

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**March 28, 2016**

Those present at 7:00 p.m.:

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

Staff Members: City Manager Carol Houck  
City Secretary Renee Bensley  
City Solicitor Bruce Herron  
Code Enforcement Supervisor Dave Culver  
Communications Manager Kelly Bachman  
Community Affairs Officer Megan McNerney  
Deputy City Manager Andrew Haines  
Finance Director Lou Vitola  
NPD Chief Paul Tiernan  
NPD Sergeant Curt Davis  
Parks & Recreation Director Joe Spadafino  
Planning & Development Director Maureen Feeney Roser  
Planning & Development Manager Michael Fortner  
Public Works & Water Resources Director Tom Coleman  
Purchasing Manager Cenise Wright  
Senior Mechanic Dave Vispi

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

2. MOTION BY MR. CHAPMAN, SECONDED BY MR. MOREHEAD: THAT ITEM 5-A-2, NEWARK COUNTRY CLUB – SURVEY REQUEST – PURCHASE OF DEVELOPMENT RIGHTS, BE REMOVED FROM THE AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

3. 1. **PUBLIC PRESENTATIONS**

A. **Resolution 16-\_\_**: In Appreciation of Nicholas Krusko, Eagle Scout, for His Work for the City of Newark

**02:06**

MOTION BY MR. CHAPMAN, SECONDED BY MR. GIFFORD: THAT RESOLUTION 16-\_\_: IN APPRECIATION OF NICHOLAS KRUSKO, EAGLE SCOUT, FOR HIS WORK FOR THE CITY OF NEWARK, BE APPROVED AS PRESENTED.

Mr. Krusko was recognized for his volunteer efforts on behalf of the Newark community and for achieving the rank of Eagle Scout. For his Eagle Scout project Mr. Krusko chose to create new baseball warm up areas for the Newark American Little League Baseball organization at LeRoy Hill Park. Mr. Krusko thanked the City for its investment in parks and recreation and for making Newark a great place to grow up.

**(RESOLUTION NO. 16-E)**

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

**11:46**

Chris Scherf, District 6, spoke about the future of the Newark Country Club and the property on which it was situated. The club wanted to make major renovations to the facility which they believed was critical to its preservation as a golf and country club. A modernized facility was critical to producing the revenue necessary to make the club self-sustaining for future decades.

The club was not closing, and its membership wanted to remain in the current location. The sole desire and focus of the club was to secure a viable, long-term future. This was not an equity club – no one benefitted monetarily from its sale. They heard Newark’s desire to maintain the property as green space. While the club experienced cash flow issues, its core asset – the valuable piece of property acquired 95 years ago and since maintained at great expense – offered a number of options for obtaining the capital infusion necessary to meet its obligations and enhance future business. The Country Club was not seeking a bailout. They were interested in obtaining a significant investment in their future without having to resort to outside financing that would grant future development rights to parties other than the City of Newark. Mr. Scherf said the maximum value of the land was as a development property but to the members and neighbors, its maximum value was as a golf course.

Mr. Scherf requested that Council remove the item regarding the Newark Country Club from the agenda because while discussions to date were productive, they had not generated a detailed plan for fair consideration and evaluation. When a plan emerged that merited such consideration, the club believed it would have real and tangible financial benefits to both parties. The members looked forward to working together to reach a mutually beneficial arrangement.

John Morgan, District 1, remarked that with traffic congestion and parking issues downtown, the Country Club should consider offering restaurant service to the public. He reviewed the club’s financial statements submitted to the Internal Revenue Service for 2011, 2012 and 2013. The revenues fell short of expenses between \$20,000 and \$125,000 per year. He felt with better advertising and economizing the club ought to be able to break even.

Dr. Morgan was confused that the development rights of the property were stated to be \$7 million, while the club’s submission to the IRS reported a total property value (land, buildings and equipment) that was consistently listed below \$5 million. He felt it was important that the City understood the basis of such statements about what the development rights were worth with some sort of independent assessment taking account of the club’s own filings with the IRS.

Sheila Anderson, District 1, was disappointed that Council voted to approve the Traders Alley project at the 3/14/16 meeting. She thought the Planning Commission’s recommendation not to approve the project should have been more carefully considered by Council. She felt the proposed building was too large for the location and was not aesthetically pleasing. She learned at the Rental Housing Needs Assessment study meetings that there was no demand for apartments in the downtown area based on those in existence and approved through 2019. She felt approving such a project showed no regard for the Comprehensive Plan.

Brian Dunigan, District 3, said quality of life issues were important to him and expressed his appreciation to Mr. Gifford for his dedication to the City. He apologized for being rude to staff when trying to get a point across that may save a life or change the

culture in Newark. He thanked the paramedics who responded to Dorothy Miller's residence. He also thanked the Electric Department for their prompt assistance and encouraged people to turn off their electrical box immediately when the power went out. Mr. Dunigan would like to see more alternatives for the Country Club. He noted that the culture on Main Street changed for the worse due to solicitation and would like to see more enforcement there. Regarding a parking garage, the City should ask whether people would use a parking garage at a certain location.

Helga Huntley, District 1, referred to the Country Club and encouraged Council to follow the strategy outlined in the new Comprehensive Development Plan and start a process to develop different options and identify needs and desires of the community, the Country Club and other stakeholders rather than trying to latch onto a single idea without considering alternatives.

Ms. Huntley read that the State would be distributing new downtown development district plans for the deadline of applying of June 1. She asked whether Newark would apply this year and Ms. Sierer responded that the City would re-apply. Ms. Huntley asked if there would be a public conversation about what kind of plans would go into the application. Ms. Houck did not think any decision had been made about what the process would be. There would be a little time to put something together and Planning and Development would have to come forward with that.

Ms. Huntley addressed the downtown parking issue discussion at the 3/14/16 Council meeting when the owner of Iron Hill Brewery asked for a parking garage. He stated everyone had friends who did not come to Newark because of the lack of parking. She refuted that assertion because she did not have problems, and if someone expressed that concern to her, she was able to tell them where to find parking, even along Main Street. She did not understand how a parking garage at the other end of Main Street would help Iron Hill when the empty parking spaces in that same lot currently were not enough of a draw. In addition, she said there were dozens of metered spaces in the nearby UD lot that were rarely occupied in the evening. Ms. Huntley pointed out some errors in on-street signage where the arrows point into buildings leading to frustration by visitors trying to find the municipal lots. She also asked that the sign above a bike rack in front of Panera saying "no bikes allowed here" be removed and that the correct sign, "no cycling on the sidewalks" be used instead.

Katie Gifford, District 3, received the municipal broadband survey through the Inform Me system which was designed for the City by CTC Technology and Energy. There were some issues that should be remedied – misspellings and typos, formatting issues with rows of answer bubbles that did not correspond to answer options and repeated answer numbering. This would make it difficult or impossible to correctly compile the survey responses. She felt this reflected poorly on the professionalism of the survey designer and potentially on the City as the distributor of the survey.

Another issue was in the introduction which was framed as a survey to explore strategies to improve Internet accessibility and affordability in Newark. The survey positioned the City as a potential provider, not of low-cost, efficient services, but as a provider of a state-of-art network that provided very high Internet speed at a correspondingly high cost. The question about what residents were currently paying gave low cost ranges starting with \$0-\$10 and topped out at about \$70 per month. The question about willingness to pay for the City's state-of-the art potential services began at \$55-\$95/month in addition to the survey referring to a connection fee which the survey questions implied could be as high \$1,000. That was at odds with how the survey was framed initially. Ms. Gifford noted the Comcast Internet Essentials program provided that every family with at least one child eligible to participate in the National School Lunch Program was eligible for wireless home Internet with 10 Mbps for \$9.95 per month.

- 5. 2-B. **ELECTED OFFICIALS WHO REPRESENT CITY OF NEWARK RESIDENTS OR UTILITY CUSTOMERS:** None
- 6. 2-C. **UNIVERSITY**
  - (1) Administration

**32:49**

Rick Deadwyler, UD Government Relations, shared highlights of activities and programs at the University. He announced that students were on spring break and about 300 students were performing community service in the UD alternative spring break program. He also noted the following upcoming activities:

- April 5 at 5 p.m. Mitchell Hall – Educator and author Steve Perry would deliver the annual Louis L. Redding Lecture on Civil Rights and Social Justice.
- April 11 – Black History Month celebration (previously postponed) Julian Nava, former president of Bent College for Women and accomplished author and economist.
- April 30 – Ag Day community event.

Mr. Morehead asked when the environmental film festival was scheduled. The third annual festival “Lights, Camera, EARTH!” would be held April 8-10.

Mr. Ruckle mentioned there was misinformation during the City Council candidates debate stating that the City and the Christina School District would not receive any funds from the development of the STAR Campus. He asked Mr. Deadwyler to set that straight. Mr. Deadwyler advised that private businesses developed on the site would be subject to property tax as any normal business would.

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

**8. 2-D. LOBBYIST:**

**37:25**

Rick Armitage reported several busy weeks in Dover. It was thought that the disability parking bill was going to stay in committee, but it was released the next day and since the legislators went into adjournment, there has not been any further action. Based on staff feedback, he was able to make comments to the sponsors about the bill.

House Bill 283, with the project labor agreements in it (unions, veterans), was released from committee. The sponsor promised he would try to keep the exemptions in there related to municipal street aid and the prevailing wages but the threshold numbers may change and he does not know between now and the end of the session as the DEFAC numbers develop what may really end with our threshold numbers again. At this point in time his intention was that those exemptions related to paying the prevailing wage would continue in some form.

Substitute 1 to Senate Bill 130, the economic development zones in cities did not impact Newark because the downtown was too small the way the legislation was crafted.

Senate Bill 178 introduced by Senator Peterson for child serving entities to update additional offenses that would prohibit someone from being able to serve in those entities passed the Senate and the House and would go to the Governor who was expected to sign it when the legislature was back in session.

DEFAC met and the news was relatively stable. In the general fund there was a decrease in the estimates for the FY17 budget. The State was down about \$4.7 million. The plus was in the transportation trust fund which is where municipal street aid comes from. The 2016 numbers came up \$13.3 million, and for 2017 the estimate was increased by \$13.5 million. The report from the Expenditure Review Committee showed the State was very similar to Newark and spending most of its money in the same places – on people, health insurance and pensions. They were looking at ways to try to reduce some of that going into the future. Another item that jumped out was Corrections and how much overtime they had to spend being able to meet the demand for services.

The Bond Committee would meet at the end of March. Transportation was not included in that.

Several more bills were introduced. Senator Peterson introduced a bill that increased the amount of time provided to someone seeking to file unemployment

discrimination charges to match up with the Federal. He thought this should be tracked to be sure Council was aware that was moving through the Legislature.

There still continued to be chaos around water. The Senate and the task force were waiting for a report to be filed on the clean water and flood abatement task force. They extended the deadline for the submission of that report twice, so at this point it was moved to the end of May. It still may not be done because of the controversy around it.

The other bill introduced was about stormwater management. Mr. Armitage did not know whether it would pass because it was sponsored only by Republicans. The group was asked to reconvene and look at how the regulations were crafted. The regulations were written to inhibit the overflow, and many people did not feel it was possible to meet those regulations.

Ms. Sierer asked about Bill 202 (plastic bags) introduced by Representative Hudson. Mr. Armitage reported it was not out of committee. His sense was it was not going anywhere at this time. It was introduced a number of years ago by Representative Longhurst, and there was so much push back from the retail sector that he did not think it would move. He would continue to track it.

Mr. Morehead asked Mr. Armitage for his sense about the handicap access bill. Mr. Armitage had a discussion with the bill's sponsor Representative Viola. One of the concerns was about regulating the University and right now State agencies managed themselves, so he expected there to be clarification around that issue. He thought it would eventually move forward. He felt Representative Viola was frustrated with the lack of enforcement by the police agencies. Mr. Morehead asked if he had Newark's support for the bill. Ms. Houck said the City provided comments and Mr. Armitage added that written comments were provided by the League on the initially introduced bill. Now that there was a substitute bill there were a number of comments during committee hearing and it was not going to be released but he walked it around. Some amendments were expected. Mr. Morehead assumed things in place were grandfathered and it would mainly be new regulations. Mr. Armitage explained Representative Viola went back to what was in place today in the substitute bill, but the real emphasis was in new spaces and in restriping, the way the signage is placed that it does not inadvertently block the aisle where someone would need to be able to use a wheelchair to leave their van and move forward and that was happening on occasion was people put things in place – they are sorting of meeting the Code by putting the signage up that needs to be there but they have not thought through a person in a wheelchair now cannot get through that space because the sign is there. It was difficult to craft that language to get the compliance Representative Viola wanted. Mr. Morehead asked for Council to be kept up to date on the status of the bill.

Ms. Hadden knew there was a substitute bill being discussed but she had not seen it yet. She asked if it could be shared with the City. Mr. Armitage would get that to Council.

Mr. Markham asked if PILOT would be the Bond Committee and noted that was the end of the month. Mr. Armitage said no, PILOT would be done through JFC and they would not be bill drafting until the end of May. He knew that Ms. Houck and staff were preparing a presentation, and he would work with the sponsor to have the hearing before the Joint Finance Committee and encourage some movement. So much would depend upon how much money would be available. Mr. Markham asked that Council get as much notice as possible in order to be able to show as much support as possible.

