Mark Edelson, co-founder of Iron Hill Brewery, noted that Iron Hill disagreed with their landlord in that they did not believe this project would enhance anything. They did not necessarily believe it was detracting what was already not a great situation. He thought the only way the parking would be helped would be to turn it over to the City so it

could be monitored. As Mr. Dennis pointed out, it was impossible to monitor it and the group monitoring it would always be the bad guy. He felt the only way to do that was to let the City be the bad guy. He noted that when there was free parking, there was not parking because it became a magnet for everybody. He noted they spent 20 years trying to monitor it and they only upset people by doing that. They had given up and by 10:30 everybody that had stores there now knew that it was already full. The only thing that they could do was circle around and hope that somebody came out so that they could pull in. That was what it created. In his view, overall they did a lot of business in 12 different communities, eight of which were main streets and in their experience the parking in the City of Newark was perhaps the worst. They had seen it in over 20 years.

He noted that twenty years ago there were a lot of empty storefronts, so the City had done a tremendous job to revitalize the Main Street of Newark. The problem was that parking had not kept pace with that, so what happened was the pie had not gotten big enough for all these business and certainly it could be. Parking was the one thing. He noted that everybody here had friends that lived outside the city who told them that they could not get parking in Newark so they did not come in. He felt everybody knew it and that was the truth and it became so hard for people to park that they decided not to come into Newark. He felt if they continued the success of these businesses, this was what was going to happen.

He noted that Iron Hill's lease was coming up very soon and they had to make a decision because they saw reduced income and knew it was all related to parking. If there were more people that could access it, all the businesses could be more successful. They had to make a business decision and this was something they had talked about to the Planning Commission for 18 of their 20 years, and the suggestion was Iron Hill needed to go to Council and lay out what was going on. He felt they needed to solve the problem.

Mr. Ruckle asked if Mr. Edelson felt that having a large parking garage down in Lot #1 would alleviate pressure for Iron Hill parking. Mr. Edelson stated yes, it will start to. Ideally he would love a parking structure behind Klondike Kate's on that lot because it would be right across the street from them. He noted that the only way to increase parking was to go down as buildings would not be torn down for surface lots. He felt anything like a parking structure would start to mitigate that and pull more parkers out of their people parking on their side down the street helped. He stated that not everybody was going to park in a garage and walk all the way down, but as that started to relieve it, it had an effect of that. He reiterated his belief that free parking should become public parking because it was not free parking. Mr. Ruckle asked if the City had an agreement for a parking structure, would Iron Hill be willing to stay. Mr. Edelson said absolutely, if they saw that the City was making strides towards improving parking, significant strides. He felt adding a space here and there was not significant strides, but a parking structure was significant.

Ms. Sierer noted that the discussion needed to stay on topic and that there was not going to be a parking garage session this evening. She recommended Mr. Edelson gather the business owners, come to council and share with them what their parking concerns were from a customer and an employee standpoint so that all of Council heard from businesses on Main Street on the solution to the parking problem.

Bilal Mustafa, owner of the Subway restaurant, stated he had owned it for about 4.5 years, had seen his business decline and shared it with Mr. Dennis several times. When he took over the business, he used to have lot of customers coming from Bank of America, Chase Bank and during the lunch hour. With the parking situation for the first couple of years, the Iron Hill was policing that area but they went through about four or five people in about six months. Every time somebody took that job of policing that area people would curse at them. He noted that his bigger concern was regarding the trucks that make his deliveries. As a franchise he had to order from the franchise, which had 18 wheeler trucks that were getting ticketed by the City when they parked on Main Street. The franchise was saying they could not deliver to him if they kept getting tickets. Safety was an issue because the truck driver could not leave his truck on Main Street. They could not send smaller trucks due to the number of restaurants they are delivering to. He did not see how with this plan, his delivery truck would still be able to get through the parking lot as it could not park on Main Street without getting ticketed.

Bob Stozek, District 1 and member of the Planning Commission, noted that the Commission voted against this project, which was not raised until Mr. Tucker talked. He noted during the Commission meeting, he raised several questions about delayed safety and fire issues and access to the building and claimed they were told at that meeting the applicant only needed to have access on two sides of the building, which was not what was presented tonight. He expressed concerns about whether the project met all Codes and the contention that the project would increase the number of parking spaces in the City. He stated it might be increasing the number of spaces controlled by the City, but that was only if the builders were allowed to turn the lower level spaces over to the City. He felt there were many pending issues to be resolved and did not see how Council could vote to approve the project at this time.

