

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

May 9, 2016

Those present at 7:00 p.m.:

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

Staff Members: City Manager Carol Houck
Deputy City Manager Andrew Haines
City Secretary Renee Bensley
City Solicitor Bruce Herron
Code Enforcement Manager David Culver
Communications Manager Kelly Bachman
Community Affairs Officer Megan McNerney
Finance Directors Lou Vitola and David Del Grande
Parks & Recreation Director Joe Spadafino
Planning & Development Director Maureen Feeney Roser

1. The regular Council meeting began at 7:02 p.m. with a moment of silent meditation and the Pledge of Allegiance.

2. MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: TO ADD ITEM 11-D, RECEIPT OF APRIL 5, 2016 PLANNING COMMISSION MEETING MINUTES, TO THE AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

3. 1. **PUBLIC PRESENTATIONS:**

A. Proclamation Recognizing May 20th as Bike to Work Day

04:12

Ms. Sierer presented the proclamation to Mark Deshon, Newark Bicycle Committee Chair, recognizing the benefits of bicycling as an excellent form of fitness, an environmentally-sound form of transportation and quality family recreation.

4. 1-B. **PROCLAMATION RECOGNIZING MAY 21ST AS KIDS TO PARKS DAY**

06:48

Ms. Sierer read the proclamation recognizing the importance of our nation's parks in promoting healthy living among children and adults.

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

A. Public

08:50

Nancy Willing, District 3, discussed the proposed bill regarding administrative warrants. She heard a number of concerns from the landlords that the renters themselves as stakeholders were not included in this discussion and have not yet commented on it. She felt it was a matter of great concern and should be taken a little slower. She would forward her comments to her Council member. She hoped the people who were still uncomfortable this bill would be satisfied.

John Morgan, District 1, referenced the administrative warrant bill and felt that a rapid response by the City in cases where tenants actually made complaints would be more valuable than the City going in when they were not requested to do so.

Regarding the issue of bicycles and bicycle safety he knew the Police Department was renewing efforts to step up enforcement on Main Street and other areas around the City. Chief Tiernan made the point that when there was a lot of other serious crime in Newark, handing out tickets to bike riders riding on the sidewalk should not be their highest priority. Dr. Morgan asked whether it would be possible to deputize the parking enforcement officers to hand out tickets for illegal bike riding. He did not know if that was possible under the current Code.

Dr. Morgan also urged that the City move ahead with an ordinance making it illegal to ride bikes on City-owned sidewalks in highly congested areas including South College Avenue, especially near the intersection with Delaware Avenue, Amstel Avenue and Academy Street. They were publicly owned sidewalks with heavy pedestrian traffic and having people ride bikes on them was not safe. Mr. Morehead would get back to Dr. Morgan regarding these issues.

Katie Gifford, District 3, commented that tomorrow was the Christina School District Board vote that affected everyone in Newark. Anyone in the Christina School District could vote. The two polling places were Newark High School and Downes Elementary and polls were open between 10:00 a.m. and 8:00 p.m.

Laura Henderson, District 3, discussed administrative warrants. She saw the second draft and agreed that not all stakeholders were involved. She believed the City intended to use the bill to go into rental properties and understood the contention that it was a safety issue. However, the way the bill was written, stakeholders were all residents of the State of Delaware because municipal governments would have the ability to, in her opinion, break into anyone's home whether owner occupied or a rental property.

She urged everyone on Council to read the bill carefully and imagine the implications. She had many suggestions for how to improve the safety and there were many educational possibilities for reaching out to renters.

Rob Gifford, District 3, seconded the information Nancy Willing shared with Council on administrative warrants. He also reported noticing somebody going car-to-car looking in the windows of each car and wanted to reinforce that when someone sees something like that, they should call the police. He hesitated for ten minutes and the person managed to escape. He noted that the police reacted well, and they were looking for the person who may have stolen some items out of a car near Shull Drive.

He also questioned the donation of a used K-9 vehicle noted in the 4/29 weekly report and asked for clarification around the rules for donation, as he stated the City Code covered sales and disposal, but he was curious about donations. He also questioned asking Council for feedback via the weekly report.

5. 2-B. ELECTED OFFICIALS WHO REPRESENT CITY OF NEWARK RESIDENTS OR UTILITY CUSTOMERS: None

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

17:40

Caitlin Olsen, Assistant Director, UD Government Relations, made the following announcements:

- UD Commencement was 5/28, and the speaker would be Bryan Stevenson.
- Convocation was 5/27.
- That weekend would be busy with students moving out and asked people to be prepared and let her know if they had any questions.

Mr. Markham asked what kind of outreach was going to the students for the UDon't Need It? Program. Ms. Olsen stated that they were doing online outreach, posting more signs around town and doing direct mailings. Mr. Markham noted that he hoped the University had also been doing social media outreach, which Ms. Olsen confirmed she thought they were. Ms. Houck noted that Deb Hoff was the UD lead for that and Ms. Olsen stated she would take Mr. Markham's comments back to the team.

Ms. Hadden asked Ms. Olsen to send an e-mail with some basic information or link to the convocation schedule of events including a contact person if residents had issues or problems and UDon't Need It? information that she could forward to her constituents. Ms. Olsen agreed to do so.

7. 2-C-2. STUDENT BODY REPRESENTATIVE:

19:35

Ms. Sierer recognized several journalism students in attendance who had been working with City staff and elected officials and thanked them for attending.

8. 2-D. LOBBYIST:

20:15

Rick Armitage commented on a bill that was moving through the legislature that people could not show up via proxy for board meetings. He thought that was aimed at the school boards. He did not know if Council wanted him to monitor that as he did not think that Council members showed up via proxy or by other electronic means. Mr. Morehead noted that he had tried to participate electronically in the past, but he had been told that unless everybody in the room could hear what he was saying, it did not meet FOIA requirements. Ms. Hadden stated her personal stand would be to take no position, and wait and see.

Mr. Armitage noted that the next DEFAC meeting was on 5/23 prior to the Council meeting. He would provide Council an update at their meeting that evening. He was not hearing rumors about any dramatic changes in the funding status at that point in time. Municipal Street Aid was still in the Transportation Trust Fund, and those transportation funds he thought were going to continue to be strong, given what the legislature did last year with the motor vehicle piece that they increased. Ms. Sierer asked if there would be an update prior to the Council meeting. Mr. Armitage said he could update them at the meeting, or Saturday afternoon. He said he would send out a quick e-mail to everyone, but then if there were more questions later that night he would be happy to fill in any blanks.

Mr. Armitage noted that House Bill 200, the disability bill, continued to sit on the "ready" list in the House. He thought he reported to Council last time that they had a meeting, but there still had been no further action, or any amendments added at this point in time that were pre-filed. The transit development bill was passed by the Senate first, then passed by the House, and then went up and signed by the governor. Mr. Armitage was not sure really whether it would have an impact going forward in Newark, but it was one of the ones that was being monitored.

Mr. Armitage indicated that he had circulated the second revised draft of the code enforcement bill to members of legislature. He had every intention of trying to make it a bipartisan supported bill for introduction, as well as it moved through their process: the committee hearings, and the votes on the floor. He clarified for some people that did not think that tenants were included, Senate attorney James McGiffin, who represented a number of tenant groups throughout the state, was given the bill for comment. The feedback from Mr. McGiffin was only one word in the original document that he suggested. Mr. Armitage shared the revised draft with him and asked if he had gotten any feedback from his clients. The answer was "No". Mr. Armitage had tried to engage tenants, the Realtors Association, the Apartments Association, and local landlords. He noted he would continue to look for sponsors of the bill, and maybe late this week, if it appeared that the bipartisan number of legislators were on there, ask for introduction.