Mr. Ruckle asked if there was any update on the dog fighting bill or anything else in there that was kind of hidden. Mr. Armitage said there were no surprises he was aware of but the bill was still sitting in committee in the Senate.

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

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

**50:15**

**Mr. Markham**

- Met with a constituent about a drainage issue. He made very positive comments about living in the City.
- Regarding the recent subcommittee meeting on Cleveland Avenue, Mr. Markham stressed the importance of better public notice as he felt input from the community was crucial in order to make improvements for as many people as possible that use Cleveland Avenue. Since Cleveland Avenue would be repaved, there were numerous questions about bike lanes, crosswalks, signaling coordination, turn lanes, etc. One thing that came out of that was WILMAPCO had a brief discussion about a traffic study or origin destination study that Mr. Markham brought up a few months ago. They did not think the normal electronic method would work based on the information available. However, Mr. Markham felt knowing the traffic's origin and destination should influence Council decisions related to development or in the event that help or relief was needed from the state, it would provide statistics. Mr. Markham expected WILMAPCO to come back with the cost to do this type of study.
- Wine and Dine would be held on April 2<sup>nd</sup> prior to the students' return from spring break.
- Was impressed with Mr. Gifford's service on Council. He came in at a tough time in his district. He did his homework and understood the issues. Although he and Mr. Gifford did not always agree, there were times when they were on the same page. Mr. Markham appreciated all the work he had done and he would miss him at the table. He felt Mr. Gifford definitely earned the title "Honorable".

### **Mr. Morehead**

- Encouraged Council and staff to heed Ms. Huntley's comments that in the Comprehensive Development Plan, a goal was set of involving all stakeholders and not just choosing one or two different ideas. Mr. Morehead would like the City to include everybody and get all the ideas on the table and then hashing them out.
- Mr. Morehead felt partly responsible for Mr. Gifford having taken on the challenge of serving Council. He rose to the challenge and there was no one more prepared coming to the meetings, and he read every word that was provided to Council before making his decisions. He went beyond that and researched the City's laws and in a number of cases found discrepancies. On behalf of District 1, he thanked Mr. Gifford for providing an example in such a professional manner and for helping Council to improve.

### **Mr. Ruckle**

- Noted that Mr. Gifford had his homework done, was always knowledgeable and presented the facts very well. He wished him well and expected to see him at future Council meetings.
- The City Council candidate debate was very civil and showed there were some good candidates running for office.
- Pointed out that the Christina School District would be receiving millions of dollars from the STAR Campus along with the City. That goes back to the Christina referendum. He received numerous phone calls from residents, particularly senior citizens, who were upset about the referendum passing.
- Attended the League of Local Governments where there were four candidates for lieutenant governor.

### **Ms. Hadden**

- Councilman Gifford truly served his constituents and all the residents of the City well. She wished him all the best and would miss him.
- Attended the open house introducing the new staff members of the Communications Department. It was well attended and a nice event
- Attended the Delaware League of Local Governments dinner where Senator Carper spoke. She encouraged Council members to attend these dinners which were a great networking opportunity.

### **Mr. Chapman**

- Recognized and thanked Mr. Gifford for his service and sacrifice on behalf of the City. It was a pleasure to serve with him. Council looked forward to him continuing to stay active in the community.

### **Ms. Sierer**

- Attended the 2016 Downtown Delaware Revitalize Conference where the City of Newark received an award for the Taste of Newark event, and Joe Charma received an award for his volunteer work with the DNP Design Committee.
- Shared information with the University from a resident regarding their concerns about St. Patrick's Day and the parties associated with it. He suggested changing spring break to the week of St. Patrick's Day which was done by the University of New Hampshire which had similar problems and alleviated everything.
- Congratulations to Newark Post reporter Karie Simmons who was a 2015 editorial contest winner from the Maryland-Delaware-D.C. Press Organization She submitted two articles – "DNREC looks to protect pond on former orphanage site," an environmental piece and an article on "Spreading the love - NPD'S 'Hug a Cop' campaign replicated around the globe." Ms. Simmons did know which one she won yet.
- The Mayor's second annual bike ride was on April 30th, at a different location this year. It would start at the Newark Shopping Center, the premier sponsor. They have a cut through to the Pomeroy Trail. There would be a 2.5 mile ride and an 8 mile ride.
- Thanked Mr. Gifford for his commitment to the community. He served his district, the citizens, City Council and City staff incredibly well. It was very obvious that he put a lot of effort into everything, and he was respected for that. She also wanted Mr. Gifford's son, Bruce, to know that he should be very proud of his dad.

### **Mr. Gifford**

- Recognized his son, Bruce, because he participated in his government unit at NCCL. He ran for and acted as a representative for a week in his government unit. They did all different kinds of government, and he was a local representative. He enjoyed it and understood agreeing with the other representatives or getting agreement was difficult.
- Thanked Brian Dunigan for letting staff know he appreciated their efforts. Mr. Gifford tried to help with the solicitation problems when the UDance folks got a little out of hand and started soliciting from the top of the recycle bins. The City did its best (and would continue to do so) to make sure solicitation was done only in the permitted areas, not from medians and running out into the street.
- Regarding Ms. Huntley's ideas about the parking signage, he just received an email that the Design Committee would be discussing parking signage on April 5<sup>th</sup> at 8 a.m. in the municipal building.
- Mr. Gifford shared the following comments on the occasion of his last regular Council meeting.

"As many of you are aware, this is my last Council meeting but also marks my last public comment as a council member. I would say Newark has changed over the last few years. We've seen increased public participation. I would suggest we've seen improved council procedure and more open dialogue, sometimes heated. Some may argue these changes have made our government inefficient or contentious. I would argue that it is better and we are more responsive than ever.

As I reflect on my term I am especially proud of our improvements to the budget process. Councilman Markham is my tax buddy, at least based on our voting records. It was much clearer where the City's tax dollars were spent, especially with the capital budget. I hope to see the openness continue, maybe fall into some of the...it's hard to understand the operations budget in comparison. Especially improved prioritization is something I'm looking for next year. I'm already looking forward to providing my public comments.

During my term City staff has been helpful in resolving issues around District 3. I'm going to give the award to Public Works for the most called on. I think Rick's stealth director title is still safe. Special thanks to City Secretary's office and staff. Most importantly I want to thank the residents of District 3. We are a rowdy bunch. I've enjoyed your comments. I've enjoyed resolving many issues. We've dealt with everything from gutter downspout placement, that's right, which way the downspout points to your neighbor. Takes longer to deal with than you think. To developments in town like Trader's Alley, power plant, all kinds of stuff, Center Street. My favorite and earliest issue was when I was contacted about raccoons running in the storm sewers. One had stolen a young child's ball after it had fallen in. Some issues you can't solve.

Finally I want to encourage everyone to continue attending Council meetings and contact their Council member whenever they have questions or concerns. No matter what the issue, I think it's the best way to be heard in our great City. Even though City issues can be messy and difficult at times, I hope my fellow Council members will continue to improve this process. Churchill once said, 'To improve is to change, so to be perfect is to have changed often.'

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

12. 4. **APPOINTMENT TO BOARDS, COMMITTEES AND COMMISSIONS:**  
None

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

A. Special Reports from Manager & Staff:

1. **Resolution 16-\_\_**: Restatement of 401A Retirement Plan – Deputy City Manager

**01:09:45**

Mr. Haines said this was considered a housekeeping item. As outlined in the memo, the Resolution was for restating the 401A defined contribution retirement fund pursuant to the IRS guidelines that were provided by ICMA-RC, the City's current provider. This had to be restated before April to be compliant and avoid any audit that would provide potential fines for noncompliance.

As mentioned in the memo, this did not change the provider, the benefit or the structure but was just a restatement of the existing plan in place. It was originally adopted in 2012 and was amended in 2014 with contract negotiations that became inclusive in addition to the management team, the CWA and AFSCME employees.

Mr. Gifford asked how the plan worked. Mr. Haines explained it was a 401A. The employee had a choice upon commencement of employment to contribute to the plan, and the City would make a match depending on the level of the employee's commitment. It was a five-year vesting at 20% per year on the City contribution from date of hire.

There were no public comments.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: TO APPROVE THE RESTATEMENT OF THE 401A RETIREMENT PLAN.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

**(RESOLUTION NO. 16-F)**

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

A. Recommendation to Award Contract No. 16-05 – Purchase of One New 43' Aerial Lift, Utility Body and Chassis

**01:12:16**

Mr. Vitelli presented the recommendation for Contract No. 16-05, purchase of a 43-foot aerial lift utility body and chassis. The contract was to replace vehicle 101, the small service truck, a 2005 International 4300 bucket truck which had 98,850 miles and 12,152 engine hours. This converted to 425,320 miles from a dealer standpoint. The truck had issues with the starter, injection pump, turbo controller, alternating swivel joint and rust on the body. There was a concern about reliability, and it probably was the most important truck. It was a small truck that could get places where bigger trucks could not.

The contract was advertised in the News Journal and posted on the City website. It was delivered to six vendors. Two sealed bids were received - one from Brian Hoskins Ford for \$156,500 minus the \$15,000 trade-in for \$141,500. The second bid was from Beltway International with a bid price of \$174,983 with a \$15,000 trade-in for a total price

of \$159,983. The specifications were general in form. The main focus of the specification was a Cummins engine mated with an Allison New World transmission. The Vehicle Maintenance Division was already familiar with the software and had adequate training to maintain this vehicle with this combination of engine and transmission. Many vehicles in the fleet already had this Allison transmission and Cummins engine. This vehicle also would have the same engine and transmission as the one approved several weeks ago.

The low bidder, Brian Hoskins Ford, did not meet the specifications as they did not bid the Cummins engines with the Allison New World transmission. The Ford model was a new model year, and there was no known reliable track record for the unit. The company that would put the chassis together with the body and the boom never built one on the Ford yet. The City would be their first customer.

For these reasons it was recommended that the contract be awarded to Beltway International which was not the lowest bidder. They met all the specifications in the contract. Funds to cover the contract were available in the Electric Department Capital Improvement program in the amount of \$165,000. It was therefore recommended that the contract be awarded to Beltway International for a total price of \$159,983 after the trade-in of \$15,000. The City mechanic concurred with the recommendation.

Mr. Markham commented that Council just approved a similar contract at the last meeting and encouraged staff in the future to present them to Council at one time. Ms. Houck said there were two bids done that could have been combined, but this one came in a little late. Staff already had talked about it.

Mr. Gifford received confirmation from Mr. Vitelli that this was one of the trucks identified in the budget process for replacement this year.

Ms. Hadden noted that copies of the bid documents were delivered to six vendors, although only two responded. She asked in the future that the vendors that were delivered the bids be included and listed with "no bid" if they did not submit.

There was no public comment.

MOTION BY MR. MOREHEAD, SECONDED BY MR. RUCKLE: TO AWARD CONTRACT NUMBER 16-05, THE PURCHASE OF ONE 43-FOOT AERIAL LIFT AS DETAILED IN STAFF MEMO DATED MARCH 15, 2016.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**15. 6-B. RECOMMENDATION TO WAIVE THE BID PROCESS IN ACCORDANCE WITH THE CODE OF THE CITY OF NEWARK ON UTILIZING STATE OF DELAWARE AWARDED CONTRACTS FOR THE PURCHASE OF REPLACEMENT VEHICLES**

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**01:17:10**

Ms. Feeney Roser presented the request to waive the bid process to purchase a 2016 Ford Transit 150 for the Parking Division at a cost of \$26,325 on the State vehicle replacement contract with funds available from the 2016 capital program. The current vehicle 1100 is a 2003 pick-up truck which the division used to service lots and meters throughout the City-wide parking system. The Public Works and Water Resources Department determined that it was suitable for replacement. Replacing the pick-up truck with a transit vehicle would allow greater efficiency of time and resources by carrying all the materials, supplies and tools to service the meters and the lots in a secure fashion, so the transit becomes a mobile workshop. It was therefore recommended that Council waive the bid process and allow the purchase of the vehicle on the State vehicle contract.

Mr. Markham said the State usually got the best deals so he did not have any problems with the contract not going out to bid. Since the vehicle had extensive rust, he questioned whether the undercoating was poor quality and asked if consideration should

be given to some other undercoating. Mr. Vispi, senior mechanic responded that this 2003 Chevy was one of four the City had, and every one of them had to be replaced. For some reason there was a problem in the 2003 year with extensive rust on the frame, the door and the brake lines. The City had a much better program with the car wash now.

Mr. Vispi said there was another truck being replaced this year due to rust under the cab door that was \$2,500 to repair. That one was used to carry salt to the parking lots in the back of the truck and the rust was so bad on the back end, the tailgate fell off. It was all structural around there that was the problem. Maintenance was doing a better job and were trying to design the trucks better. They were doing factory OEM straight-in bed liners. He felt it would be better in the future when combined with the car wash program.

Mr. Markham confirmed with Mr. Vispi that this was a truck/van, not a pick-up truck that it was being replaced with. Mr. Vispi added that the van suited the purpose much better than the pick-up truck. Ms. Feeney Roser noted they had a trailer to haul the salt.