Jeff Lawrence, District 3, expressed confusion regarding the discussion. He appreciated Ms. Sierer ending the parking discussion as he felt that further confused the issue. He was not taking sides on the issue, but felt it was very complicated. He noted the issues presented by Mr. Mustafa and Mr. Edelson and stated he was a supporter of the free market. He felt it was not government's job to bail out businesses, but felt government should not be impeding their ability to conduct their business.

Donna Means, District 5, felt Council could not approve the project until the Chancery Court case was settled and encouraged Council to table the project until that time. She felt if that did not happen, the City was opening itself to a lawsuit the residents would have to pay for.

The Chair closed the floor to public comment and brought the discussion back to the table.

Ms. Hadden noted that Mr. Tucker had stated there were 41 parking spots and asked if that included any reserved spots for tenants. Mr. Tucker stated he believed there were 45 spots if the reserved spots were included. If the reserved spots were taken out, there were 41 spots, which he stated were more than what was proposed if this project were approved.

Mr. Markham asked the applicant how they were going about doing the construction of utilities or construction easements. Mr. Charma stated the utilities would be connected to either the existing building infrastructure or if they had to, they would run a new main. They could run through the building. There were multiple opportunities to route utilities, and they had those discussions with the Public Works and Water Resources Department. They could do the same thing for sewer. The initial plan was considering doing a directional drilling operation to put the sewer in where there was a sidewalk that ran adjacent through the existing Iron Hill building. If that was prohibitive, they could install it by a small force main or some other means. That could go through the building or by some other means determined later. At this point they had not developed those construction drawings yet. That was why Council might see the reference in the recommendations that item would be discussed through the CIP process. Mr. Markham asked for more detail about what going through the building meant. Mr. Charma indicated it might not go through Iron Hill Brewery, but that a lot of buildings had overhead utilities chases that run within the ceilings. He noted that they had not gone far enough with the design, so they were not there yet. He referenced several notes on the subdivision plan referring to that condition of the utilities.

Mr. Markham asked for confirmation as to whether there would be less public parking available with the new structure than there was today. He thought there would be more overall spaces but less available to the public on the ground floor. Mr. Charma stated that was not correct. There were 45 spaces in the lot, currently, on the ground. Eight of those spaces were reserved for Iron Hill Apartment tenants that currently resided over the Iron Hill. Those eight spaces would be removed from the ground level and put on the deck level, so the net would be 37. There were 37 spaces available currently that were not reserved, that were free for everyone. Mr. Markham asked staff if this was the case because he thought he had heard from staff that there were six less spaces. Ms. Feeney Roser stated there were 45 spaces there now. There were eight spaces that were reserved. Four of those spaces, she understood, were on Mr. Dennis's property, but there

would be 37 spaces on the Iron Hill lot, because eight spots would go upstairs. Mr. Markham asked for a final number. Ms. Feeney Roser stated there were eight spaces that were reserved and those eight spaces would go up to the second floor of the Trader's Alley building. Only four of them were at this point on the Trader's Alley property, but they would still be moved upstairs. So there would be eight spaces that were now reserved moved up into this building.

Mr. Ruckle asked if the parking spots available to the public currently was the same number of parking spots available to the public with the new building. Mr. Markham stated that he was trying to hear what this number was. He knew four were on the other side, and they would remain on the other side, but they would become available for that parking. Ms. Feeney Roser stated the original parking waiver was for both properties at the same time. So they were being used in unison. It was four and four. So it was eight spaces that were going to go up to the second floor. So 45 spaces there on the Traders' Alley lot. There will be 37 there when the project is finished, but the net change was zero. Mr. Markham stated that he had been asking staff to clarify because that was not the number he heard. Ms. Feeney Roser noted that Mr. Walton had told Council there were six and it was eight spaces that were reserved for tenants of Iron Hill in the joint lot.

Mr. Chapman believed that Council was told there was a net loss of total parking spaces with the number being six. Ms. Feeney Roser reiterated that the number of spots would be going from 45 to 37 on this lot, but in the total lot itself there were eight spaces that were reserved for the tenants of Iron Hill. They would be on the second floor. So it was a net gain of no spaces.

Mr. Ruckle thought that Ms. Feeney Roser was saying that there were 37 spaces open to the public. Ms. Feeney Roser stated that right now there were 45 spaces open. Mr. Ruckle asked if it was correct that only 37 could be used by the public. Ms. Feeney Roser said that in the combined lot there were more than 45 spaces. The 45 spaces was only on the applicant's property. Mr. Ruckle agreed and said that 37 of those were going to be used for the public. He noted that the applicant was saying 37 were going to be used in the project, and so there was going to be the exact same public spaces that could be used. Ms. Feeney Roser stated there was a net gain of no spaces, yes. Mr. Ruckle noted that it was equal, which Ms. Feeney Roser confirmed.