Mr. Morehead stated that he was growing extremely uncomfortable with Council's position on this particular bill. It highlighted a problem with Council's system where they come out of executive session and immediately vote on something that they may not have considered the ramifications. He noted that they give direction, but do not necessarily specify all of the parameters. The way the bills were in right now, it covered City law, all structures and all premises. Then, as the City Manager verified in the letter, for any home or business. He did not think it was Council's intent that the City would have the ability to knock on a door with warrant in hand for any property in town. He had seen this forwarded at the State Legislature level saying that this was important that the state changed its laws. Council was making this a Delaware-wide issue. He noted an example in the bill as currently written, where the requirement to get an administrative warrant from an alderman or a judge was that the City was able to sign an affidavit saying that they had requested an inspection of a property. The way the bill was written right now, staff could address that request and sit it on their desks and let it time out for 48 hours and then go to the judge and get a warrant. He thought that was wrong. There were things in the bill he did not like. He felt there were things in the bill that were conceptually not American. Council had talked about the tenants. The tenants were half of the town. He wanted Council to have a serious conversation about either defining exactly what they meant, or withdrawing their support and changing their direction, or asking Mr. Armitage to stop moving the bill forward. Mr. Morehead noted that when he and Mr. Armitage first talked, they were talking about this being a matter of life and death. While Mr. Morehead could not say what was discussed in executive session, he said it was not a matter of life and death.

Ms. Hadden asked for more conversation before any motion was made. She noted that Mr. Morehead made a statement that the form could be drafted up and sat on a desk and held there. She asked what in the bill he was basing that statement on as she was looking at the revised bill. Mr. Morehead noted that the sentence was, "The affidavit must declare that at least one prior inspection has been requested upon at least forty-eight hour written notice addressed or delivered."

Ms. Wallace echoed Mr. Morehead's concern. She was also concerned about the process of how this came to be. She did not think the City had included all stakeholders. She was concerned both Newark state representatives, Representatives Baumbach and Kowalko, had voiced their opposition to this process and thought Council needed to take note of that. The City was promoting legislation, and could not get local sponsorship of that legislation. She felt very strongly that the City may be doing something wrong. She wanted to see a step back, take the pause that Representative Baumbach requested, open it up to the stakeholders and have more discussion about what it was that the City was trying to do. Council could put a pause on it and have workshops. There were various solutions that the City could bring forward to engage the public more. She thought there were wider implications beyond this city, wider implications than what she thought Council intended. That was before her time. She did not think there was enough of an argument to believe that the City needed to rush this forward because of the end of the legislative session. She thought this was a big issue. She noted that the City took a lot of time to talk about accessory use and noise levels and thought this was something that they should take more time to think about.

Ms. Hadden asked if Mr. Armitage could tell Council who had been engaged as far as the public or stakeholders up until this point. Mr. Armitage stated that through Jim McGiffin, the tenant group had been engaged, but he could not be specific as who was represented over time and he did not ask Mr. McGiffin that. Scott Kidner and three people from the Apartment Association that came with him to their meeting on 4/22. Ms. Houck stated one was Doug Hershman. The Realtors Association was not able to participate in the meeting due to some technical problems with the call-in at the beginning, however Mr. Armitage had spoken to Maria Evans since then and she was given copies of the revised drafts. The feedback Mr. Armitage had from them at this point in time was that they were going to oppose the bill, but had not told him why. He said the other background was that there were some jurisdictions in the state that did make them more nervous than others if they had that warrant authority. Ms. Hadden noted it was also her understanding that there was already a law in the books that allowed for administrative warrants and this bill only provided for due process. Discussion ensued regarding which jurisdictions already had administrative warrant capabilities. Mr. Armitage stated that he would try to determine that within the next 24 hours. He noted that his sense was that New Castle County had ordinances more surrounding nuisance properties than some of the code inspection things that Newark had focused on.

Mr. Morehead noted his concern that the way this was written now and the way it would potentially be used was that it could be literally any property. He did not think, if the public understood that a request could sit on someone's desk for 48 hours and then become a warrant, and that someone would have the right to enter their house to check if they had their carbon monoxide smoke detector, for example, that the room would be as empty as it was.

Ms. Houck clarified that, as she understood it, it was for health and safety. One of the examples that had been used at some of the meetings that she attended was that it could possibly be for a home where the roof was bowing and the City tried to get in because it looked as if it was a health and safety issue, and there was not access granted. That would be a private home situation, as how it was intended. She noted certainly there were other procedures the City would put in place regarding the 48 hours if it became law. The City currently provided notice for inspections of 48 hours. It was in City Code that the City would get an administrative warrant, but there was no provision in State Code to actually get it. The City did have right of entry in its building and property maintenance codes. It was not entirely new.

Mr. Morehead understood it was not new. He noted what was new was the City expanding its concept and its ability to control its potential misuse to anybody and everybody, any municipality, in the state. He did not think the City had that reach or should have that reach. He found this very unpalatable. He had not had anyone say this was a good thing. Every single comment that had come had been negative.

Ms. Sierer asked Ms. Hadden if she had additional comments. Ms. Hadden stated she was fine if Mr. Morehead wanted to change "or" to "and." She thought that should be done. She also knew that this was now part of the state process and in the works. If it got a backer or it did not get a backer, there were a lot of municipalities, according to the reception that it had at the League of Local Governments, that were happy to stand behind this. Because it was now in a process, she was reluctant to change her original position on this as she felt Council had a pretty good conversation before they came out and did it.

Ms. Sierer noted that she was also say that she was part of the meeting where the municipalities in the room were unanimous that this would be moved forward. There were municipalities that were very much looking forward to being able to utilize this process because they had homes that they had not been able to get into, that were health hazards, for 10 years. She thought they needed to safeguard against potential abuse, but she did think that there were municipalities in the state that would let this push forward. She said she had met with multiple landlords on her own. There were many that were in support of this. She did not think to cage it as "all landlords don't want this" was fair and accurate.

Mr. Ruckle noted that he actually met with a landlord on another issue and brought this up. He thought good landlords would want their units inspected for safety issues. Mr. Ruckle thought the reason this was coming about was there was, he thought, a 50% rate, where the City needed to get in to look at it and the tenants were saying, "No, I'm not going to do it." He thought the landlords had taught them to say no. If the tenant had eight people living in there, which was against the code, the City had no way to confirm it. He thought there had to be a way to limit this just to rentals. He did not like the idea of, "Who's going to be the decision maker?" It was going to say "It's a homeowner." He did not think this was for a neighbor complaining that they smelled something funny coming from the house and they were going to come in and bust it. It was more for something linked to a rental permit which could maybe be the direction the City could do as that was really what this was for. It was not for going in a house for a neighbor complaint. He thought that maybe was where Council needed to be more specific in the direction they wanted to go.

Ms. Sierer agreed and thought this was a process for the City to be able to do inspections for landlords that did not let the City in by whichever process they used, whether they told the tenants not to let the City in, or whether they did not let the City in. This was a process for municipalities in the State of Delaware to be able to go in and complete necessary inspections or to make sure repairs were done. The next process would be to look at the City's inspection program and see what adjustments could be made there. This allowed the City to do that.

Mr. Ruckle suggested that if someone did not let the safety inspector in, they got three chances. If not, their rental permit was revoked. He thought it could be legally done and asked Mr. Herron to answer that. Mr. Ruckle indicated that as part of a rental agreement, the tenant had to allow inspections. If they did not allow them in, their rental permit could get revoked by the municipality. Mr. Herron said that may not be correct and he would have to look at that. Mr. Ruckle asked Mr. Herron to provide Council options.