Mr. Morehead pointed out that the vehicle being replaced averaged 46 miles a week and asked if the vehicle needed to be replaced. Ms. Feeney Roser said yes, the lots needed to be maintained. There was grass to cut, salt to be spread and meters that needed to be fixed as quickly as possible. While it was a short distance that it traveled, it moved around that short distance quite often. This vehicle provided the ability to make repairs on site. Mr. Morehead appreciated stepping down from a pick-up truck to a transit. That was much more fuel efficient. He also understood about the closed back making it a mobile shop. He had to ask the question about the actual use and if it was needed.

Mr. Morehead commented to City staff that there was more conversation recently about what was wrong with City vehicles. With a 13-year-old vehicle, he expected to replace a water pump. That was not a justifiable reason to spend \$20,000 - \$30,000 for a vehicle. The fact that it was rusted beyond repair was a great reason. If there could be some limits to the cosmetic issues he would appreciate that.

Mr. Ruckle thanked Mr. Vispi for his service and for keeping the City's fleet on track.

Ms. Hadden noted that the replacement vehicle would be auctioned and asked the value of the vehicle. Mr. Vispi said because of the rust, he would have to do a very detailed explanation when the vehicle went to market because of the extensive rust in the back.

Mr. Chapman asked if the City purchased one of the transits before. Ms. Feeney Roser responded that the City had transits. Mr. Vispi said they had a twin but it was a different year and it worked out very well.

Francis Young, Townsend Road, said regardless of the vehicle, throwing salt in it would create the same problems. Mr. Vispi explained they would now use a utility trailer to haul the salt.

John Morgan, District 1, was concerned about the City incurring expensive lawsuits. He asked if there was risk in putting a vehicle up for auction with serious structural problems without full disclosure and then it was bought for something other than scrap and had an accident. Mr. Vispi said the City recently sold a Cavalier with structural issues. Detailed photographs and a detailed explanation of the rust were provided. The same would be done with this, and the vehicle would be sold as is. Dr. Morgan suggested if the vehicle would be sold for less than a \$1,000, it might be better to sell it for scrap.

**MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: TO WAIVE THE BID PROCESS, IN ACCORDANCE WITH THE CITY OF NEWARK CODE AND UTILIZE THE STATE OF DELAWARE AWARDED CONTRACTS FOR THE PURCHASE OF A 2016 FORD TRANSIT 150.**

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

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

Nay – 0.

**16. 6-C. RECOMMENDATION TO WAIVE THE BID PROCESS IN ACCORDANCE WITH THE CODE OF THE CITY OF NEWARK ON UTILIZING STATE OF DELAWARE AWARDED CONTRACTS FOR THE PURCHASE OF BALLISTIC VESTS**

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**01:28:20**

Chief Tiernan presented the recommendation for the replacement of ballistic vests, currently used by the Police Department, which were necessary to ensure the safety of the officers. Ballistic vests expired after five years. A total of 31 ballistic vests expired in 2016 and required replacement.

The State of Delaware entered into a cooperative agreement for the procurement of body armor designated as a State of Delaware contract. The pricing for the ballistic vests and accessories was \$31,000. Funding for the purchase was available from the Capital Improvement Project for \$26,195, donation from CSX for \$2,500 and money from seizure funds for \$2,305 for a total of \$31,000.

In accordance with City Code, it was recommended that Council authorize the purchase of ballistic vests and accessories from the State awarded vendor, Lawmen Supply Company in the amount of \$31,000 in accordance with the State of Delaware contract.

Mr. Ruckle asked what happened with the old vests. According to Chief Tiernan they were destroyed.

Mr. Gifford asked whether the CSX donation was specified for any certain department or fund. Chief Tiernan reported it was specified for the Police Department. Ms. Sierer said the Police Department received that award at last fall's CSX railroad safety training event as did the University of Delaware Police Department.

There was no public comment.

**MOTION BY MS. HADDEN, SECONDED BY MR. RUCKLE: TO WAIVE THE BID PROCESS IN ACCORDANCE WITH THE CODE OF THE CITY OF NEWARK IN UTILIZING STATE OF DELAWARE AWARDED CONTRACTS FOR THE PURCHASE OF BALLISTIC VESTS.**

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

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

**17. 6-D. RECOMMENDATION TO WAIVE THE BID PROCESS IN ACCORDANCE WITH THE CODE OF THE CITY OF NEWARK FOR THE SINGLE SOURCE PURCHASE OF THE LEICA GEOSYSTEMS TOTAL STATION MAPPING SYSTEM**

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**01:31:09**

Chief Tiernan reported this was a recommendation to waive the bid process for the Leica Geosystem. The Leica Geosystem Total Station Mapping System was used to analyze collision and crime scenes. The system utilized laser measurements and GPS software to create precise and accurate scene drawings for analysis and court presentation. Presently outside agencies were requested to take measurements at serious, fatal crashes or crime scenes in the City of Newark. The purchase of this mapping system would eliminate the need to rely on other agencies for assistance, decreasing the amount of time that roadways were closed for collision investigations and pinpoint the cause of collisions more accurately.

The purchase would include equipment, software and training for employees. Funds were available from the 2016 Capital Improvement Project in the amount of \$35,000. It was therefore recommended that Council authorize the purchase of the Leica Geosystem Total Station from Leica Geosystems Incorporated at a total cost of \$35,000.

Ms. Hadden asked whether the \$35,000 cost included the annual ongoing maintenance cost of \$496. Chief Tiernan said it did not, that would come out of the future budget from IT.

Mr. Markham assumed this would save time for the officers as well, that was a selling point that was left out as well as other agencies had to be pulled in to keep the roads closed.

Mr. Gifford asked if this was just one unit or could multiple officers use it at the same. Sergeant Curt Davis reported it was one unit but there were several satellite stations to it. It was very similar in nature to what a surveyor would use except the software end of it was much different for mapping pictures and distances and that sort of thing. It would be brought around from accident scene to accident scene as necessary.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: TO WAIVE THE BID PROCESS FOR THE SINGLE SOURCE PURCHASE OF THE LEICA GEOSYSTEMS TOTAL STATION MAPPING SYSTEM.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**18. 6-E. RECOMMENDATION TO WAIVE THE BID PROCESS IN ACCORDANCE WITH THE CODE OF THE CITY OF NEWARK ON UTILIZING STATE OF DELAWARE AWARDED CONTRACTS FOR THE PURCHASE OF POLICE MOTORCYCLES**

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**01:34:15**

Chief Tiernan presented the recommendation to waive the bid process for police motorcycles. In advance of the preparation of the 2016-2020 Capital Improvement Program, the Vehicle Maintenance Division of Public Works and Water Resources evaluated the fleet of vehicles and made recommendations regarding vehicle replacements. The evaluation took into consideration depreciation, condition, continued need and uses of vehicles for the mileage and repair history.

Vehicles 902, 903 and 904 were being recommended for replacement from the State of Delaware contract. They were all 2005 Harley Davidson motorcycles. All three motorcycles had oil leaks and electrical problems with the demanding police load. The mileage was low, but the vehicles were often used in traffic and did a lot of idling which was not good for the motorcycles. With roving traffic issues such as escorts, they idle then speed up to the next location then idle again which puts a lot of wear-and-tear on the vehicles as well as during training they get dropped and rock a lot. More importantly, the new motorcycles had anti-lock brakes for the safety of the officers as well as improved emergency lighting on the motorcycles.

The State of Delaware vendor pricing for the three 2016 Harley Davidson FLHTP police motorcycles was \$23,956.90 each, for a total of \$71,870.70. The motorcycles being replaced would be auctioned on Municibid. It was expected to receive at least \$5,500 for each motorcycle which would then go toward the purchase of new motorcycles. Funds were available from the 2016 Capital Programs Equipment Replacement Fund of \$55,500 and anticipated auction proceeds of \$16,500 for a total of \$72,000.

In the memo it was mentioned that if the auction of the motorcycles yielded less than \$16,500, that only two motorcycles should be approved. However, after working with Finance and Purchasing and if this came up short, they would be able to pull some money from the operating budget from either contingency or machine maintenance. It was therefore requested that Council authorize the purchase of three police motorcycles from the State awarded vendor Rommel Motorsports Delaware, Inc. at a total cost of \$71,870.70, in accordance with the State of Delaware contract.

Ms. Sierer asked the anticipated delivery of the motorcycles. Sergeant Davis said the expected deliver was four to six weeks.

Mr. Markham asked if the motorcycles came fully equipped. Chief Tiernan responded everything would be on them. There was nothing to be done except maybe add the insignia or something along those lines.

Mr. Gifford wanted to understand the thinking around why the department may have only needed two motorcycles versus three – was there a backup motorcycle or did they regularly use only two together. Chief Tiernan replied they often used three. It was just thought there might not be enough funds if they did not get the full amount in the Municibid.

There were no public comments.

MOTION BY MS. HADDEN, SECONDED BY MR. RUCKLE: THAT THE BID PROCESS BE WAIVED TO UTILIZE THE STATE OF DELAWARE AWARDED CONTRACT FOR THE PURCHASE OF THREE POLICE MOTORCYCLES AS DETAILED IN STAFF'S MEMO DATED MARCH 9, 2016.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

19. 7. **FINANCIAL STATEMENT:** None

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

A. **Bill 16-09** – An Ordinance Amending the Comprehensive Development Plan by Changing the Designation of Property Located at 47 West Cleveland Avenue

**01:38:54**

*(Secretary's Note: Items 8-A, 8-B & 9-A were discussed simultaneously.)*

Ms. Bensley read Bill 16-09 by title only.

MOTION BY MR. MOREHEAD, SECONDED BY MR. RUCKLE: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR BILLS 16-09 AND 16-10.

Ben Prettyman, 212 Beverly Road, presented the project at 47 West Cleveland Avenue and was joined by Hal and Ruth Ann Prettyman along with Alan Hill, Hillcrest Associates.

Mr. Prettyman referred to visuals of the project. Currently the parcel was non-conforming because it was zoned BN and was being used for residential use. There was an active rental permit on the property for six individuals. It was non-sprinklered and was built roughly in 1933. The parcel was located on Cleveland's west end and was directly adjacent to the recently approved Cleveland Station. The zoning map showed the zoning in the neighborhood – everything in blue was the University, anything in the green or greenish brown was residential. The 47 West Cleveland parcel was outlined in yellow.

The make-up of the neighborhood was primarily residential and was adjacent to the recently approved Cleveland Station which had a parcel of it which was BN and was rezoned to RM which was being sought this evening.

Another overlay of the neighborhood showed the University of Delaware and the makeup of the neighborhood in the one block radius. It was very close to the University of Delaware and was primarily made up of student rentals.

The proposed project received a positive recommendation from the Planning Department as well as the Planning Commission. The proposal was four townhouse-style apartment units comprised of six-bedrooms each. It was worth noting that the project was less dense and directly next to Cleveland Station and was also less dense than the second closest RM rezoned redevelopment in the area which was Campus Walk. RM

zoning permitted anywhere from 11-36 building units per acre. They were on the low end of that requesting 12.9 building units per acre.

Before the approval of Cleveland Station the density in the neighborhood was 12.5, so this was right in line with the density in the area as well as on the low end of the RM zoning and below the two closest RM zoned redevelopments. However, the owners were willing to deed restrict the property to one person per bedroom.

Mr. Prettyman felt the site design for 47 West Cleveland was extraordinary since they were able to strike an agreement with the adjacent redevelopment and came to an access agreement to use their entryway off Cleveland Avenue. Not only was this a superior design, but it had many benefits since one curb cut would be removed, eliminating some of the stop-and-go on Cleveland Avenue. It would conceal the parking in the rear and provided 5-6% more open space on the site plan. The vision was not only to improve the streetscape but also complement the adjacent redevelopment at Cleveland Station while unifying the street.

Mr. Prettyman reviewed a rendering of both redevelopments side-by-side. They mimicked the superior architecture of Rick Longo and chose like materials to simulate and complement the two developments almost as if they were one. This was duplicated elsewhere on Cleveland Avenue at the Cleveland Avenue townhouses 71 through 79.

With a positive recommendation from the Planning Commission and the Planning Department, Mr. Prettyman asked that Council approve this project as it did not have any negative impact on the adjacent or nearby parcels, and did not conflict with the development pattern in the nearby area.

Mr. Ruckle asked if there were six parking spots since there were six bedrooms for each building. Mr. Prettyman responded there were four parking spots for each unit.

Mr. Morehead asked if there was a permanent cross access agreement with the supplier of the driveway. Mr. Prettyman said that was correct, it was memorialized in perpetuity. Mr. Morehead pointed out there was a mistake on the drawing. It mentioned eight garage spaces per unit, and he thought it meant eight garage spaces total. Mr. Prettyman confirmed there were two per unit underneath. Mr. Morehead appreciated the good parking there and the fact that the curb cut on Cleveland was being taken out since it was a particularly bad spot. Unfortunately the driveway they were now using made that situation worse. He would have preferred the entrance to both of those properties be further away from the corner.

Mr. Markham pointed out that the project was tied to the property next door and asked how the timing worked. As far as he could tell, nothing was being done on the adjacent property. Mr. Prettyman replied the timing was not discussed yet. They discussed internally about how they would be built, and there appeared to be no imminent discrepancy if one had to be built simultaneously with the other. If for whatever reason 47 West Cleveland could not be started right away because the property was currently leased, then when it was time to build, they could actually use the entryway off Cleveland Avenue and should not have an issue with completing the building. Mr. Markham was thinking the other way around – if Mr. Prettyman decided to build first and that exit was not yet established. Mr. Prettyman said in that case their start would be hindered.