Mr. Gifford wanted to follow up with the applicant on Mr. Markham's question regarding utilities, but move more into the general construction of the building. He asked the applicant what they needed from any neighbor to move materials, to bring in equipment to construct this building. He asked if there was any construction easement needed from either the individuals here tonight or any other adjoining property owners. Mr. Charma stated at this point, they had not determined what easements exactly would be needed. They were hoping that they did not need any easements, any construction easements. They had the access easement and the right to access the property from Main Street and/or East Delaware Avenue. He said it was too early to tell. Assuming this project moved forward, when a construction manager was hired, the construction manager would determine the method of construction. There might be a likelihood of some kind of a small tower crane or something that for this site. It was not a closed site and he understood that. This was not different than construction in any other city. In Philadelphia, buildings were a couple of feet apart, and they built them. So he thought he would reserve the answer to that question truly until they had a construction manager who determined the method of construction.

Mr. Gifford asked for clarity on the type of truck referenced earlier. Mr. Charma indicated that he had mentioned two types of trucks. The first truck was an SU30, which was a delivery truck typically seen downtown like a box truck. He noted a box truck can get in the lot as demonstrated by the auto-turn software model. Mr. Gifford noted that speakers had brought up the point that sometimes a larger truck delivered to them. Mr. Charma noted the WB40, which was a 40 foot semi-truck that would be a city truck that they would use for local deliveries, pretty similar to what you see running up and down Main Street. He stated they did one scenario where the truck came in Delaware Avenue. The truck could back up and unload at Iron Hill and then pull out to Main Street. Mr. Gifford asked if that truck could actually get through the building if they wanted to deliver to

another tenant over on Dennis's property. Mr. Charma said it could not get through the building and could not make that turn. If someone wanted to get to Mr. Dennis's property, the truck would come in from Main Street. He stated that would be the most logical way. He noted that Council heard testimony earlier by the owner of Subway that the trucks could not get in there now, so he did not see what the issue was. Mr. Gifford stated there were too many trucks mentioned, so he wanted to know what truck could get through the building and what truck could not.

Mr. Gifford asked what the timeline was as far as construction time and any potential disturbance to neighbors, for this type of building in general. Mr. Charma stated he was not a construction manager, but his experience was telling him that they would have most of that structure completed probably in eight or nine months.

Mr. Ruckle asked if the City's garbage trucks would be able to get into the building. Mr. Charma indicated that the City did not do commercial garbage pickup, so it would be a private hauler.

Mr. Ruckle noted the earlier comment about the fire access requirements for a four story building. He asked if all four stories had to be living space. In this case, there were two stories that did not have living space. He asked if the project would be under that fire requirement. Mr. Charma stated that as Council heard in earlier testimony, the perimeter accessibility requirement for that building was 75%. The applicant met with the City fire marshal, the State fire marshal and the Aetna Chief. On March 14, they had a meeting and with the head of the Code Enforcement Division. Mr. Charma stated this building would probably be one of the safest buildings in town. He stated because of the tight access, it did have the accessibility. Accessibility, as Mr. Davidson had mentioned, did not necessarily mean they had to drive a fire truck all the way around the building. On the north side of the building, that face was accessible coming in from Main Street. On the south side of the building, that face was accessible from East Delaware Avenue. On the east side of the building which made up the other portion of the 75% accessibility, there was an analysis done as requested by the fire marshal to demonstrate that two men and a ladder (which was considered accessibility by State Fire Code) can place their ladder at 73 degrees and get up to the fourth story window. The applicant had agreed to increase the fire rating to a two to three hour rating, which was almost health care standard. Three stand pipes would be in this building, and that was primarily what firefighters were going to use. They were not going to drive fire trucks in here. They were going to pull their hoses in, they were going to stand pipes, and they were going to hook on. They were going to bring a truck in and pump. The lower perimeter walls were added to add additional fire barriers to meet the Code requirement. They were pretty confident that this design was going to be probably one of the safest buildings in town. Again, it's considered another design criteria for this property in a traditional urban setting and that's in accordance with Section 7, General Fire Safety Regulations in paragraph 4.3 of the State Fire Code. He stated they would not be here before Council with a plan that was not Code compliant.