Ms. Houck noted that one of the things that had been said at meetings she had participated in with different entities representing the apartment complexes, landlords, etc., was that if they had suggestions for change, bring them to the City's attention. Some suggestions were brought at the first meeting or second meeting and they were put into the bill. She heard three people stand up and say that they had suggestions and they were going to forward them and the City and Max Walton, the City's Special Counsel, had welcomed that. Ms. Houck noted that they had not gotten any suggestions from the Newark Landlords Association to date. On 5/11 it would be a month that they had the information. All the City had heard was, "change your process." The City's process, if they changed it for rental inspections, would be something done in a fashion complete with research and confirmation that what the City did to change it was in the best interest of the community. She suspected it would not be something that the City did very quickly. She noted that Mayor and Council would have the authority to make that decision. She stated that information should be shared. It was not a done deal. That was why it was a draft.

Mr. Armitage agreed that it was absolutely a draft. He tried to the best of his ability to share the draft. When he received the draft from Mr. Walton initially, he sent it to the listserv that went to all of the registered legislative agents in the state. There were only three people that came back to him that had clients that appeared to be stakeholders. Those were the entities they had been working with at this point in time. He reiterated Ms. Houck's comments that they welcomed any thoughts that improved this bill. They wanted it to be as public a process as they could make it. As it moved through the legislature there would be at least two committee hearings, one in the House and one in the Senate. Delaware was the only legislature in the country that allowed citizens to testify on the Senate and House floors. They were trying to bring a bill forward that had built consensus among people. The goal was to make this as palatable as possible but still moving the idea forward that doing the inspections was a good thing.

Mr. Markham said this was just an ongoing discussion going back to former Council member Clifton and the student home ordinance, the rental ordinance, which got thrown out and came back, and through the landlords' lawsuit, which modified things. This was just another adjustment of that process. At this point in time it was not a Newark bill in his opinion. It was way beyond that. Mr. Armitage agreed with that. There was interest statewide in this enabling legislation. Mr. Markham said like any state legislation if someone liked it, they could go fight for it. If someone hated it, they could go fight the state. He felt they should let them go through their process. Newark initiated the process. If there was not support, it would not go anywhere.

Mr. Chapman felt he could echo much of what just about everyone on Council said. He was fine with his original intention in letting Newark be the body that asked the state to have this conversation. He agreed with Mr. Markham that there were a lot of large and impactful questions being raised and that the conversation was being had. All he was doing was trying to solve legitimate problems to put additional legal and due process tools in the toolbox in order to offer a safe and healthy community. He had faith in

the process and the state legislators to either pick the bill up, have the courage to have a conversation and mark it up or throw it out. Depending on how that process morphed or was either taken up or not, the City or Council as individuals could continue to weigh in. It was not to say that just because Newark asked the State to pick this issue up and have the conversation did not mean the City was blindly and openly supporting whatever version that ultimately hits the floor or committee for conversation. It was that the City asked for the conversation to be had, while personally recognizing the potential dangers and risks but having faith in the process. At any time, representatives from Newark could go down to Dover or could make a proclamation at the dais that said, "In its current state, form, or particular word or comma placement, I cannot support this bill" or depending on how it ends up getting shaped, "Thank you very much. You addressed a very serious question as far as the City of Newark is concerned. We feel comfortable as well as appreciate the fact that you gave us an additional tool to solve a problem."

Ms. Wallace did not think there was anything to be lost by slowing down and including more stakeholders. She was hearing constituents say they felt this was being jammed through. She did not feel there was enough outreach to the people who would likely be most affected by this who were the tenants.

Mr. Markham was under the impression that that question had been raised with the League and that there was no interest. Ms. Sierer said the question was raised by Newark's Special Counsel at the League meeting. Specifically, the question was raised in reference to what Representative Baumbach asked, which was a three week pause. It was the unanimous consensus in the room not to do that.

Mr. Morehead stated that the League was a private, nonprofit, lobbyist organization. Mr. Armitage said the League was a consortium of all the municipalities in the state. They employed a lobbyist and had an executive director. Mr. Morehead asked if they were subject to FOIA because municipalities paid dues to fund the group. Mr. Herron did not believe the League was subject to FOIA but would have to look at that. If the League was going to be vital in moving this forward, Mr. Morehead wanted to better understand their specific role. He believed that in addition to the impact the bill would have on tenants, every property owner would be impacted by this law. He did not think the public understood that.

Ms. Hadden asked if the drafter could be directed to change the "or" to "and" to make it "addressed and delivered to," instead of, "addressed or" in both places. Mr. Herron would caution Council against doing that. He thought the point was made and it could be relayed to special counsel.

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

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

52:23

Mr. Chapman: None

Ms. Wallace

- Thanked the members of the audience for attending the meeting.

Mr. Markham

- Kudos to Ms. Sierer for the Mayor's bike ride.
- Noted that on 5/15 at 1 p.m. the Memorial Day remembrance ceremony would be held on the UD Green followed by the parade at 2 p.m.

Ms. Hadden

- Attended the Jefferson Awards Ceremony at HomeGrown with Ms. Sierer, and it was fabulous. It was an honor to be in a room full of so many special people.
- Attended the League of Local Governments dinner in Dover.
- Attended the Police Memorial Ceremony held last Wednesday in the lobby in the Municipal Building. This event honored those officers who have passed, either in or after having given service to the City. The police force worked very hard for everyone, and she encouraged people to say thank you when they had the opportunity.
- Attended to various citizen concerns. She thanked Mike Fortner from the Planning Department for doing an outstanding job at her meet and greet.
- Echoed Mr. Markham's comments about the Memorial Day parade. She encouraged people to come show their support to the military and to the people who have died so we can live free today.

Mr. Morehead

- Attended the public forum by the Planning Department for the Downtown Development District grant application. It was very well done.

- Was a bystander in an accident where a car ran into a utility pole on Elkton Road. He credited the first responders including Officer Conover of the Newark Police Department who was there almost immediately. Unfortunately, passers-by had taken the driver out of the car, but fortunately, the ambulance showed up very quickly. The pole was sheared so the Electric Department jumped in and replaced the pole, and the street coming into town was closed for a number of hours. There was a lot of money in the budget to fund the first responders. The service from that was excellent, and he planned to continue to support that in the future for the public good.

Mr. Ruckle

- Would meet with Ed Osienski on Friday about the traffic light at Cleveland Avenue and Woodlawn which was greatly reduced, and the neighbors wanted it extended. They would be trying to get DeIDOT to extend it from three seconds now to maybe five or six seconds.
- Met with Matt Dutt who had about 50 rentals. For whatever reason, the parking permits for his properties on Chapel Street which they had for the last 30 years were revoked. Mr. Ruckle wanted to get the information on why the permits were revoked and how Mr. Dutt could get his parking permits back.
- Attended the League of Local Governments with Ms. Hadden and Ms. Sierer. They met the economic director, and there were a lot of interesting things happening in Delaware.
- As Ms. Gifford mentioned, Christiana School District had an election tomorrow and this was the chance to elect the person residents wanted. There were only two people running.

Ms. Sierer

- Noted the success of the second annual Mayor's Fun Ride and wanted to thank those in attendance who participated including Messrs. Markham and Chapman for riding in the event, Chrissy Palmer, Tyler DeBruin and all the other staff members who worked so hard to get it all setup, the Police Department who helped with safety and Aetna Hose, Hook and Ladder who provided EMT service for the event. There was more of a festival event this year. It was the first time out of the Newark Shopping Center. She looked forward to that next year and thanked everyone again.
- Announced the winners of the City of Newark Jefferson Awards: Joe Charma, Gene Niland, Charlie Emerson, Richard Gays and John Horner.
- Had the pleasure of doing a couple of ride-alongs with the Electric Department and the Street Crimes Unit of the Police Department. She spent 7-8 hours with each of those departments. She found it very informative and educational, and thanked the staff in both those departments for spending the time helping her learn about their work.
- At the Delaware League of Local Governments meeting in April, Newark received recognition for the highest member attendance to the meetings. Mses. Hadden, Houck and Sierer and Messrs. Ruckle and Haines were in attendance, so there was good representation. She encouraged those on Council that had not been coming to the meetings, or had not had an opportunity to do so, to please do so. They were very informative, and Ms. Sierer noted that people met other folks from other municipalities, whether it be from city managers to mayors. Attendees learned about what the League was working on and really important information from the speakers that they had, so she encouraged Council members to come. She gave Ms. Houck the award certificate.