Mr. Markham said with the previous development he asked about issues making the left out of and the left into the development. He asked if there was an answer back from the developer on what DeIDOT had to say because he still had concerns about crossing that traffic both directions. Ms. Feeney Roser had not heard from the developer but did reach out to DeIDOT to talk about it. The response Public Works received was that DeIDOT was not concerned about left turns there. They suggested that if the City wanted to put a time limit on when they would be allowed, they would not object to doing that but they did not feel it was an issue that needed to be prohibited.

Mr. Markham would like to revisit that because of the traffic congestion during rush hour. He wanted the City to look into a restriction and asked if the applicant would be in

support of that. Mr. Prettyman had no objection to the signage, but could not agree to restrictions on behalf of the adjacent property owner. Mr. Markham pointed out that Mr. Prettyman's project had to share that entrance and exit.

Mr. Markham asked Mr. Prettyman to describe the benefit to the City for this project. Mr. Prettyman said there was revenue generated from this project, roughly \$2,500. It also increased the streetscape. He knew there was great improvement done along New London Road and this would improve the vacant lot and the old house. He also thought it would improve a lot of the runoff and flooding in that area. It was sloped back toward Church Street and some of the residents expressed concerns with runoff and flooding. This parcel, even though it was included with Cleveland Station, had its own stormwater management system separate from theirs and any runoff and possible stormwater issue in that area was addressed and should greatly improve.

Mr. Morehead said an additional benefit was that the property would be brought up to fire code which included sprinklered apartments whereas the current property was not.

Mr. Markham asked how this project would improve Cleveland Avenue. Mr. Prettyman thought the improvement was slowly working its way forward to the middle of the old Cleveland Avenue. He felt with the close proximity of the development to the University that walking would be the main method of transportation for the students.

Mr. Markham said he always pushed for wider sidewalks, especially Cleveland Avenue which at times was so busy that people end up in the street. Mr. Prettyman said the sidewalks should be a match – it was five feet wide with a three foot grass buffer. Ms. Feeney Roser confirmed that was standard. Mr. Chapman pointed out that was the new ADA requirement, so it was significantly wider than the current sidewalk.

Ms. Sierer noted the developer agreed to do additional LEED-like points and asked what points they planned to achieve at the property. Mr. Prettyman said the list the City recognized was limited – the point system maxed out at 32. The minimum required was 24. Ms. Sierer restated they might do more as they agreed to do additional ones.

Ms. Sierer asked what kind of fence would be installed in the back. Mr. Prettyman said it would be a chain link with privacy slats and would be 6-8 feet high.

Ms. Sierer encouraged Mr. Prettyman to install more bike racks.

Ms. Sierer asked if Mr. Prettyman intended to follow the Parks and Recreation Department recommendation to take down two trees. Mr. Prettyman thought they probably should come down and noted they had quite a few plantings back there.

Mr. Chapman echoed comments that were already mentioned. His district started just shortly after the property, and traffic at the intersection of New London and Cleveland was a consistent issue for District 5. He was concerned about the additional impact of the ingress/egress and thought the City should revisit the possible left turn restriction at least at certain times. He suggested the possibility of shifting the entrance from the neighboring property to this property so it was further from the busy New London/Cleveland Avenue intersection. Regarding a possible traffic impact study by DeIDOT, Ms. Feeney Roser did not think DeIDOT felt the number of units would generate peak hour traffic that met the threshold of 500 additional trips per day for a study.

Mr. Markham asked if there was a precedent for doing what Mr. Chapman suggested. Mr. Herron advised it would not be something that Council could require because the applicant was in no position to grant the request. Ms. Feeney Roser said the department could discuss this with the Cleveland Station developer to explore a better design, but they would have to come back to Council because it would not match the approved subdivision plan.

Mr. Chapman asked what requirements this would put on the other development, which was already approved. He asked if that would more or less move that project back

into the full process, or could they be brought back just to talk to Council and essentially provide a unique adjustment.

Ms. Feeney Roser said their concern would probably be time more than anything because they were almost finished their construction improvements plan. She did not know how that would impact their financing.

Mr. Markham said he would ask the question. He noted that as the City went forward, when there were these types of opportunities, staff now had a feeling from Council to look at these ahead of time and make the suggestion knowing that Council liked to combine things and move traffic away from the intersection.

Mr. Markham asked if there was any response from the Newark Housing Authority since they owned the two lots directly east of this property. Ms. Feeney Roser replied they were contacted and had no comments.

Mr. Morehead referenced the Newark Housing Authority properties which he noticed were labeled UN on the zoning map. Ms. Feeney Roser said Exhibit A was incorrect. The two Housing Authority parcels were zoned BN and she would check to make sure it was correct on the zoning maps in the department. Mr. Markham asked whether the Planning Commission questioned this since they saw the same information. Ms. Feeney Roser said they did not.

Ms. Sierer asked if there was currently parking in front of that house on the street. Mr. Prettyman said it was on the side. There was no parking on Cleveland Avenue currently. Mr. Hal Prettyman said the Police Department asked him if he would be willing to remove the parking off the street. Since there was adequate parking he agreed, but they used to have two parking spots in front of the street there and he agreed to remove those off the street. Ms. Sierer said as Cleveland Avenue redevelops, one of her goals was to remove parking on Cleveland Avenue. She had a discussion with Rick Longo about this and hoped as new projects were developed that adequate parking was included for the residents in the new development. Also, she got a lot of positive comments about Rick Longo's designs and appreciated the fact that Mr. Prettyman was utilizing him to design these buildings. It was a positive improvement for the City.

Jean White, District 1, was in favor of changing the zoning from BN to RM and changing the comprehensive plan to allow that to happen. She attended all the meetings for Cleveland Station, the neighboring property. At that time because it was site plan approval, it needed a lot of major and lesser variances, except that it was a site plan approval, so that was not relevant.

On the eastern side next to the property in question now, instead of the side setback, it was only 2.5 feet or something less, but it was said that the owner of the neighboring property, which you could tell by looking at the blueprint, was Hal Prettyman and now she saw why he did not object to it because this plan was in the works but it was not conveyed to the audience either at the Planning Commission or the Council meeting.

She thought that it should have come out that Mr. Prettyman and his development team was thinking of taking down the neighboring house (the one being discussed today) and having a like or similar proposal because, for example, this idea put forth by a Council member of having the exit between the two developers' properties rather than at the end.

A number of variances were needed that were not in question because it was being done by site plan approval. For example, it would be one acre but only showed .31 acres. It would be a 20% lot coverage but it was 27.8. She felt that site plan approval was good in some situations, particularly for an unusual lot. At the Planning Commission meeting, she stated that six bedrooms with one person per bedroom was too much. The developer was adding 24. The neighboring property allowed 85 occupants, totaling 109 people, most with cars, and she thought it was too dense for that purpose. She would like a reduction to four bedrooms with one tenant per bedroom.

Helga Huntley, District 1, referenced the proposal to move the driveway further east away from the intersection. She remembered the developer at that time made a point of locating the driveway where the left-hand turn lane would provide motorists an opportunity to get around the people trying to turn left so there would be less traffic impact since the driveway was so close to the intersection. She brought that up for Council's consideration and did not see how moving the driveway back from the intersection would do much to improve the traffic situation. Ms. Huntley clarified that she referred to traffic turning left from Cleveland into the development.

Mr. Morehead believed the thought process was that the road was two lanes wide in front of that driveway, and so it made some sense. However, if a driver was not turning left but was coming out of the property and turning right, it would make sense to move the driveway as far away as possible. This was about two different things, turning in vs. turning out. Ms. Huntley asked why it would improve traffic to turn right. Mr. Morehead responded rather than turning way down by the intersection.

Ed Burke, District 3, had a question about fire safety related to the chimneys and moving the property closer to the other property. Ms. Sierer pointed out those chimneys were design element only.

Donna Jackson, 46 Church Street, was opposed to a variance on the side. She did not know what the long-reaching effect it would have on her property if the variance was granted. She also had concerns about the drainage system and just wanted to be able to protect the property. As far as the chain link fence, she thought the students could get over it so she would like it to be 8 feet instead of 6, especially when talking about having the traffic come back that way. She thought it would be an impact on her property.

Mr. Prettyman responded the variance he was seeking was not on the rear yard. It was on the side. It was the 4.8 feet on the edge of the curb behind Lot 1 on Cleveland Station's property line. Ms. Sierer asked Mr. Prettyman to address the fence issue. Mr. Prettyman stated if someone was going to climb a six foot fence, he believed they would go the extra two feet to get over an eight foot fence. The main purpose of it and the reason he volunteered to do this was because he understood there would be additional cars back in there and it would help minimize light and noise. In addition, the shrubbery planned for the area would minimize any spillover sound or light that might come in their direction. Mr. Markham asked if Mr. Prettyman had any objection to an eight foot or higher fence to be neighborly. Mr. Prettyman did not object.

Mr. Markham asked Mr. Prettyman to address the stormwater based on the current State regulations. Alan Hill, Hillcrest Associates, said the requirement under State law was that the runoff had to be reduced to less than what was there today. Mr. Prettyman added they had six or eight inch curbing surrounding the parking lot as well.

Joseph Word, 55 Church Street, referenced the question his cousin had about the variance – there was a dotted line at the back and it had 25 feet but at the corner of the driveway, asked if that was a variance that the City would require because it was coming back down lower than that 25-foot line. Mr. Hill explained that was actually the building setback line, so the building could not cross over that. It was not a parking restriction line at the back of the property.

Mr. Morehead noted that the side yard requirements were 20 feet and the building was significantly west. He asked why it was not centered. Mr. Hal Prettyman said they were trying to meet as many setbacks as possible, and if the building was moved further into the middle of the lot, then they would no longer be 25 feet off of the Newark Housing Authority neighboring property, so they met the setback on that side, on the rear and the Code for the setback off of the street. The only variation needed was the setback on the one side and they talked to the property owner next door about maybe adjoining... because the Code allowed eight, ten townhouses in a row but they were not really interested in that so Mr. Prettyman set back the same amount that they did. It was about a three foot setback on that corner, but it opened up going towards Cleveland Avenue to about eight feet. They have four units going across their front – and both properties each had four doors. It kind of balanced, so that was the reason for not centering it on the line.

Mr. Morehead asked if the spacing between the two buildings was representative. Mr. Prettyman responded it was representative in the front but not in the rear. Mr. Morehead said so the two buildings converge at the back, so that's not... Mr. Prettyman responded that would not be visible going by at 25 miles an hour at the rear.

Mr. Morehead asked if there were windows on the poles on the two facing walls. Mr. Prettyman confirmed they were just flush walls on both sides. Mr. Hill explained the buildings were too close to put windows in those walls.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: TO AMEND THE COMPREHENSIVE DEVELOPMENT PLAN BY CHANGING THE DESIGNATION OF PROPERTY LOCATED AT 47 WEST CLEVELAND AVENUE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

**(ORDINANCE NO. 16-12)**

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: TO AMEND THE ZONING MAP OF THE CITY OF NEWARK BY REZONING FROM BN TO RM, 0.31 ACRES LOCATED AT WEST CLEVELAND AVENUE.

Mr. Markham would vote in favor of the amendment because it should not have a negative impact on adjacent or nearby properties, and it would not conflict with the development pattern in the nearby area.

Mr. Morehead would be supporting this. He looked at this as a down-zoning. Neighborhood shopping in this location would be more intense, would have more traffic issues and the willingness to zone it multi-family residential would be an improvement for traffic.

Mr. Ruckle would support the project. He did not believe it would impact traffic and did not believe it would affect neighboring properties. He thanked the Prettyman family for continuing projects that beautify Newark.

Mr. Chapman planned to support the rezoning from BN to RM. He believed the rezoning would improve this section of Cleveland Avenue and that the proposed development was in line with the surrounding area and would not pose a threat to any of the surrounding residences or properties.

Mr. Gifford would support the rezoning for the same reasons stated by Messrs. Markham and Morehead.

Ms. Hadden would support the requested zoning because it would not conflict with purposes of the Comprehensive Development Plan IV. She also believed that rezoning and changing the designation reflected the current makeup of the surrounding community.