Mr. Markham noted that in relation to deliveries in other parts of the City particularly Main Street on Center Street, the City had loading zones specified for certain parts of the day. He asked if there was some reason why they would not have one further down on this section to alleviate this. Ms. Feeney Roser noted that the closest one would be on Center Street, which was pretty close. They would have to cart it across the street and deliver that way, but there was a loading zone on Center Street. Mr. Markham asked Ms. Feeney Roser to make sure the tenants knew about that so their trucks would not get tickets and to see if a loading zone was needed further down Main Street. Ms. Feeney Roser stated staff could look at that.

Mr. Chapman noted there were very adamant claims on both sides regarding parking and he did not know that either one of them agreed with what Ms. Feeney Roser was saying. He asked Mr. Dennis where he believed the four spaces were being lost. He also asked Ms. Feeney Roser, when looking at the plans for the first floor where the ground level of the proposed parking structure, there were three spaces that were indicated as handicap. He asked if that was locked in, if that needed to be followed very closely, if that was a loose number and if those spots could be put up top or on the bottom. He assumed the bottom made the most sense. He asked how fluid that was location wise.

He asked with the current 45 spots, or more importantly the 37 spots not specific to tenants, were any of those 37 spots currently indicated in reserve for handicap parking. Ms. Feeney Roser stated there were handicap spaces in that lot, but she was not exactly sure where they were located. Handicap, depending on the number of square footage of retail and things, they had a number of handicap spots that they needed to maintain. They should be closest to the entrance where the handicap person would like to go. There was a bit of fluidity there, but not a lot. They would be on the first floor. Mr. Chapman asked if what they saw was what would be final design, which Ms. Feeney Roser confirmed. Mr. Chapman said they did not know for sure exactly where the current handicap accessible spots were, which Ms. Feeney Roser did not know off the top of her head.

Mr. Chapman asked Mr. Dennis to explain his answer to Mr. Chapman's question of where he thought the four spaces were being lost. Mr. Dennis stated there are currently 45 spaces on the applicant's parcel. If they had eight reserved spots per their cross parking agreement, then only four of them were on the applicant's parcel. Four of them were on Mr. Dennis's property. When they did this, the previous owner asked him to allow them to only put up four stands so they had parking across instead of putting up eight. Mr. Dennis agreed, but reserved the right in their agreement to ask that they be removed at any time. So they currently had 41 spaces available to the public, 45 less the four on their parcel. They were going down to 37. They currently had four ADA spaces as reflected on this plan of theirs and they were reducing them to three. Mr. Chapman stated there were currently 37 spaces available to the public. Mr. Dennis stated there were currently 41 on their parcel available to the public. 45 minus four. Only four of their reserved spots were on their parcel. Four were on Mr. Dennis's parcel. But they had in their agreement the right to have them removed. In an effort to be neighborly, they did not ask them to do that. Mr. Dennis also noted that the applicant said that Mr. Dennis had 24 spots, but that Mr. Dennis had 43 spots on his lot that was part of this agreement now that would probably disappear.

The Chair closed the floor to questions from Council.

MOTION BY MR. RUCKLE, SECONDED BY MR. MARKHAM: TO APPROVE THE REQUEST OF TRADER'S ALLEY, LLC FOR A SPECIAL USE PERMIT FOR EIGHT APARTMENTS IN THE BB ZONE AT THE PROPERTY LOCATED AT 147-163 EAST MAIN STREET

Ms. Sierer indicated Council would be voting individually and that Council members should state their reasons why they were voting yes or no.

Mr. Ruckle stated he was voting yes because he did not feel it adversely affected the health or safety of persons residing or working within the City of Newark boundaries or within one mile of the City of Newark boundaries, or within the state of Delaware. He did not feel it to be a detriment to the public welfare or injurious to the property or improvements within the city boundaries, or within one mile of the city of Newark boundaries within the state of Delaware. He believed there was no conflict with the purpose of the Comprehensive Plan in the city.

Mr. Markham stated after his question had been answered, he was going to vote in favor of this. He did not believe it was in conflict with the Comprehensive Plan, it did not adversely affect health and safety, it contributed to the overall downtown and was not in conflict with the development downtown. Nor did he believe that it would be injurious to the property or improvements within the city.

Mr. Chapman stated he would be voting no on the request by Trader's Alley. Specifically he was struggling to believe that the special use permit standards had been adequately answered by the applicant in regards to any adverse effects of health and safety of folks not only residing, but working in the city limits, especially the adjoining properties, as well as potentially being detrimental to the public welfare or injurious to property improvements within the City of Newark boundaries.