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-__:** Resolution to Direct the City Manager to Include Funding for the Installation of Water and Sanitary Sewer Lines at the Proposed Preston's Playground Location in the 2017-2021 Capital Improvement Program to Be Considered By Council as Part of the 2017 Budget Process

01:02:30

Mr. Spadafino explained that the scope of the Preston's Playground project at the Newark reservoir was going to expand to include permanent restrooms that would house two family restrooms. The cost of the restroom building was estimated at \$45,000. The cost of installation of the water and sanitary sewer lines to the restrooms would be \$160,334. There currently was a handicapped portable unit at the reservoir. This would not be conducive when Preston's Playground was completed. The handicapped units had smaller holding tanks and filled more quickly than the regular units. Children with special needs who would be utilizing the playground may need to have family members assist them while using the restrooms. Portable toilets were not convenient for more than one individual at a time.

The permanent unit would not only serve the Preston's Playground users, but the reservoir users as well, making it more convenient for park visitors. Staff was asking for Council's support to fund the installation of the water and sanitary sewer lines at the proposed Preston's Playground location at the Newark Reservoir. The \$160,334 cost of installation would be included in the 2017-2021 Capital Improvement Program, to be considered by Council as part of the 2017 budget process. The funding would greatly reduce the project's financial burden and help the project reach its funding goal.

Mr. Markham wanted to make sure that everybody was clear that this was adding to the capital budget, which also had hearings in the fall. He noted this was his district, so he was familiar about where things were. He questioned the \$160,000 number as he thought the water and sewer was down through the whole Paper Mill Park. Mr. Spadafino stated from there it would actually go through Paper Mill Park all the way up through into the reservoir area to the right of the parking lot where the playground was going. Mr. Markham was surprised at how high that number was. Mr. Spadafino noted that was the cost estimate the City received. Mr. Markham noted that the work would be put up for bid to see what the real number was. Mr. Spadafino believed that Corrado Construction had given the estimate for Preston's Playground, but staff could go through the budgetary process to make sure that those numbers were accurate. Mr. Markham noted that if it was City money, it had to go through the bid process.

Ms. Wallace asked if staff had looked at the cost of maintenance and upkeep of the building and having staff service the building. Mr. Spadafino stated they would have to look into a few different things. One was obviously servicing the unit. There were sanitary groups that would still do some cleaning on contract with the portable unit service, or they could try to find the availability for their maintenance staff to deal with it, as well. Another thing they were looking at was different security measures. Time out locks would lock the restroom at dusk and then re-open again at 7 a.m., or whatever time that was set. He had been working with the Preston's Playground group about making the restroom unit as vandal-proof as possible, or at least make the clean-up process a lot more conducive, should vandalism happen there. Ms. Wallace asked if this would be a restroom that all visitors to the reservoir could use, which Mr. Spadafino confirmed. Ms. Wallace asked if she was correct in assuming that this was one of the City's most frequented parks with the highest number of visitors. Mr. Spadafino said that the Pomeroy-Newark Rail Trail was the most heavily-used trail in the State of Delaware and with Preston's Playground, that area of the reservoir was very heavily-used. They anticipated the completion of the trails with the Charlie Emerson White Clay Creek Bridge that connected with the Pomeroy Trail was going to increase traffic considerably, as well. Mr. Spadafino reiterated that the portable units that they had filled up quite frequently as the smaller handicapped units had a smaller holding well.

Mr. Ruckle asked the size of the restroom. Mr. Spadafino said it would be two family units of 10'x8' for a 20'x20' building. Mr. Ruckle noted that this would be the first one in the city and it was actually bringing the City into the 21st century. Most parks had a facility like this. It also could help the City do more community events. It was not just Main Street. He would say now this park was going to be a showpiece, and they were going to be finishing that. He said there was a whole other section over there, an open area that was also going to be finished, which Mr. Spadafino confirmed that all of Paper Mill Park would hopefully get developed as well in the next few years. Mr. Ruckle said that would be a great area to do outdoor movies and such, and they could have businesses come in and set up an amphitheater. It would be great to have a bathroom there. It would be more convenient, so he would be supporting this.

Ms. Sierer stated that she did think this was forward-thinking. She noted that most knew she was a fan of Preston's Playground. She did think it was forward-thinking in that the City was providing facilities for folks beyond Preston's Playground and people would use it. She also shared that it was going to be very beneficial for the fundraising for Preston's Playground to know that the City potentially would take a look at and be supportive of this item in the City's 2017 Capital Budget. Ms. Sierer introduced Preston Buena, for whom the playground would be named, and acknowledged the other members of the Preston's Playground organization at the meeting.

Mr. Morehead asked what the timing of this was. Mr. Spadafino said that the Preston's Playground committee should be finding out by 5/16 about the Longwood Foundation grant. If the grant was received, they would have 18 months to spend the money. Right now, at this point, it was looking like a 2017 project. Mr. Morehead asked why the City was not including the \$45,000 for the building itself with the \$160,000. He also noted that Council constantly had the ability to change the budget and to amend the CIP and was wondering why they were putting it off. He felt if Council was going to support it, they should do it, change the CIP and put it in. Ms. Houck confirmed that Mr. Morehead was referring to the existing 2016 budget. She noted that they could do that and she was not opposed to that. If it was going to be spent in 2016, it could be put in. Mr. Spadafino stated that a lot of it was going to depend on the timeline. If they were to receive the Longwood grant, he believed it would definitely push the timeline up. There still would be some fundraising to do. He was confident that it was an outstanding committee

and they were going to achieve their goals as they were very driven. Mr. Morehead was sure they would, and he thought all of Council supported this. He was just curious why they were doing it in this fashion. The administration certainly had the ability to put anything they wanted on next year's CIP. He thought if Council was going to jump in, they should do it and get it done. Ms. Sierer noted that the resolution was that there was support within the budget.

Mr. Markham asked if this also showed commitment from the City when they have talked to other organizations because that was one of the most important things for influencing potential funders. Mr. Spadafino noted that, for example, when they met with the Longwood Foundation, the first thing Thère DuPont asked was, "Once they received the funding, what would happen with the facility?" With the commitment from the City that they would maintain the upkeep, take care of the safety practices, he thought that went a long way. This would be another driving force to show the City's commitment to making this thing happen and for the future upkeep. Ms. Sierer noted that in her experience with the Longwood Foundation, they did not want to be the full source of funding, which was what Mr. Markham was getting at. She did think that this would be helpful in that not being the case. Mr. Spadafino said that he knew once the facility was built, it was going to be a great enhancement to the City. He thought it was going to make the City of Newark an even better place to live, work, and play. Plus, it was going to draw more people from outside of Newark as well and make Newark more of a regional destination.

Mr. Morehead reiterated that if the City wished to show support, and the City Manager was willing to put it in this year's budget, that he would like Council to direct that they go ahead and direct the administration to amend this year's budget to include it, so that they put their money where their mouth is and put the seed money in, so the Longwood Foundation could see the City was committed. Ms. Houck asked for clarification that Mr. Morehead was suggesting to find the money in the 2016 budget, not to budget it for 2017. Her understanding was the resolution would be put on so Council could show support or not. She certainly heard they had their support, but that this would be shared with the Longwood Foundation and other entities that funding was being asked of so that they would see the City did have a commitment. Ms. Sierer thought this was a document they needed to support some of their grant writing.