Ms. Sierer would also be supporting this for the same reasons stated by Mr. Markham.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

**(ORDINANCE NO. 16-13)**

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: TO APPROVE THE 47 WEST CLEVELAND AVENUE MINOR SUBDIVISION AND SITE PLAN

APPROVAL PLAN AS SHOWN ON THE HILLCREST ASSOCIATES PLAN DATED OCTOBER 25, 2015, WITH REVISIONS THROUGH DECEMBER 2, 2015, WITH THE SUBDIVISION ADVISORY COMMUNITY CONDITIONS AND THE ADDITIONAL RESTRICTIONS THAT THE PLANNING COMMISSION ADDED IN TERMS OF DEED RESTRICTING THE PROPERTY TO SIX UNRELATED TENANTS PER UNIT, ONE PERSON PER BEDROOM, AND MAKE THE FENCING AND LANDSCAPING IMPROVEMENTS ALONG THE SOUTHERN BOUNDARY IN CONSULTATION WITH THE ADJACENT PROPERTY OWNER, MEMORIALIZE THE CROSS ACCESS AGREEMENT FOR PARKING AND VEHICULAR TRAFFIC BETWEEN CLEVELAND AVENUE AND 47 WEST CLEVELAND BEFORE THE FIRST BUILDING PERMIT AND SEEK AS MANY LEED-LIKE POINTS BEYOND THE 24 REQUIRED AS FEASIBLE, ACKNOWLEDGING THE PLANNING COMMISSION'S RECOMMENDATION THAT THEY REACH THE MAXIMUM POINTS.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(RESOLUTION NO. 16-G)**

- 21. 8-B. BILL 16-10 – AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE, BY REZONING FROM BN (NEIGHBORHOOD SHOPPING) TO RM (MULTI-FAMILY RESIDENTIAL – GARDEN APARTMENTS) 0.31 ACRES LOCATED AT 47 WEST CLEVELAND AVENUE**
- 

**(SEE ITEM 8-A)**

- 22. 8-C. 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**
- 

**02:30:11**

Ms. Bensley read Bill 16-11 by title only.

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR BILL 16-11.

Chief Tiernan reported that the Police Department received many complaints regarding U-turns being permitted at the intersection. Sergeant Curt Davis from the Traffic Bureau went out and did a site review. The Traffic Committee discussed and unanimously approved the request to prohibit U-turns at Capitol Trail northbound at Cleveland Avenue. If the City approved this, DelDOT would put up a sign. An amendment would be required to Code Section 20-221.1.

Mr. Markham asked Chief Tiernan if any feedback was received from residents in that area. There were no comments from the residents. Sergeant Davis said he had not heard anything from any residents. He was getting feedback from other people that were driving through that particular area.

Mr. Markham asked how to get the word out to get people to break their habits of doing U-turns there. Chief Tiernan said the sign would go up and then the department would be there giving warnings. As Sergeant Davis explained to him, it was very dangerous with the cars coming off of Cleveland Avenue and the cars making U-turns and was a recipe for a collision. Mr. Markham agreed, but said it was a matter of getting people to break habits.

John Morgan, District 1, said one way to enforce it was to give tickets. He asked if there was a camera monitoring that intersection. The Chief replied there was not. Mr. Gifford thought the police did a good job with the warnings first and then the tickets.

Helga Huntley, District 1, agreed that U-turns at that intersection were dangerous. She encouraged the Traffic Committee to figure out where they would like motorists to U-turn instead because invariably there would be people going down that road if they did not want to go all the way to the end of Capitol Trail before they could turn around. Eventually someone would make an illegal U-turn because they did not have any other option, so if the Traffic Committee could come up with a solution that motorists liked, that would also improve the enforcement issue.

MOTION BY MR. RUCKLE, SECONDED BY MS. HADDEN: TO ACCEPT THE RECOMMENDATION OF THE TRAFFIC COMMITTEE TO PROHIBIT U-TURNS AT THE INTERSECTION OF CAPITOL TRAIL AND CLEVELAND AVENUE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(ORDINANCE NO. 16-14)**

**23. 8-D. 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**

**02:35:02**

Ms. Bensley read Bill 16-12 by title only.

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR BILL 16-12.

Mr. Valentino De Rocili, Senior Consultant for Compliance Environmental, said Council had a marked-up version of the original ordinance with the information that was discussed at previous meetings. He asked if Council had any questions on any of the provisions or changes in the ordinance. Mr. Morehead said his understanding was that Mr. De Rocili was given a list of revisions and questions and asked which ones he thought would be problematic.

Mr. De Rocili noted there were a few e-mails received today. The one comment was on definition in 20A-2 (3) about the definition on cyclically varying noise. Basically, this was a new definition. The reason for adding this was this term was used in the original ordinance but there was no definition to support it. The comment was that the word "levels" should be replaced with "intervals". The definition read "Cyclically varying sound: Any sound that varies in sound level so that the same level is obtained repetitively at relatively uniform levels of time." This definition and its wording addressed machines and machine cycling. Mr. De Rocili said the original ordinance was 1981 and they were adding or suggesting an edition of this wording to define this condition. Basically it said this was a noise that varied over time and since duration or time of a machine cycle depended on the task if the word "interval" was used it meant seconds, minutes, hours. Then, the sound was generated in a fashion that changes in the machine cycle were then relevant. In essence he did not think the word "interval" should be used since it meant a sound that varied over time. It said here, if the word "interval" was used to meet the definition, it would be a sound that was generated over a certain interval.

Mr. De Rocili said if he was in a situation with a machine and had a problem, in that he was trying to move around that definition, if he changed the interval, it would not be, then, subject to this definition. Basically this definition of "cycling, varying noise" was written to address sound levels. For example, using 70, obtained repetitively (which meant more than once), at relatively (which meant plus or minus), uniform, the same level, of time. Levels of time speak more to past and present. In other words, this happened in the past, and was happening now, without defining the interval. If the interval was defined and it had to be the same uniform interval, then, if someone was not operating the machine at that interval, it would then fall out of the ordinance. He did not think Council wanted that to happen.

Mr. De Rocili provided another example with the changes in the wording. If you had a machine and said that over an interval of time (seconds, minutes, hours) that by varying that noise randomly, it then would fall out of the ordinance, and Council did not want that to happen. How that could happen was that machines cycled. Usually, the machines would not cycle in the same fashion. Manufacturing facilities could control that cycle. It should not specify that it met this criteria that it was in a set interval. It was better to say that it was done in the past and the present. That to him was more of a definition that would hold. He did not recommend replacing the word interval.

Mr. Morehead asked Mr. De Rocili if he agreed that "The American National Standards Incorporated" should be "The American National Standards Institute". Ms. Sierer caught that on the amendments page 1 and page 7.

Mr. Morehead asked what about the fact that the Acoustical Society of America document 110-1994 was not available any longer. Mr. De Rocili said it was available. It was up on the screen. It was reaffirmed or updated June 15, 2009. Mr. Morehead said the City had documentation from the Acoustical Society of America's website itself saying that it was not for sale as of today. Mr. De Rocili believed it was purchased today by the City. Mr. Morehead responded that was the ANSI document. Mr. De Rocili was not aware of that.

Mr. Morehead said in section 20A4, page 5, number 11, about yelling, shouting, hooting, whistling, it was agreed to take out "on public streets" to address the issue of people having parties on their own private properties. That was a discussion in Council several meetings ago, and that was the preferred fix for that problem. He would make a motion to do that. There were a number of corrections, and he wanted to do all of those at once. One of the discussions was about residential air conditioners - this would be section 20A-2, definition number 26. In the amendment, that would be on page 3. The last sentence where it said "residential air conditioners are exempt from this definition". That was done for a specific reason. The proposed wording now was "residential air conditioners and heat pumps in good working order are exempt from this definition" because lots of folks have heat pumps, not just air conditioners. More and more people are going to heat pumps. Also, "in good working order" was important there because there were a lot of reasons that air conditioners get noisy having to do with poor maintenance. They were easy to fix.

Mr. Morehead - Another question would be 20A-4(b)(4). In the amendment on page 5, (b)(4) was about selling anything by outcry. The question was raised, "What about a farmer's market?" Right now the ordinance did not allow outcry in a residential district. It made sense not to do this in a residential district, but to allow it in a commercial district. The question was whether to change that.

In 20A-5(a)(4), this was in the current Code, page 6. It was the first sentence on the top of the page. This was under "The following uses of an activity shall be exempt from noise level regulations" and the sentence is "Any noise resulting from activities of a temporary duration permitted by law and/or for which a waiver has been granted by the city." The question was whether to tighten that up and say by this law. In other places we say "under any chapter of this ordinance". It makes it perfectly clear. For example in 20A3-5, it made sense that we would say in that position that we would like to include the words "under any chapter of this ordinance" to tighten that up and make the meaning clear.

Ms. Hadden said that was not the understanding she got from that sentence. She thought it was any activity permitted by law that would require a waiver. She did not think it was any activity that was allowed in the ordinance. Mr. Morehead asked for an interpretation. Mr. Herron was not sure what Mr. Morehead was asking. It said "and/or for which a waiver has been granted by the city." Mr. Morehead said the "and/or" was not the question as far as the waiver, the question was, "What was the interpretation of "permitted by law?" Was it any law? Ms. Hadden said if you have an event or an activity, and it was permitted by law and for which you can get a waiver. Mr. Herron added it said, "and/or for which you can get a waiver". Mr. Chapman read this as ... For example, recently, he thought about the noise ordinance while pounding steel stakes into the ground to support yard signs. He thought, "I bet this is annoying to people near me and violating the noise

ordinance" and therefore as long as he was not doing that after 9:00, by this sentence as written, he was not breaking the law as it was a temporary legal activity.

Mr. Herron said he interpreted it the same as Mr. Chapman and Ms. Hadden.

Mr. Morehead referred to section 20A-6(a)(2) in the law on page 7. The problem here was the definition of repetitive impulse sound, and the specifics in the law said, "Any stationary source of sound which emits a pure tone, cyclically varying sound or repetitive impulse sound shall be considered a noise disturbance if the sound exceeds the ambient noise level by five dBA." That was the requirement. The problem when in going back to look at the definition of those words being excluded. The repetitive impulse sound was not the repetitive impulse sound until it was 15 decibels higher. So, if it was five decibels higher, that was the limit, but it did not qualify until it was 15 back in the definitions on page 2, number 21, and that was a new definition.

Mr. De Rocili responded the definition of repetitive and impulsive sound said, "A sound that consists of a single burst with a duration less than 1 second, with peak levels 15 decibels higher than background noise." Peak was the absolute top of the measurement. Going back to A2, it talked about that sound from a stationary source that exceeded the ambient noise by five dBA, and dBA was an average or measurement over time. It was a repetitive noise because that was its temporal signature and that 15 was above a peak value, but this was the peak, and we were looking more at a dBA average for that measurement. So these peaks were going on that added a function to where this dBA was going to be. It was possible to have a 15 dBA and a five dbA measurement.

Mr. Morehead asked Mr. De Rocili to come back to the definition - what if it was 16? Mr. De Rocili said if it was 16, it was over. It was at least 15. It said peak levels of 15 higher. So if it was hitting 16, it was 15 also was the way he interpreted it. If it was a 30 measurement, it was also a 15. It had to pass 15 to get to 30. Mr. Morehead said that was an interesting interpretation. The City typically wrote laws a little more carefully than that. They would say "at least" or "greater than or equal to" or "15 or higher". They would not set it at 15 when they meant more than 15. Mr. De Rocili said it was that the industry defined these terms. It was accepted that the 15 dB was kind of that threshold, that once it reached that in one second, it was considered that definition. Mr. Morehead said one second would have an A component. They were not talking about an A component. Mr. De Rocili was talking about a peak.

Mr. Morehead asked if levels of time was an industry-accepted concept. Mr. De Rocili said it was more physics. In his interpretation, physics spoke to past, present, and future. Mr. Morehead had a degree in physics and never heard of a level of time. The offer was for intervals, not a single interval, but intervals, plural, and he thought that addressed the concern. He was extremely uncomfortable with the level of time. He did not know what that was. He did know what intervals of time were. Mr. De Rocili replied that definition was found in many different noise ordinances, and it was a standard.

Mr. Gifford reported a concern was brought up by a member of the community about the stormwater regulations that were rolled back due to an issue with a separate set of technical documents. The documents were available for the public to review. Someone reviewed them, and another ANSI standard was mentioned in here, which was ANSI standard 1.4 that referred to the meters. That was publicly available because it was in the CFR for the United States Government. It was available online, and he forwarded that to the City.

Mr. Gifford's main issue was that the standard was concrete and would not change unless Council came back and revised it. That started on the first page of the amended ordinance. The first paragraph ended with "shall be in conformance with applicable publications of the American National Standards Institute (ANSI), the Acoustical Society of America (ASA), or its successor bodies." He proposed, "shall be in conformance with applicable publications of the American National Standards Institute (ANSI) and the Acoustical Society of America (ASA) as referenced in this ordinance." Just so everyone was clear, ASA was the SDO, standard developing organization. ANSI basically just

accepted their documents and collected all these standards. Mr. De Rocili confirmed that was correct – ANSI was like the mothership.

The second one in number two, was a comment at the end that says, “over time.” Over time was not favored. Then, a community member also mentioned they were not sure ANSI and ASA were needed in this specific definition again because it was already said above. His recommendation was to say, “The ambient noise level shall be determined with a sound level meter.” The method section later on states exactly what code to use, so the definition would not need to specify for number two when nothing was specified for number one and number three. That would make it clear without having to repeat those words.

On the top of page three, it was new number 23, *Sound level*, should be (ANSI S1). That was the ANSI standard available publicly without purchasing it.

On page seven in (b), last paragraph, he wanted to clarify this. Remove “or latest edition” so it would not be changed. Right now, ANSI standard S 12.18 was being reviewed and there might be a new release in 2017 according to the business director at ASA. This ordinance would include the 1994 edition written here. The next piece needed to be capitalized because it was the title of the document, “Procedures for Outdoor Measurement of Sound Pressure Level.”

On page five, number 11, “Yelling, shouting, hooting” add “or” before “whistling”.