Mr. Gifford stated this was a very complicated case with over 500 pages worth of material. After his review of all the information, for him, there were the three criteria of the

special use permit. It was the responsibility of the applicant, in this case Trader's Alley, to demonstrate the conditional use would not be detrimental to the public welfare or injurious to property or improvements. After asking questions and listening to the presentations, he did not believe they had met the criterion that it was not injurious to the property neighboring them. He felt that during this operation, it was not proven to him that the construction easement would not inflict some harm on the neighboring property owner, and he thought it would put an undue burden on that owner and could cause significant burden during the construction or even after the construction to his access or customer parking. He did agree that A and C had been met, A being adversely affect the health and safety of persons. He believed the building was designed to protect the safety of the people residing or working within, and he did think that if B had been met, the building itself was not in conflict with the Comprehensive Plan IV because there were other mixed use buildings in town. He was voting no on this application tonight.

Ms. Hadden stated it was her opinion that based on the safe design of the project, the low density of the units, and the fact that the development plan corresponded to recently approved and existing downtown development projects, she did not feel that it would affect adversely the health and safety of persons residing or working within the City of Newark, or be detrimental to public welfare, so she was voting for the project.

Ms. Sierer stated she was also going to be voting for the project. She did not believe it adversely affected the health and safety of persons. She did believe that what had been presented before Council met applicable Code requirements. She also believed it would not be detrimental to public welfare or injurious to property or improvements within the City of Newark. It was designed at this stage as a low density project. It fit in with the downtown Newark area and did not conflict with the Comp Plan. She would be voting yes.

MOTION PASSED. VOTE: 4 to 2.

Aye –Hadden, Markham, Ruckle, Sierer.

Nay – Chapman, Gifford.

Absent – Morehead.

26. **9-B. REQUEST OF TRADER’S ALLEY, LLC FOR THE MAJOR SUBDIVISION OF 0.88 ACRES IN ORDER TO CONSTRUCT A FOUR STORY BUILDING WITH GROUND AND SECOND LEVEL SURFACE PARKING AND EIGHT UPPER FLOOR THREE-BEDROOM APARTMENTS AT THE LOCATION OF THE TRADER’S ALLEY EXISTING SURFACE PARKING LOT AND ATTACHED TO THE SECOND FLOOR OF THE EXISTING TRADER’S ALLEY BUILDING LOCATED AT 147-163 EAST MAIN STREET (RESOLUTION AND AGREEMENT ATTACHED) (SEE 9-A)**

04:00:47

MOTION BY MR. RUCKLE, SECONDED BY MR. MARKHAM: TO APPROVE THE REQUEST OF TRADER’S ALLEY, LLC FOR THE MAJOR SUBDIVISION OF 0.88 ACRES IN ORDER TO CONSTRUCT A FOUR STORY BUILDING WITH GROUND AND SECOND LEVEL SURFACE PARKING AND EIGHT UPPER FLOOR THREE-BEDROOM APARTMENTS AT THE LOCATION OF THE TRADER’S ALLEY EXISTING SURFACE PARKING LOT AND ATTACHED TO THE SECOND FLOOR OF THE EXISTING TRADER’S ALLEY BUILDING LOCATED AT 147-163 EAST MAIN STREET.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Morehead.

(RESOLUTION NO. 16-D)

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

28. 10-B. Others: None

29. 11. **APPROVAL OF CONSENT AGENDA**

04:02:02

Ms. Bensley read the Consent Agenda in its entirety.

- A. Approval of Council Meeting Minutes – February 22, 2016
- B. Receipt of Alderman’s Report – February 23, 2016
- C. Receipt of Planning Commission Minutes – February 2, 2016
- D. ***First Reading – Bill 16-11*** – An Ordinance Amending Chapter 20, Motor Vehicles, Code of the City of Newark, Delaware, To Prohibit U-Turns at the Intersection of Capitol Trail at Cleveland Avenue – ***Second Reading – March 28, 2016***
- E. ***First Reading – Bill 16-12*** – An Ordinance Amending Chapter 20A, Noise, Code of the City of Newark, Delaware, By Lowering the Permitted Noise Levels in Residential Districts, Updating Definitions and Clarifying Enforcement Mechanisms – ***Second Reading – March 28, 2016***

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

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

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

Nay – 0.

Absent – Morehead.

30. Meeting adjourned at 11:03 p.m.

Renee Bensley
Director of Legislative Services
City Secretary