Mr. Morehead noted he was addressing a point that this document said Council would consider the funding later. He thought they had a stronger position if they just did the funding. Mr. Vitola noted there was somewhat of a procedural problem with that, only because of the way the City budgeted 2016. There was not enough of a surplus left, even though they budgeted a large surplus across funds, there was not enough of a surplus in the General Fund where this project would reside. If this was put this in the 2016 budget, they would have to de-obligate something in the General Fund of an equivalent amount, which would take another review and other work to do, and it would kick a project that was slated for 2016 and identified as a priority and a need in 2016 and push it to 2017. If the action by Council of directing it to be put into the 2017 budget was enough for this group, and the timing of it was not necessitated until 2017 anyway, then it would be better not to have to kick something out of the 2016 slate of projects in the General Fund. There was surplus money, but just not in the General Fund.

Mr. Morehead said so the comment that Council always had the ability to change or amend the CIP during the year was effectively not something that they were interested in doing. Mr. Vitola said no, Council was capable of doing that and it could happen if there was enough cash. For instance, if the City was running a surplus halfway through the year, the funds could be appropriated. Mr. Morehead said if the City was not running a surplus, then it was not. Mr. Vitola said right, or Council could de-obligate \$5 million. Ms. Houck said Council would have to tell staff what they would want to cut. Mr. Morehead said he was perfectly willing to do that.

Mr. Chapman would not anticipate this being the case in this particular situation, but the proverbial bridge to nowhere – he did not necessarily want to de-fund something in 2016 to go ahead and build this facility for a field. He recognized that it was a good infrastructure to make an investment in, and he fully expected to see Preston's Playground breaking ground and being completed in 2017. However, with the timing he did not see any necessity to update the 2016 budget and CIP if what was in front of Council now was sufficient for the needs. Mr. Morehead said he understood the point and the fact that it was budgeted, it had to come in front of Council again when it actually comes time. Mr. Chapman said just the same, Council could adjust the 2016 budget today and it come in front of Council for bid and they say no even though it was in the budget. Mr. Morehead said that was exactly right. Mr. Chapman said either way there was a cart in front of the horse. He was comfortable with this process.

The Chair opened the floor to public comment.

Nic DeCaire, owner of Fusion Fitness Center and the co-founder of Preston's Playground, thought this was a wonderful project for the City for many reasons. They were building an 8,400 square foot

playground that had no barriers. This would be one of the first in the state and was going in Newark. It would be a destination for people to come to and see the enhancement of City parks. To date over \$70,000 was raised for this project. The total cost of the project would be \$500,000 and included the playground, the surface material, the sewer, water and the bathrooms. When the project was first brought to proposal they were not thinking about the bathrooms, so coming in with another initial cost of \$160,000 would just prolong the project even further. That was why Council was being asked to support the sewer and the water. As mentioned by Mr. Spadafino, there was a grant in for the Longwood Foundation and they would find out on the 5/16 if the project was a recipient of that grant. If that was the case, there would be 12 to 18 months to finalize and raise the rest of the money. Mr. DeCaire's question was there was a good chance that if they got that money, this project could be done in a couple months with the help of the City's \$160,000 for the sewer and water. Did they have to wait until 2017 to start building? In that case, they cannot break ground, build a playground, and build the bathrooms later. With the rubberized pouring material everything had to be done at once. After listening to this conversation, he asked if there was a way if the money came from Longwood and finished fundraising, could they come back to Council and say, "We are ready - are we able to have that \$160,000 in 2016 instead of waiting until 2017 because he would like to break ground now?" Mr. Morehead would like to help do that.

Ms. Sierer said Council could come back and address it, but that was seven months from now. Realistically, would they be ready to break ground in seven months? Mr. DeCaire said yes. Ms. Hadden added that Council wanted them to come back then and ask for that money.

Mr. DeCaire was curious about the way this was written. If they got the money, did they have to wait until 2017 or could they come back and ask for the money earlier the way it was allocated? Mr. Ruckle said they could ask for the money now. Mr. Morehead added that Council would amend the CIP for 2016 to get the money. Ms. Sierer pointed out that it would go through the bid process anyway.

Deb Buenaga, Preston's mom and co-founder for Preston's Playground, remarked that this playground was important for everybody, not only for children with special needs. It was important for every child to be able to play together. For many years she sat on the playground with Preston and he did not play. He watched his brother and his friends play. The playground had 8,400 square feet of rubberized material. Preston could use his wheelchair, walk on it and play with the other children. She could watch him have fun and watch him smile. She felt that Newark was an awesome place to locate the playground.

Shelvia Neely, the mother of two children, one a seven year old son with Down syndrome said the obstacles that her son encountered were that typical playgrounds were not really safe for him. As a resident of Newark, having Preston's Playground in Newark would be a huge help. He would be able to get out and socialize with friends. He would be able to have independence because he did not want her following along on the playground behind him. Preston's Playground would provide a safe environment. It would help him build confidence. It would also give him the opportunity for physical fitness that he so needs and hopefully build some long-lasting friendships.

Dr. Cole Galloway, University of Delaware Professor of Physical Therapy and Developmental Psychology, talked about the scientific and economic impact of Preston's Playground. He studied for a living through the National Institute of Health, the National Science Foundation, the Department of Education, the impact of fun and mobility on kids with severe brain injuries. His grants fetched anywhere from \$3 to \$5 million. He considered this an experimental playground.

He hoped to get back to Council within a year of breaking ground to talk about how he could spend some direct funding on equipment and additional hardware for these playgrounds. The National Institute of Health, for example, had expanded authority. Dr. Galloway spent the money as he saw fit on equipment. For example, turning this very base quadrant of playground into something more by harnessing, so body weight support harnesses allow all kids to climb. Dr. Galloway could come back and fund that directly. He would love to push the University of Delaware/City of Newark envelope and interface by coming back to Council to return funding to push the envelope. There were very few interactive playgrounds and experimental playground laboratories. The National Institute of Health knew about the GoBabyGo Foundation for advocacy and research across the planet.

According to Dr. Galloway, this was really an intersection between the University and the City of Newark like no other. He loved the community-based science. The other thing was a brand new start-up company, Enliten, LLC on 896, the builder of real-world harnesses. They place those in UD's STAR Campus building. They now place harnesses in people's homes, at their work, YMCA. Dr. Galloway's hope was to harness this playground in the second and third generations of this. These harnesses would be built here in Newark and were shipped all over the world right now. They kept them here.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: TO APPROVE THE RESOLUTION TO INCLUDE FUNDING FOR THE INSTALLATION OF WATER AND SANITARY SEWER LINES AT THE PROPOSED PRESTON'S PLAYGROUND LOCATION IN THE 2017-2021 CAPITAL IMPROVEMENT PROGRAM TO BE CONSIDERED BY COUNCIL AS PART OF THE 2017 BUDGET PROCESS.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(RESOLUTION NO. 16-J)

14. 5-A.2. NEWARK COUNTRY CLUB – SURVEY REQUEST – PURCHASE OF DEVELOPMENT RIGHTS

01:26:41

Ms. Houck reported this item was on a previous agenda and was removed and had a request to bring it back to Council. She provided a revised memorandum and representatives from the Country Club were at the meeting. Mayor and Council were being asked whether they wanted the survey to be conducted.

Todd Ladutko, member of the Board of Directors of Newark Country Club, noted in March they celebrated their 95th anniversary in the City of Newark and hoped to reach another 95 years in the same location. However, circumstances somewhat beyond their control have made it difficult to keep the organization in the light that they want to. The City was also interested in keeping the club in a green space. As part of a win-win proposition, there were meetings between members of the board, members of Council and City management about ways to keep the Country Club where it belongs and keep it as a green space into the future.