On page five, (b)(4) *Street sales*: Selling anything by shouting or by outcry. If that was left as it is, the “within any zoned district” should be removed because once “residence” gets removed, it made no sense.

Mr. Ruckle said he received many phone calls and e-mails from people from outside the district and other districts who were adamant against this bill. Before, he was open to all of this. Right now, the City had the strictest noise ordinance in all of Delaware and adopting Bill No. 16-12 would make Newark the strictest in the country. He did not want the City to be the laughing stock on every national comedy show. He felt this was absurd and it was time to take a deep look because enforcing this law was impossible. Comcast reached out to him and said they had late night times to do emergencies. They were not a municipality. They would get arrested. This was criminal, not civil. He had a hearing impaired person who said they listened to their TV loud. Point four was the same sound as in a library, so any sound from one to five, it had to be silent. That was what it really was. Mr. Gifford asked Mr. Ruckle to explain the numbers. Mr. Ruckle said point four two was the same sound as a library, silent, and that was what was being expected from that time. He claimed a hearing impaired person would be arrested because his television was too loud and would be able to be heard from the street. A Windy Hills resident with medical reasons for having a backup generator reached out and said, “When my generator goes off I need to have my dialysis machine working, and I assure you it isn’t silent.” The University also reached out even though they would not speak about it today. They were very disappointed in the City because, as a college town, this would make things more difficult. He had one business owner who received deliveries from 1:00-5:00 a.m. He did not want anyone to get arrested because of this.

Mr. Ruckle stated that senior citizens were furious about this because they did not want the police off the streets but wanted them enforcing real crimes. Now he found out tonight that the police would not be the ones who enforce this. He believed it would require hiring someone with special training and equipment. He asked Mr. Herron how many people were arrested in the last ten years under the noise ordinance through the use of sound equipment. Mr. Herron replied he was not aware of any.

Mr. Ruckle referenced a line of the bill that said “the city manager shall have authority consistent with the chapter to revoke any building permit or occupancy permit where the owner has failed to demonstrate compliance with an ordinance after 60 days.” That was removing a family from their residence because of a noise ordinance. He felt that had to be completely taken off. Certificate of occupancy was given any time a building was completed granting the right to live there. This was a homeowner, not just a tenant.

Mr. Ruckle asked if the City had any of this equipment and if anyone had training. Ms. Hadden replied that yes, the City had equipment, and in the past, Code Enforcement worked with her. Ms. Houck added that during the many months leading up to this, it was mentioned that special equipment and training was needed. Staff's idea was that if the City moved ahead with enforcement and taking measurements that a professional would be brought in when needed. It had not gotten to the point to make any decisions. If the City was going to enforce whatever was approved, they would either have to purchase the equipment and train people to do this or would have to hire somebody.

Mr. Ruckle opposed having the police department do this work since their job was to protect the citizens from violent crimes.

Mr. Ruckle said this would not even affect the STAR Campus because they were University of Delaware. If it was the decision of some people in this Council to stop the development of the STAR Campus, this would not even affect it. Instead, this law was going to hurt the residents.

**MOTION BY MR. RUCKLE: TO DROP THE ENTIRE NOISE ORDINANCE AND MOVE ON.**

**MOTION FAILED - NO SECOND.**

Mr. Gifford asked to respond to some of Mr. Ruckle's comments. The one thing that would remain true was part of the noise ordinance as it was written today and as it would remain did not involve the use of the sound meter, so a sound meter did not have to be used every time. Yelling, hollering and a loud TV that could be heard from the street were violations today and remained a violation and were enforced by the Police Department. After 9:00 p.m., violators did not get a warning but were fined. That stayed the same. If a Comcast representative had to do work at night, he could get a waiver if it was a serious incident from 1:00-5:00 a.m. Ms. Houck said if it was an emergency, it would be handled by staff in place that would make the right decisions. Council was familiar with the fact that she could grant noise waivers for construction and other types of things. Things like loud TVs and loud parties were usually from complaints made to the City. Mr. Ruckle felt this law was asking for the City to be proactive rather than reactive.

Mr. Morehead said just because the City might pass this law did not mean they would be looking constantly for transgressors. It provided a backup if needed in case of a problem. This law was around for a long, time in one form or another. Code Enforcement was responsible for enforcing it and they did. It gave them the tools to shut down loud parties and to improve neighbor-to-neighbor relations to some degree.

Mr. Ruckle asked why the limits were being lowered if the law already in place worked. Mr. Morehead did not say it worked – he said it was there. It was being enforced and parts of it worked and parts of it did not work. That was why the laws were constantly improved because they were not perfect.

Mr. Chapman was concerned about the trajectory this conversation was taking, and it was starting to feel more like a debate rather than a productive conversation. If Mr. Ruckle had concerns, he would like to discuss and address them and have those questions answered.

Ms. Hadden said it was the residential district portion that changed the most in the ordinance as it was and was now. The reading she took truly reflected what was actually occurring at night. This was an accurate reflection of what existed in the residential districts at night. In looking at page six, the University district and the business district did not change. The only thing that changed was they bumped the time back an hour. She could not see an impact on the STAR Campus for future growth. It really was to maintain the quality of life that currently existed in the residential areas. She understood the concerns of people, but this was only on a complaint basis. The police did not drive around looking for loud TVs. Nobody was going to go shut a generator down at a house where someone must have it to live. That was not going to happen.

Mr. Ruckle did not think it made sense to change this and lower the standard since Newark was already the strictest in the state. Mr. De Rocili compared the 57 municipalities in Delaware and presented a table. Newark and two others, were pretty much at the same level at that time. With the new levels, Newark would be the strictest municipality in Delaware and portions of the ordinance were stricter than San Diego's.

Mr. Chapman responded to a couple of points brought up by Mr. Ruckle. He referenced being arrested as if it were the immediate and only punishment. He saw a lot about fines. He thought everything that had a punishment typically followed the fine by some amount of imprisonment, including not paying for parking tickets. Including imprisonment he did not think was odd or uncommon. Mr. Herron confirmed there were fines but this was not a civil citation so it was, in a sense, a criminal charge. A noise violation had always been a misdemeanor.

Mr. Chapman referred to page 5 of the red line version, section 20A-4 (14), *Exhausts*. "Discharge into air of any exhaust, mobile or stationary, except through a muffler or other device which will effectively prevent a noise disturbance." He asked what that meant. Mr. De Rocili explained that was in the section of noises prohibited and his interpretation was that there could not be any discharge of air of any exhaust into the air except through a muffler. There had to be a control device called a muffler or other device that effectively prevented a noise disturbance. Going back to the definition of noise disturbance, there were four criteria that constituted a noise disturbance – that was how it was tied in. It said that a mobile or stationary piece of equipment must have a muffler or some kind of control device. Something with a straight pipe such as a vehicle with a straight pipe without a muffler would be in violation of that. Also contractors' equipment where they were running a generator or something similar without a muffler installed would violate that provision.

Mr. Chapman discussed the exemptions for doing lawn work (red line version, page 6, item (c)), and Mr. De Rocili confirmed that any manufactured device that was not altered most likely had a muffler, and the muffler was required if the equipment being operated had exhaust. Further, the levels of noise was one of the criteria for noise disturbance.

Mr. Chapman asked what the noise level was on Main Street in the middle of the day, or at 2 a.m. He asked because his neighborhood was really quiet and in testing the sound meter on his phone while outside playing with his dog, he has gotten readings of 60. Mr. De Rocili could not answer the question about Main Street because they had not collected measurements there. However, from experience in Delaware they get night time levels around 1 a.m. until 4-5 a.m. in the 45 range. Mr. Gifford commented that the phone apps never matched any of the meters he tried to use.

John Morgan said this started in October 2013 when he had a conversation with former Councilman Doug Tuttle, who was impressed with San Diego's noise ordinance with the three tiers and the limit in residential areas of 40 decibels late at night. Dr. Morgan asked Mr. Ruckle who in the University objected to this ordinance and were they speaking in an official capacity. Mr. Ruckle said no, they were not. Dr. Morgan assumed if anyone in the University administration thought this was really objectionable, that Rick Deadwyler or Caitlin Olsen would have been here tonight to register their concerns. In reference to the STAR Campus it may not be widely known that in the lease agreement with The Data Centers there was a provision that every time TDC would install a new steam turbine, careful sound measurements would have to be made to ensure that the addition of the turbine did not cause a noise disturbance that would violate the City's noise ordinance. After all the complaints that were made about how the University was treating the City, it was a relief to him to be able to read the lease and find that University administration was concerned about not creating a noise disturbance in the City.

Dr. Morgan said Newark would not be the strictest in the country with 42 decibels late at night. In San Diego it was 40 as it was in some other more progressive areas of California. He pointed out the population of San Diego was over 2 million. They had more people in one city with many different kinds of areas, residences, commercial, industrial and an international airport. If it worked there, he felt it should work here fairly well. Also,

it was consistent with the measurements made by Ms. Hadden with her noise meter. He respected Ms. Hadden's careful survey which to date was the only survey of actual noise measurements in residential areas in the City.

Dr. Morgan thought it was important for Newark to be known as having the quietest single family residential areas in the State of Delaware. Newark had the reputation of a party town. In order to encourage families with small children to live here, they should be assured by statute that the single family residential areas were the quietest in Delaware.

He thought Mr. Ruckle identified an important issue about back-up generators which may need to run at any hour. He suggested adding an exemption in the ordinance for back-up generators similar to air conditioners. Mr. Ruckle responded an exemption would satisfy that one particular constituent's concern.

Helga Huntley, District 1, said aside from updating some of the technical details, the main purpose of the ordinance was to set lower noise limits in the night time hours in residential districts that were consistent with the current ambient noise levels. Rather than creating a new burden, this would guarantee that the currently quality of life would not be degraded over time. She was in favor of Council adopting this noise legislation. She agreed that some points brought up should be addressed or discussed at least.

She refuted the statement that "cyclically varying" had anything to do with something happening in the past and happening in the future. That means constant in time; that was not cyclical. As a physicist, there was nobody in physics who called it cyclically varying if it referred to something that was the same in the past as in the future or in the present.

Ms. Huntley did a Google search on how other municipalities define cyclically varying noise in their noise ordinances. She looked at 40 of them, and there were three that used levels of time in their ordinances. One used intervals of time, the other one used periods of time. She suggested using language consistent with the way that physicists and acoustic scientists used the language and do not talk about levels of time and definitely do not refer to cyclically varying noise as something that was the same in the past as it was in the present. She encouraged Council to follow the suggestion of Mr. Morehead to make it above 15 decibels for the impulse noise since 15 was not equal to 16, it was not equal to 17. That was just not right under anybody's understanding.

It was already mentioned that San Diego's stricter noise ordinances would affect the STAR Campus because the University was not exempt from noise ordinances, as a response to one of Mr. Ruckle's comments.

The question came up about what this exemption of temporary lawful activity meant. She was concerned about that because she would consider mowing the lawn as being a lawful activity. It was temporary – she was not doing that constantly, so mowing the lawn at 2 a.m. would be exempt by this rule. That was clearly not something the City should permit, so she suggested looking at section 20A-5 (a)(4) and making sure that there was too much being exempted.

Ed Burke, 409 Apple Road, had several questions because he thought there was a lot of ambiguity in 5, particularly the one brought up by Mr. Ruckle in regard to some of the sound levels. One of his concerns was the temporary duration during weather events. During heavy snowfalls he would be out with a snow blower at 10-11 p.m. to avoid dealing with it in the morning. He did not want to be fined or arrested under the provision stated in the ordinance.

In regard to music, he was a piano player and played with the windows open when the weather was nice. The piano would probably measure at 80 to 100 decibels. That would be clearly audible from his property line meaning he could be considered a public nuisance.

Mr. Burke gave examples of some decibel levels from Purdue University. 70 was considered an arbitrary basis comparison; living room music 76 decibels;

radio/TV/vacuum cleaner 70; conversation in a restaurant, office background music, air conditioning unit at 100 feet is 60 decibels; a quiet suburb, conversation at home, large electrical transformers at 100 feet are 50 decibels; a library and bird calls at 44 decibels and then 40 was stated as the lowest limit of urban ambient sound.

Francis Young, District 3, was glad the City was addressing the noise ordinance. He felt the word noise was used very loosely here. Loud noise in Newark meant if it could be heard outside of a property line. His property was only nine feet on one side, ten feet on the other side, and 25 feet to the front. If someone could hear noise that did not mean it was loud. He pointed out that if he was on his street and it was after 9 p.m., he could be fined for talking like he was right now. There were neighbors who were actually complaining anonymously. He agreed with Mr. Ruckle that this should be taken off the table and encouraged Council not to make the law any stricter.

Mr. Burke referenced the cars running around with coffee can mufflers which were very loud. He asked what that would fall under or whether that would be addressed under traffic violations by the police. Also, what about motorcycles – there were mufflers on them. Were those vehicles now in violation of this? He felt this had to be enforced across the board. He also felt music blaring out of vehicles on Main Street now that the weather was turning warmer ruins the wholesome family atmosphere and was a detriment to trying to bring people into the City.

Ms. Sierer read her notes for the amendments, which listed the following:

- Page 1 just above item (1) in the first main paragraph after (ANSI), add the word "and", remove the words "or its successor bodies" and add "as referenced in this ordinance."
- Page 1, item (2) Put a period after "sound level meter." Remove "in accordance with American National Standards Inc. and Acoustical Society of America Standards Overtime."
- Page 2, item (16) near the bottom of the paragraph. Change from "such as, but limited to", add the word "not" so it would read "such as, but not limited to,".
- Page 3, item (26), third sentence, add the word "is" before "not," so it would read "including, but is not limited to."
- Page 3, last sentence of that section, Residential air conditioners then add a comma then add "back-up generators in an emergency and heat pumps in good working order" are exempt from this definition.
- Page 3, item (23), (ANSI S1.4 – 1971), "S1.4 needs to be "S1.4".
- Page 5, item (4), remove "within any residence zoned district."
- Page 5, item (11), after "hooting" add "or". Second line, item (11), remove "on public streets".
- Page 7, item (b), after American National Standards should be "Institute" not "Inc." In the next line remove "or latest edition of the" and "procedures for outdoor measurement of sound pressure level" should be capitalized.

MOTION BY MS. SIERER, SECONDED BY MS. HADDEN: TO INCORPORATE THE AMENDMENTS LISTED ABOVE INTO BILL NO. 16-12.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

The following additional amendments were discussed.

Mr. Ruckle, page 4, amendment 2, item (6), should read "In addition to the penalties listed in this ordinance, the city manager should have the authority, upon conviction, consistent with this chapter, to revoke any building permit."

Council members thought the rest of the sentence was needed but would strike out "occupancy permit" in both places. Mr. Herron understood why it was there and said there was no harm in keeping it there.

Ms. Sierer asked why this had to be addressed. Mr. Ruckle said occupancy permit or certificate of occupancy meant a homeowner purchased this property. With this provision in the noise ordinance, the entire family could be removed from the house. That could only be done by a sheriff under Court order, not the City or City Manager. Mr. Chapman understood that point. Typically, he thought a building permit was something used to actually build something and asked where this played in – if the machinery was too loud or a builder was building through the night and refused to not build through the night. Mr. Herron believed that was what it was intended to address. Mr. Gifford said as an example, there was somebody who left a work site and left their generator on to empty a drainage ditch and just walked away from it.

Mr. Chapman asked about intent in the inclusion of an occupancy permit. Does this in any way impact or relate to rental permits or students where there was a consistent problem house where we can help the landlord evict in a way. Mr. Herron believed that was already addressed in another portion of the Code. He thought it was better to leave it out from a legal perspective because it was addressed elsewhere. He thought the reason it was in there was to address the building permit issue.

AMENDMENT BY MR. RUCKLE, SECONDED BY MR. MOREHEAD: CHANGE ITEM (6) ON PAGE 4, AMENDMENT 2, TO READ "IN ADDITION TO THE PENALTIES LISTED IN THIS ORDINANCE, THE CITY MANAGER SHALL HAVE THE AUTHORITY, UPON CONVICTION, CONSISTENT WITH THIS CHAPTER, TO REVOKE ANY BUILDING PERMIT WHERE AN OWNER HAS FAILED TO DEMONSTRATE COMPLIANCE WITH THIS ORDINANCE AFTER 60 DAYS NOTIFICATION TO THE OWNER REGARDING THE INTENT TO REVOKE SAID BUILDING PERMIT."

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

AMENDMENT BY MR. RUCKLE, SECONDED BY MR. CHAPMAN: ON PAGE 6, SECTION 5, PART a WILL READ, "RESIDENTIAL DISTRICT-57 dBA BETWEEN THE HOURS OF 7:00 A.M. AND 9:00 P.M.; 50 dBA BETWEEN THE HOURS OF 9:00 P.M. AND 7:00 A.M.

Mr. Markham said Council spent at least an hour at two different workshops discussing these, going over the numbers and going over the charts. At that point in time they came to an agreement that these were the decibels they would use. Unless Council was going to relive that whole conversation again and pull out all the documentation again, he was going to stick with what was agreed upon those meetings.

Mr. Ruckle said the issue he had was the district, now that it was publicized, he was flooded with phone calls and that was why he had to make this motion. He had to put their interest first.

AMENDMENT FAILED. VOTE: 1 to 6.

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

AMENDMENT BY MR. MOREHEAD, SECONDED BY MS. HADDEN: ON PAGE 2, ITEM (21), CHANGE THE DEFINITION OF REPETITIVE IMPULSIVE SOUND TO "A SOUND THAT CONSISTS OF SINGLE BURSTS WITH A DURATION OF LESS THAN ONE SECOND WITH PEAK LEVELS 15 dB OR HIGHER THAN BACKGROUND NOISE."

AMENDMENT PASSED. VOTE: 5 to 2.

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

AMENDMENT BY MR. MOREHEAD, SECONDED BY MR. GIFFORD: ON PAGE 1, AMENDMENT 1, ITEM (3), CHANGE THE WORD "LEVELS," THE THIRD TO LAST WORD IN THE SENTENCE, TO THE WORD "INTERVALS".

Mr. Markham pointed out that in Googling that term, it came up with that definition in several other noise ordinances - "cyclically varying noise," means any sound that varies in sound level so that the same level is obtained repetitively at a relatively uniform level of time. Mr. Chapman felt the consultant's response was pretty thorough, and he did not like the use of the word intervals instead of levels based on that.

Mr. Gifford thought in the end it was going to get to the same place. They found codes with both.

AMENDMENT FAILED. VOTE: 2 to 4.

Aye – Gifford, Morehead.

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

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: THAT BILL 16-12 BE APPROVED AS AMENDED.

MOTION PASSED. VOTE: 6 to 1.

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

Nay – Ruckle.

**(ORDINANCE NO. 16-15)**

MOTION BY MR. GIFFORD, SECONDED BY MS. HADDEN: TO EXTEND THE COUNCIL MEETING PAST 11:00 P.M.

MOTION PASSED. VOTE: 6 to 1.

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

Nay – Chapman.

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

- A.** Request of Harold B. Prettyman, IV for the Minor Subdivision and Site Plan Approval of 0.31 Acres in Order to Demolish the Existing Structure and Construct Four Six-Bedroom Townhouse-Style Apartments and Associated Parking Located at 47 West Cleveland Avenue

***(See Item 8-A)***

**25. 9-B. REQUEST OF 91 E. MAIN, LLC TO AMEND THE APPROVED SUBDIVISION AGREEMENT FOR THE DEVELOPMENT KNOWN AS THE NEWARK OPERA HOUSE CONDOMINIUMS IN ORDER TO CONVERT EACH OF THE RESIDENTIAL UNITS TO TWO-BEDROOM APARTMENTS FOR A TOTAL OF 32 BEDROOMS IN 16 UNITS AT THE SITE LOCATED AT 91-95 EAST MAIN STREET (RESOLUTION AND AGREEMENT ATTACHED)**

**04:17:22**

Ms. Feeney Roser reported since this agenda item was a bit unusual, she would provide a brief explanation before introducing the applicant for their presentation. The Newark Opera House subdivision was approved in July 1983 for 16 condominium apartments, and more specifically for 15 one-bedroom apartments and 1 two-bedroom for a total of 17 bedrooms and 16 apartments in the building. Prior to the subdivision approval, there were 11 apartments in that building which were existing non-conforming in terms of parking. In addition, prior to Council consideration of the 1983 request, the applicant secured variances from the Board of Adjustment for the parking requirements

for the five additional units, so there was no legally required parking associated with the 16 current units at the site. Now that the property was purchased, the new owner would like to make renovations to the interior of the building and change the apartment layout so that all 16 units were two-bedroom units. No other changes to the building were proposed and no additional parking requirements were triggered by Code to go from one bedroom to two bedroom units, so no new parking spaces were required to accommodate the request. Expanding the number of bedrooms met Code in all aspects. However, because the original subdivision approved in 1983 specifically indicated the number of bedrooms in the sixteen units at this site, and because the plan was referenced then in the accompanying agreement and resolution when the subdivision was approved, an amendment to both the agreement and the plan were necessary in order to accommodate the request. That was what the applicant was doing here tonight.

John Tracey, Esq., Young Conaway Stargatt & Taylor, said Ms. Feeney Roser summed up the request adequately. There were no exterior renovations taking place in the building, so it was a little odd. The number of apartment units remained the same. Their internal renovation was taking place on floors two through four, which would have the impact of renovating kitchens and bathrooms which had not been updated since 1983, recapturing some excess space in the circular hallway to help expand those units which were not listed as two bedroom or which did not have studies which some of them had but were not considered bedrooms so that everything would be a two bedroom apartment.

There were no changes to the commercial occupancy on the first floor. It was the Grassroots business that was here for a long time.

The subdivision plan that the applicant was seeking to revise was approved in July 1983.

The only reason for being here tonight was because the original agreement had no reference to bedrooms, but it referenced the plan. The plan had a plan sheet that had square footage and bedrooms, which was why they had to come this route to get Council's approval on the amendment to have two bedrooms for all sixteen of the apartments.

In addition to the renovations there were also updated security features being added to the building which were not touched since the early eighties.

Mr. Markham said currently there were 17 bedrooms and asked how many occupants there were. Mr. Tracey noted they have the building under contract. He thought there were 26 or 27 folks in there now – the occupancy varied over time. It was suggested from the department in its recommendation that the applicant enter into an occupancy limitation on the building. They agreed to an occupancy limitation of 48 folks for the building as a whole.

Mr. Markham confirmed there would be two bedrooms in 800 square feet plus kitchen or whatever. Mr. Tracey said there was a kitchen, and a bathroom in each unit, and they adjusted the square footages, so some came up from what was originally approved. Mr. Markham said these were tiny apartments and the proposal was to put three in each apartment. Mr. Tracey said they were capping the building at 48. Very likely there would be a number of units that would not have more than two people in them. There may be some other units that might have four because they were bigger. That was why they had the cap as the building as a whole as opposed to each individual unit. Mr. Markham said at two per that would be 34, or 14 more... Mr. Tracey continued would be the maximum permitted if all were at least two full tenants and everybody wanted to have three people. It was an overall cap, he did not know that they would ever get to that number. They just looked at what other limitations were in town, using Astra Plaza as a recent example. They had three bedroom units, it was a maximum of four people. That was why this had two bedroom units with a maximum of three total for the building.

Mr. Markham remarked this basically said the parking was off-limits to Council in what they changed, but what was not off-limits to Council was to put a limit on the occupancy. Mr. Herron said as he understood it, the plan was Code compliant, and this should be treated as a subdivision plan which was Code compliant. Mr. Markham said

Council asked for less occupants previously. That was his issue, the higher number of residents with still the same amount of space, not providing any more parking, but he could certainly make a motion to lower the number, particularly since there were 26 now, and could have 34 now. To him, it was a real leap to go from those numbers up to 48.

Mr. Tracey said there had not been a demand for parking at this building, but his client would be willing to commit to procure up to ten spaces off-site for use of folks in the building to the extent that they need them. He did not know the ratio of people to cars in the current building. Because of its location central to downtown and central to campus, cars have been less in demand there. They could commit, to the extent that the parking was needed, to agree to lease up to ten parking spaces for the use of folks in this building.

Mr. Chapman said the interesting thing about that was that procuring parking spaces would not add a single parking space. It was just locking them up for a particular use, which may make a bigger problem. It would be taking existing parking spots, not adding parking spots. Ms. Sierer said the concern was no availability in City lots.

Ms. Sierer asked relative to what Mr. Markham brought up was whether Council could change the occupancy number in the subdivision agreement from 48 to a different number. Mr. Herron said the City would run into problems if they insisted upon that as a condition because if that was not required under the Code and what they were proposing to do was consistent with the Code, there could be difficulties with insisting upon a different number. Mr. Markham asked Mr. Herron if that meant they would be unlimited to the number of people they could put in two bedroom units with 800 square feet.

Ms. Feeney Roser reported the property was zoned BB so the requirements were based on the Building Code of how many people could reside successfully, so there was no restriction on it. The parking was compliant because of the non-conforming status of the variance. It met Code in all aspects. There has been successful in asking for an applicant to voluntarily deed restrict their properties. That was what they tried to do with development approvals downtown. There were some two bedroom units that were limited to four, and others have agreed to one. She did not think it had been consistent throughout, and during discussions, Mr. Tracy said he thought his client could agree to the three per unit, maximum total of forty eight. Mr. Markham understood that, he just saw the agreement making things worse downtown when it came to parking.

Mr. Chapman asked Ms. Feeney Roser if there was anywhere in the Code restricting how many people could reside in a particular amount of square footage. Ms. Feeney Roser said it was in the ICC Codes, the BOCA Codes would list how many people. She was not sure. It was pretty liberal how many people could reside there to meet that Code. Right now, there was no occupancy restriction at all. From the department's point of view, going to 48 was an improvement over an unlimited number.

Ms. Sierer said many of the one bedrooms currently have two people in them at the location.

Ms. Hadden asked if the current residents of the apartments had cars. Mr. Tracey was not sure of the numbers that had cars. He had not been made aware of any issues that the folks there had in regard to them.

Joe Calabro said the current owner was not willing to share that information or did not have that information so they did not have additional details in that regard. Ms. Sierer said she spoke with several of the renters who indicated that most of the folks who rent there do not have cars. Ms. Hadden said so with these changes, the possibility existed that people would continue to not have cars because there was no parking provided.