With the help of Representative Baumbach, Senator Sokola and members of City staff, meetings were held with the board regarding creating a funding of selling the development rights of the club. That would entail a joint participation by the City, New Castle County and the State of Delaware.

The response from the State Representative, the State Senator and from New Castle County was that they were on board to pursue this option to see if it was a worthy project, but the leading force would be the City of Newark. Based on discussions with Ms. Sierer and Ms. Houck, it was decided to see if there was interest by the City to go forward with the survey.

Mr. Ladutko said they were here to see if that was a viable option for the Council. It was an opportunity to create a situation where if they sell the development rights that the ground would remain open as a club. The City would then have control should there be a circumstance beyond the club's control. It was an opportunity to obtain those rights at a very reasonable discount compared to what the value would be as a development in its current zoning. It would also help the City if it was ever developed and would maintain a lower level of traffic as opposed to if something did occur. The club was asking for the City's support to see if there was the will to maintain this as green space and to eliminate an opportunity for development and keep everyone in a win-win position.

Mr. Markham said a private group of citizens including his constituent, Mr. Sharp, was here. They had been talking to the Country Club, to the City, to several representatives of the State and New Castle County as well. This was not just a City initiative where the City was going to provide all the funding but was rather a consortium of many different groups. Mr. Markham thought what was needed was a survey to judge interest and was a lot cheaper to do than a referendum.

Mr. Markham asked whether staff was thinking about doing an online survey that would be available to residents in which case that was a lot less expensive. Ms. Houck said staff had not spent a lot of time deciding what would be the best way with the exception of researching a citizen survey in relation to outsourcing the refuse. First would be to meet with the Newark Country Club representatives to hammer out the questions. Next would be engaging with the company, (Peak Democracy), which would handle the survey responses. Next would be outreach. That was as far as it had gotten except for the memo before Council.

Mr. Markham asked if Ms. Bachman had experience doing surveys like that. From past experience he knew it was difficult to write good questions without bias in order to get good information. Ms. Bachman said she conducted surveys, but not to this extent. It would certainly be something that staff would have to work with either an outside firm or get consultants to come in and take a look at the survey. It was not something that she had done to that level. Mr. Markham asked if the City could approach an

organization such as the University that writes lots of questions. Ms. Bachman responded the City was in a position to work with the University of Delaware on this if that was the direction that Council gave. Mr. Markham wanted to know what his constituents thought of this. He received varied information, some very passionate, on both sides. He would like to do the survey but wanted to make sure the City had the right questions.

Ms. Sierer shared some of her thoughts. She was a proponent of the survey but it needed to be done right to get the right data. She did not think it should be rushed because she thought more should be done than SurveyMonkey. There were a lot of constituents in the community that did not use a computer. Maybe there were a variety of ways to use the survey like in the utility bills or social media including SurveyMonkey. Thought should be given to the various ways in which to reach the most people to receive the most responses. The other piece of it was brought up by Mr. Markham which was who would approve the questions. Would it be Council, Newark Country Club, City staff, all of the above? How many questions? There were ways to draft the questions such to get the answers wanted, which was something to be careful of.

Mr. Chapman thought the comments made so far were along the lines of some of the things he was thinking about. He recently spent time talking directly with a good majority of the district in which the Country Club property resided. There was a media piece that went to the Newark Post during the election. It was specifically a topic of conversation at a lot of the households. What that showed him and what he was trying to convey at the door was the idea of a survey. The City had not yet narrowed down what it was they were asking. Based on what was printed initially, there were a lot of misconceptions and jumping to conclusions based on what was written. He had the opportunity to speak to the households now three different times over a period of years at which point the property and its future was at different stages. Some of the households that were previously saying, "Do anything you can at any point to make sure the club remained green space or was never developed," were the same ones that were a bit forceful with the surprise and disgust that the City was even going to consider paying \$7 to \$9 million for the property. Mr. Chapman said at the beginning of the conversation that what he believed the Country Club was asking the citizens to consider was whether there was a willingness to consider a solution that would include purchasing development rights so the club could remain there. All of the details were yet to be hammered out, including costs, concessions on either side and other details.

Mr. Chapman's vision for the last several years with regard to this property and that he discussed with Ms. Feeney Roser was to have and host a series of workshops (a specific industry term called charrettes) in which both questions and concerns were collected and ideas or suggestions presented. He felt that through that process they could zero in on a very specific survey or find they could skip the survey all together. He did not have a lot of confidence in the City going through the process and ultimately feeling like they got what they wanted to get. He did not know if they identified what it was they wanted to get yet. He had a feeling through that charrette process the City either went to referendum or they did not. There was either willingness and drive to go to referendum or there was not. Mr. Chapman was happy to and willing to champion this high-level general idea. He did so two years ago in speaking to members of Newark Country Club as well as members of Council to see if there was going to be any support to move forward. At that time there was not, not from Council. He was pleased this was a conversation again.

Mr. Chapman understood there was a group called the Newark Country Club Long-Range Planning Committee, and he asked if he could be included in this process. As a representative of District 5 he already heard from and collected much of the information sought by the Country Club. Mr. Ladutko stated that would be a board decision. Mr. Chapman also wanted to participate and was an advocate for the long-term success as well as the current location of the Newark Country Club. He felt that his being allowed a voice on this committee, would put the future and fate of the Newark Country Club in a stronger position. He asked Mr. Ladutko to bring that back to the committee.

Since he represented the district across the street surrounding the property, Mr. Morehead also was interested in being a participant. He believed Ms. Sierer should be involved as well. Then there was a need to worry about having a quorum. As expressed by Mr. Chapman, the City did not know what to ask in a survey at this point. He would ask Council to consider directing staff to hammer out the details and to begin to have the conversation because the City needed to be able to present what the deal was. They needed to have a proper assessment of the property to be able to negotiate money. They needed to understand the legal details of what development rights meant. People might think it meant one thing when it meant something completely different.

Mr. Ladutko said they just wanted to move the process. The survey was a suggestion of one way to get it started. They felt it would be prudent to start in that manner.

Mr. Houck clarified that the survey was the Country Club's idea, not the City's idea. She would be more than happy to be in a position now, if hearing Council was so inclined to sit down with representatives and maybe that committee and start to answer the question about what do development rights mean and even start to have at least a draft of what an agreement might look like.

Mr. Chapman would be very pleased to be part of that process. He had a lot of input to share and asked that the Newark Country Club partner with him to work together in seeking what it was they would like to accomplish and letting him act as an advocate for them.

Mr. Ruckle said District 2 was adamant against doing this because they did not get any benefit from it. He thought there was a benefit having the green space. Mr. Ruckle said he had most of the retirees in his district and asked how those retirees could benefit from giving money to the Country Club to get these rights – what kind of access could they get. Two districts would be for it because they backed up to it. Mr. Ladutko said that was also a point with the state as well. Mr. Chapman said it was a perceived benefit. He would be happy to go sell this and answer those questions. Mr. Ruckle saw the benefit.

Ms. Hadden said two things happened tonight that she was very pleased with about this particular issue. She was happy to hear the word charrette again because the people who would be most affected and the people who cared a lot about the property would have an opportunity to weigh in. Secondly, she was pleased that Mr. Ladutko came here with this and gave the opportunity for collaboration and a partnership as a very workable way to try to find an answer to this.

Ms. Wallace echoed much of what was said about delaying this survey. She did not think there was enough detail to move forward. She said that overwhelmingly, the residents in her district that have reached out to her were not in favor of this concept. They raised concerns about what would be the benefit to them, particularly District 3, which did not back up to the property and was not swayed by having the ability to walk on the property. Ms. Wallace had a question about where the \$7 million came from for the development rights. She did not know what that figure meant. She felt that could be communicated better. Mr. Ladutko replied that was still a moving target. Ms. Wallace said that was exactly why the survey would be premature at this point.

Mr. Markham noted that every district ended up doing something that affected the whole city and referenced the reservoir. He wanted to take a step. He thought they had a unique opportunity here. The city and the country club were talking. There were people who thought it was time to do something to capture that energy. He stated that even if Council took baby steps, he would take that. If it was not a survey, then taking some action, taking some movement. At some point in time he wanted the residents of the whole city to have a chance to speak up, have a chance to say "are we going to do this". The reservoir gave the whole city a chance to speak up on "are we going to spend this money". Ms. Wallace noted that Council had more detail on that. Mr. Markham stated that was very true, but that if Council took a step, they would have these details, or take a step towards detail.

Mr. Markham stated that when he heard three members of Council wishing to work with the country club, although it was not a harm, his personal experience was that there would now be a sub-committee for Council, which would have set some rules in terms of minutes and open to the public and FOIA. He asked Mr. Herron if that would be the case if Council had three people that were acting on behalf of them. Mr. Herron noted it would depend on the circumstances. If they just attended a meeting of the country club, probably not. Mr. Chapman indicated that he intended to be very active. Mr. Herron said if that was the intention of all three council members, then it may become a sub-committee. Mr. Markham noted he would just look for some guidance on what Council can do. If they had one person attend, or even rotate it so they did not get into the legal issues. He did not think Council ever had that. He noted a past problem and stated he wanted to avoid that.

Mr. Chapman stated his other proposal was that he would be more than happy, and, frankly, would, as a member of that committee be relaying back and sharing the conversation with the rest of council and the administration. Obviously, he was not able to act unilaterally and would constantly be soliciting the input and feedback from Council, the City, as well as the residents, and the voices of District 1, specifically, would carry a lot of weight, as much as District 5 would. He referenced in the memo a mention that the state senator had given a timeline and asked what that was in relation to. Ms. Houck noted that she had spoken to him. Mr. Ladutko noted that the budget ended in June. Mr. Chapman noted that would be if they were trying to get a state promise for money this year. Mr. Ladutko stated that they went last week or the week before to go to the hearing and spoke in favor that the legislature allocate money for the open space fund preservation fund, which apparently they did not do the year before. The country club did send representatives down, as did the City. The lobbyist spoke up in favor of that as well.

Ms. Houck added that the conversation with Senator Sokola occurred after she was visited by Mr. Sharp. Mr. Sharp had relayed some information about the timeline that Senator Sokola had, if anything was going to take place this year.

Mr. Chapman thought it was unrealistic to expect a commitment from Newark to either conduct a referendum or otherwise fund the effort prior to mid-June. He thought perhaps the initiation of a workshop or charrette process in that timeline would be sufficient for Senator Sokola to feel compelled to make the argument and say the City of Newark was behind this enough for him to try and fight. Mr. Chapman was at a meeting hosted by Representative Baumbach last week in which there was some conversation. They were not too confident that they were going to get the number that they were asking for, if anything, but at least it was being discussed this year whereas it almost started at zero the previous years. He felt that was a positive thing.

Ms. Wallace stated she would not be opposed to a workshop or a charrette. She did think it would be premature for the City to frame that in the way that Mr. Chapman just did, that the City of Newark was on board. She did not think they were there yet. Mr. Chapman agreed that they were not there yet.

Mr. Ruckle asked how much a referendum cost. Ms. Bensley stated it was approximately \$15,000 to \$16,000.

Ms. Sierer stated for the record that she thought she heard that Council wanted to request that the Newark Country Club determine whether they were interested in having a member or members of Council participate in their long range planning and the development of the process to collaborate and move forward on potential development rights to the property. Mr. Chapman noted he would like to correct that to specifically state the representative from District 5. Mr. Morehead noted he would like to add the representative from District 1. Ms. Sierer noted the second item was that Council would get direction from Mr. Herron regarding how many could participate in this process of the Newark Country Club and what the procedures were for District 1, District 5, and/or the mayor to be a part of that process.

Mr. Morehead stated that he thought Mr. Markham mentioned that Council could take a step. He thought the step would be to have Council direct the administration to start spending the time to hammer out the details so that the City could have informed charrettes and informed citizens.

The Chair opened the floor to public comment.

John Morgan, District 1, said that if members of Council became members of this Newark Country Club Long-Range Planning Committee, he would be worried they would have to recuse themselves of voting on any recommendation that committee might make. He thought that instead of having two or three members of Council meeting with this committee, the better thing to do would just be to have a public workshop where all members of Council were present and all the members of the Newark Country Club Long-Range Planning Committee could be present as well as members of the public, and everybody knew what was going on so there was no suspicion of things being hammered out behind closed doors.

He thought he had been a friend of the Newark Country Club. He spoke against the downzoning when it was an issue last fall. There were some issues that he had. One would be about conducting the survey. He did fill out the form on the broadband survey. He was wondering what the response rate was on that broadband survey. He thought it would be good to know. If the response rate was below 10%, he wondered how representative it would be.

He was not sure where the figure of \$7 million for the development rights came from. A couple meetings ago, he gave Council a newspaper article from this past December, which reported on the sale of a 40 acre golf club property in Philadelphia in the Chestnut Hill neighborhood to a cricket club. Forty acre property, \$600,000. The Newark Country Club has about 120 acres. He noted if he judged by that, maybe the total value of the land was only about \$2 million. He thought the first thing that had to be done before they could have any survey was at least one, and preferable two or three, independent appraisals made, paid for by the City, not the Newark Country Club. Another issue was bringing this before the Planning Commission, because if they read the duties of the Planning Commission, even if the letter of the law did not require it, he thought the spirit indicated that for something like this, which was tantamount to rezoning, they would want to get the input of the Planning Commission.

He also thought the Newark Country Club should be doing more to solicit new members and more business, starting with sending out letters to all people who live in District 1 and District 5 a brochure of what their club had to offer. He had never received such information in all the years he had lived in Newark. He did look at the Form 990s for the country club going back from 2010 to 2013. It seemed that

their annual deficit was only about \$100,000. If they could just get a little more business, he thought they could eliminate their annual budget deficit, and they would be in much better shape without needing to get several million dollars from the taxpayers of the City.

Desmond Kahn, District 1, was a member of the Board of Directors for the Coalition for Natural Stream Valleys. They strongly supported trying to ensure that the 120 acres of the country club was never turned into a housing development. They thought in the long term, this open space could be a great benefit to the city. They knew that about ten years ago, it almost was turned into a housing development. He thought they had an opportunity here. He thought it was very important, and he was really happy to see the country club and City Council was interested in working on this and educating people about it. One minor point he wanted to make was if they settled on a \$7 million amount, or whatever the development rights would be, the City would not pay all that. The City would just have to participate and put some of the money up along with the state and New Castle County. That was the idea. He thought the idea of development rights was that if the country club were ever to decide they would have to sell, then the entities who had the development rights would have the first right to purchase that property. It would not be able to be sold immediately to some developer without the city having a controlling say in it.

Rob Gifford, District 3, thanked Mr. Markham for talking about the process. He has been a big advocate of keeping the process open, making sure separate committees or any of that kind of development doesn't run afoul of City of Newark rules. He thought that would be a huge step to make sure that there was not even an ounce of anyone thinking, "Oh, this was a deal behind closed doors." He thought that was paramount in this process. He was against doing a survey. Right now, there was just not enough information. A lot of folks had pointed out that there was not enough to actually put in a survey to actually see what people were for or against. He noted the deficiencies with the municipal broadband survey. He noted that many constituents did not even really use computers much, so there would have to be a paper survey. He recommended Council stick with what they knew and do workshops or charrettes, which he felt would be better.