Mr. Chapman said there was an offer for a deed restriction of no more than 48 total tenants. He asked if the applicant would be willing to offer a lower number. Mr. Tracey could discuss that with his client to see whether there was another number they would come up with. That number was simply based on what was seen in terms of the downtown densities for apartments, but he could talk about it. Mr. Chapman could understand that, but it was apples to oranges in comparison to what was allowed for other properties.

Mr. Tracey said they were willing to come down to a maximum cap of 44 as opposed to 48 for the building as a whole. Mr. Chapman appreciated the applicant's willingness to move on that. He asked about continuation of the conversation about procuring some dedicated parking spaces not currently owned by the City. Mr. Tracey was willing to explore options if they had demands from their tenants to look for parking they could procure and then make available to them. There may be nobody in there that had a car, and it did not make sense to procure a spot if there was nobody that wanted to use the spot. They would be willing to pursue if there were folks looking for a parking spot. They know that coming in, because they were coming in to rent, so they could make the efforts to procure one to ten. Mr. Chapman said so it would be fair to put on the record that, by the request of a tenant, that the property owner would assist in procuring dedicated parking spaces (up to 10) outside of what was owned by the City at that point. Mr. Tracey was in agreement with that statement.

Ms. Hadden noted the paperwork said no changes to the exterior of the property or building were being proposed by the requests. Mr. Tracey said correct, but to clarify, the existing agreement provided that no modifications could be made to the exterior of the building, partly because it was a historic building. That would not preclude his client from making upgrades/repairs and things of that nature to the exterior of the building. To be clear, they were not proposing to make any changes to the exterior of the building.

Mr. Morehead asked if the plan was to sprinkle the property. Ms. Hadden questioned whether this was a Code question since renovations of more than 50% had to be sprinklered to be brought up to Code. Ms. Feeney Roser clarified that in this case, the sprinkler requirement would be determined at the time of the building permit. The renovations may not add up to 50% of the entire structure. Mr. Calabro reported the ground floor condo unit was owned by a commercial tenant, so that was excluded, but he confirmed they would install fire sprinklers for the apartments on the second, third and fourth floors. Ms. Sierer asked if there was space in the middle as part of the Opera House. Mr. Calabro said and common area and they should also make sure... he was not a civil engineer and could not say whether or not it would be feasible to do this without changing the exterior of the building which they would be precluded from doing. Without knowing that, that was where they might run into a little bit of an issue. He said to the extent that it was possible without changing the exterior, they were willing to commit to sprinkle second, third, and fourth floor units and common area.

Mr. Morehead asked who would make that decision because he would say it could go up through the center. Mr. Calabro said it would be after the architectural studies were done. Mr. Morehead thought it could be done if they wanted to do it. His question was, were they going to do it or not. Mr. Calabro replied that honestly, he did not know. He was not informed enough to say whether it could or could not without making those changes. If they could do it without having to make exterior changes, they would but he could not say for certain. He did not have enough information to make that decision.

Mr. Tracey thought what he was hearing was, assuming it could be done without there having to be outside modifications to the building, his client would do it. If the only way to sprinkle it would be to include outside modifications, they could not do that under the current agreement as it stood.

Ms. Hadden asked if they would sprinkle the units – it was just the common area they were not sure about. Mr. Tracey thought what he was saying was, all the residential space would be sprinkled. It would be units and common as long as that could be done without having to modify the exterior of the structure.

Helga Huntley, District 1, said there was a question as to whether there was any non-City owned parking available the applicant might be looking into. She noted the University's Center for the Fine Arts was renting out monthly parking spaces, so there would be a place to look at.

Jean White, District 1, remarked that there were references to condominium owners and others as renters. She asked if the current condominium owners were renting them all out to other people. (*Response was inaudible.*) Mrs. White asked if they tended

to be all UD students. (*Response was inaudible.*) Mrs. White asked the average age of these renters. Ms. Sierer replied that her understanding was the majority of the renters were students. Mrs. White said it was hard for her to believe that with 26 student-aged people, some proportion of them would not have cars. If this got up to forty four, she thought this was quite an additional amount.

Mrs. White said it was hard to understand why 15 condominiums with only one bedroom could be converted to two bedroom apartments. It seemed like these were tiny units. Mr. Calabro explained there was an interior atrium that was currently wasted space. They would be infilling part of that to add additional rentable square footage, and that was where the additional square footage would come from. Mr. Tracey added the central light and portions of the atrium would remain, the atrium was very wide and half-circle. Mrs. White clarified they were making it smaller, but still having a central part.

Mrs. White remembered maybe it was always by the agreement of the developer where you have so many occupants that were suggested in a plan and then the buyer was willing to reduce it so maybe that was something they agreed to, rather something you could enforce, but it seemed to her that it should be lower than 44.

John Morgan, District 1, had been concerned about parking in downtown Newark for a while. He asked if you rent, for example, ten spaces from other commercial property owners that those were ten fewer spaces that could be used by the public visiting those businesses. It did not really do anything to alleviate any of the problems with parking downtown. Mr. Tracey responded if they were leasing from a commercial operator, that would be a space that they currently had that they would no longer have available at least while it was leased. One would presume they would not be leasing spots if they needed the spots for themselves. Mr. Tracey would not envision (and again, these were strictly commercial) if they did not have sufficient parking that they would then turn be leasing a spot available, but there may be some University spots available. There may be occasions when there may be City spots. As previously stated, they would make the effort if there was a need for it and to date there has not been to try and procure spots for tenants. Dr. Morgan thought it would be better for the property owner to tell tenants that they should not be expecting to park a car here. He suggested if students do bring a car that they park it on one of the remote lots. Mr. Tracey said that was possibly being conveyed because currently the folks there now recognize that parking was not available.

Mr. Gifford added that students actually had a parking option. Parking options were less for non-students.

AMENDMENT BY MS. HADDEN, SECONDED BY MR. RUCKLE: TO AMEND THE SUBDIVISION AGREEMENT AS FOLLOWS: (1) DEVELOPER AGREES TO VOLUNTARILY DEED RESTRICT THE PROPERTY TO A MAXIMUM OCCUPANCY OF 44 TOTAL TENANTS FOR THE RESIDENTIAL PORTION OF THE PROPERTY; (2) DEVELOPER AGREES THAT RENOVATIONS INCLUDE SPRINKLING THE APARTMENTS AND THE COMMON AREA IF IT CAN BE DONE WITHOUT CHANGING THE EXTERIOR OF THE BUILDING; (3) DEVELOPER AGREED TO PROVIDE UP TO TEN OFF-SITE PARKING SPACES IF THE NEED IS THERE.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

MOTION BY MS. HADDEN, SECONDED BY MR. RUCKLE: TO APPROVE THE REQUEST OF 91 E. MAIN, LLC TO AMEND THE APPROVED SUBDIVISION AGREEMENT FOR THE DEVELOPMENT KNOWN AS NEWARK OPERA HOUSE CONDOMINIUMS IN ORDER TO CONVERT THE RESIDENTIAL UNITS TO TWO BEDROOM APARTMENTS FOR A TOTAL OF 32 BEDROOMS IN 16 UNITS AT THE SITE LOCATED AT 91-95 EAST MAIN STREET.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

AMENDMENT BY MS. HADDEN, SECONDED BY MR. MOREHEAD: TO AMEND THE RESOLUTION IN THE SAME MANNER AS THE SUBDIVISION AGREEMENT AND THE AMENDMENT.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

MOTION BY MS. HADDEN, SECONDED BY MR. MOREHEAD: TO APPROVE THE RESOLUTION AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**(RESOLUTION NO. 16-H)**

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

**A. Council Members:**

1. National League of Cities Membership

**04:53:19**

Mayor Sierer reported there was a brief discussion at a previous Council meeting regarding the City's membership in the National League of Cities. Information about the National League of Cities was provided to Council members. Ms. Sierer thought it was important to rejoin this group and noted the money was budgeted for this membership. This was her second year of attending conferences put on by the National League of Cities. She found it to be beneficial. She got to meet representatives of other communities, got to bring ideas and network with them, and benchmark with them on things being done in Newark. She thought it allowed Council to stay current.

If Newark was a member, and she was willing to participate in these things, then she believed the City could participate as a member in more events. If Newark was not a member there were things they were excluded from, one being joining councils. There was a university council that she would like to be a part of that she felt would be beneficial, but she could not be on it if the City was not a member. They had exhausted (and Ms. Hadden went to some of these as well) first-time attendee registration opportunities, so they now had to pay a higher price to attend these events if Newark was not a member.

Ms. Sierer said she had been attending conferences her entire career. They were effective if people put something into it and came back and got something out of it. If someone just went to attend and did not participate, they did not bring something back to the table and they did not get involved in the organization, then it was not effective. But if they did that, then it could be beneficial for the purposes of the organization of which she intended to do that and she had been. Council encouraged staff to do professional development. She thought elected officials should be encouraged to do the same.

Mr. Chapman was excited about the activity that she and Ms. Hadden had given to the participation in the National League of Cities events and conferences in the last year plus. The ideas that came back, the energy that came back he thought was beneficial. He was in favor of the City rejoining and giving Council access through Ms. Sierer who was willing to participate graciously and actively and bring these ideas back.

Mr. Markham provided some of the history. He was pleased to see that the fees were not raised the way they proposed back when Council decided against renewing the City's membership. Council said that was not worth it, especially with the cost to go as a non-member. He was willing to give it a try again, he was going to throw out some caveats

because he went a couple of times. He was actually on the IT Committee for many years, even after Newark was no longer a member. The concern he had was the IT Committee really did not address anything that was going on with Newark. They had different issues in terms of much larger cities and at the federal government. He was not saying he was against it – the times he did go he came back with some great ideas. The university one was very disappointing to the group that went previously because they were touting their health card, there was really nothing to do with the university. There was a presentation by the University of Massachusetts about off campus housing and parties and dealing with things like that. He asked the question about ideas on how to deal with it. They asked him where he was from. He told them the University of Delaware and they said, "Why are you asking us questions, we follow your lead."

Hopefully, the university cities out there have progressed and would give Newark ideas rather than just looking to Newark for ideas. He was fine with giving this a try but would revisit in a year, see what the value was and encourage people to go as well.

Ms. Sierer thought a year was too short because the University Council meets once a year outside of the two conferences, so she was not sure a year was enough for her to come back. It would have to go in the budget every year anyway so Council would have to have this discussion. She also said when they went to Washington D.C. and had the meeting at the Capitol with the legislators, this was brought up by Senator Coons in particular regarding municipalities in the State of Delaware being active at the national level and she thought there was a county organization that he was involved in. She thought it behooved Newark to do this and to work with its State legislators and what they were hearing at the national level and taking it back to them and how we can make things happen in Newark that they are hearing as well. She felt if members went and did nothing, then it was wasting money. They had to go and get actively involved. To get actively involved, they had to attend conferences and attend workshops and be able to work on things. Ms. Hadden added and attend be members on committees. Mr. Markham said Doug Tuttle was very active and probably because of the fee changes, he agreed with the decision at the time.

Mr. Gifford said it did not sound like he was on the same side as the rest of the Council. He was uncomfortable with even the League of Local Governments, especially there were a lot of things here like key legislative wins and he was sure this was not an exhaustive list but he did not necessarily like funding something that he did not know that each individual Council member supported. He was fine with attending the conferences and spending money that way, but he was not sure he wanted to support folks being on committees, putting forward their opinions as a representative of Newark without Council voting on certain items.

He had an extreme discomfort with that because he did not know what happened in those meetings and there would be Council members on Council that did not have time to go down to those events. He wanted to voice his concern. He did not support using City funds for the dues. If some individual Council members wanted to go down and learn and absorb that was fine.

John Morgan, District 1 asked what the membership cost was for the City. Ms. Sierer replied membership was \$3,300. Dr. Morgan said that did not seem like a lot of money to him. He had no objection. Mr. Gifford responded it was not the money that he was worried about spending from the City, but he was worried about what could come out of spending that money.

**MOTION BY MS. SIERER, SECONDED BY MR. RUCKLE: TO DIRECT STAFF TO SUBMIT A MEMBERSHIP APPLICATION AND PAYMENT TO THE NATIONAL LEAGUE OF CITIES FOR THE YEAR 2016.**

**MOTION PASSED. VOTE: 6 to 1.**

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

27. 10-B. Others: None

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

**05:02:40**

Ms. Bensley read the Consent Agenda in its entirety.

- A. Approval of Council Meeting Minutes – March 14, 2016
- B. Receipt of Alderman’s Reports – March 3 & 10, 2016
- C. ***First Reading – Bill 16-13*** – An Ordinance Amending Chapter 32, Zoning, Code of the City of Newark, Delaware, By Permitting the Sale of Alcoholic Beverages By Indoor Theaters With a Special Use Permit – ***Second Reading – April 25, 2016***
- D. ***First Reading – Bill 16-14*** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Updating the Rules and Regulations for the Use of Parks Owned By the City of Newark to Comply with Firearms Regulations in State Code – ***Second Reading – April 25, 2016***

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

29. Meeting adjourned at 12:13 a.m.

Renee Bensley  
Director of Legislative Services  
City Secretary