He seconded what Dr. Morgan said. One specific thing he did not like in the document, that he wanted to highlight, was it said the survey results would be non-binding. However, positive support of the idea would require Council action to facilitate funding source or approval of a future referendum. He felt the word "require" should have been replaced with something else. That immediately just made him think that this survey, once again, people think, "Oh, it's a done deal, it was a survey, it was positive." He reiterated the need to stick with workshops and do what they know. He also agreed that rushing forward to meet a state legislative calendar was definitely something they did not want to do. He felt it should be done for the right reasons and if the timing aligned, great, but there were a lot of things that were being rushed this year, administrative warrants being the other. He thanked Mr. Chapman for going down the workshop route, Mr. Markham for keep the process correct, and Dr. Morgan for his comments as well.

Carol McKelvey, District 4, was concerned and wondering who really represented the country club, and what their legitimacy was when they said, "I represent the country club?" She found that difficult as a person who came to the meetings to understand. There were several meetings when they had different people who told her they were the country club, and they represented the country club. She thought it was imperative that they understood clearly what the country club's process was when they sent someone here to speak for them. She did not think Council knew who the country club was and she definitely did not know who the country club was legitimately and who could speak for that entity.

The Chair brought the discussion back to the table.

Ms. Sierer asked if there was clear enough direction, or if there was any further discussion on the table. Mr. Chapman noted tasking staff to move forward with hammering out details, he thought skipped the step, or the understanding that was what the workshop and the charrettes were to do. He had not been given the opportunity to work with this group in sharing statements, concerns, interest, visions from constituents, their neighbors around. Nor had he been given the opportunity to understand what they were trying to accomplish. He found that over the previous four years of being on council, typically, if they were having a difficult conversation or it was not very clear as to what direction Council was heading or what they were trying to accomplish, often times they would just say, "OK, staff, now it's your ball of yarn to try and fashion into something and bring back to us so that we cannot talk about this anymore tonight." Then Council beats up on them when they bring it back eventually, and they say, "That's not even close to what we wanted to discuss. And by the way, you forgot these three things that were really important to me." And that's the first time that they have heard that. Mr. Chapman referred to Ms. Houck's statements that no staff time or resources were put into this. He would be happy to provide Council's support in applying staff resources to it. However, he did not think staff had enough clarity. If Ms. Houck felt like she did, he would be interested in having that read back so Council could confirm it.

Ms. Houck wanted to at least facilitate a meeting to see where the Country Club was because she thought what Mrs. McKelvey said was that understanding the leadership was something she struggled with even with taking it off the agenda and putting it back on. She wanted to make sure there was some vote somewhere of somebody who had a responsibility level at the Country Club that was giving her this information or making the request.

Early on, the first request was from the working group when the first survey request was made, so she thought having a meeting with the entities on the board or on this long range planning committee mentioned tonight, could be the start and staff could come back with a plan of action after having heard everything said. Maybe it was the workshop or a charrette, but right now, she did not know the best course of action because the Country Club needed to be asked how they envisioned the community involvement. That was the biggest thing people wanted to hear.

Ms. Sierer concurred and said the long-range planning committee spoke for the board of the club. She was also struggling with that which was why Council wanted all of this removed from the agenda and all in writing because they needed to have a concrete spokesperson from the club who was speaking for the club from a board standpoint. She agreed with Mrs. McKelvey that they were all struggling with who had the right response and answers for this. Ms. Sierer thought that an initial meeting discussing who the City would be able to work with from the club, who was going to have the answers because there was confusion about that eight months ago.

Mr. Morehead thought Mr. Chapman brought up a good point and the question he heard in his comments was, what did they think they wanted. Mr. Morehead thought individual Council members had the ability to highlight things they would like staff to find out or to hammer out the details specifically. Council could individually send those questions or those comments in to the City Secretary to provide a summary before spending staff time. Ms. Wallace thought directed effort made a lot of sense. Mr. Morehead said there would be a summary of the direction and Council would talk again before providing the direction and maybe even vote and say, these are the things or strike this one or add that one.

Ms. Wallace thought it was premature to commit to a workshop at this point. She thought this next step was needed and allow the City to go back to the Country Club and give them the opportunity to provide more details to staff before having the workshop. She thought this was a direction if individual Council members submitted questions to the City Secretary for the City Manager to find out the answers to with communications with the country club. Mr. Morehead was not suggesting that it goes directly to the City Manager at that point. What he was suggesting that it come back to Council with a summary of everybody's questions, and then Council would have another similar conversation of, "Is this what we want to direct the staff to address?" It was a step in-between to avoid wasting staff's time.

Mr. Chapman said since his statements were being invoked so much, he wanted to bring a little clarity. His fear in the way this was all of a sudden taking a left turn was he did not want to spend a lot of municipal time. He had no problem with Ms. Houck, Ms. Feeney Roser and Mr. Herron or anybody else who needed to be party to that conversation, to go to the working group or to go to the Country Club if they have not already done so directly, to get the initial questions answered in order to inform Council. He did not see any reason why at the same time, members of Council could not be submitting specific interests, concerns, questions that they want answered. The plan would be to open it up to an opportunity of collaboration, and he thought an understanding of charrette would be beneficial to Ms. Wallace and recognizing that the process, by design, was where that conversation was had over a period of time with all affected stakeholders and interested parties to emerge from with a direction, details, and a vision. That was what Mr. Chapman was advocating for at this point. Mr. Chapman would submit to Ms. Houck and share with Council an initial subset of questions and concerns. He would organize comments he collected over the years from constituents and would wait to hear back from the committee as to whether or not they would allow him to participate directly and be an advocate for all parties. He urged Council not to just get ready to get ready and to direct no action.

A deadline was set of Sunday, 5/15 for Council members to submit their questions to Ms. Bensley. Ms. Houck thought it would be a good idea to get everything in order to deal with the greatest number from the beginning and not have any rugs ripped out moving forward. She asked if it was Mr. Chapman's intention that this be brought back to Council for discussion or that it comes to her to have a meeting. Mr. Chapman wanted this to go public with a series of public workshops/charrettes. He wanted it to start and have all the parties there including members of Council, staff representation like the Planning Department and members of not only the club leadership, but the membership of the club, and any other stakeholders, whether they be potential developers with ideas of future uses, concerns or questions about if a development right purchase was ultimately approved, what concessions would have to be provided or would be desired by the public funding that development rights purchase.

Ms. Hadden asked Ms. Feeney Roser if she had a good definition of charrette to provide to Council. Ms. Feeney Roser explained that a charrette was a collaborative effort with the stakeholders in the community, the property owners and the potential developers. Generally, it was done when there was pressure for development to get out in front and get a vision by the end of it. It hammered things out and got a vision of what the community would like to see happen to a particular property. The City could do that for open space if they were to move ahead for the purchase of it. They could talk about what that might look like, they could talk about if it did not go forward what would happen if it was going to be developed, was the community interested in clustered housing to save a lot of open space. Or they could talk about, did they want it to be open space or did they want it to be developed, which she thought was where they were. It was in Comprehensive Development Plan V to get that started. As soon as staff had some direction to put it together, they could begin to work on that.

Ms. Wallace said she heard Mr. Chapman's passion and thought everyone was on the same page about having some sort of public workshop/charrette. Her concern was about the timing to allow the Country Club to have more input. Before moving forward with the public discussion, the City needed to find out what the club was interested in doing and make sure that piece was moving forward before having public discussion. This space was privately-owned. The next step after submitting Council's questions was to allow staff to go back, work with the club, get clarification about who could speak for the club, find out if they were interested in a public workshop, and move forward. She thought that made the most sense.

Ms. Sierer clarified that Council will submit their questions, thoughts and concerns by Sunday to Ms. Bensley. Ms. Houck would work on setting up a meeting with the Country Club that would include sharing the questions and thoughts and concerns and determining who would represent the club when there were meetings and then begin the process of taking a look at developing a workshop and charrette two weeks and begin the research and development to make that happen. Mr. Herron would be directed to determine how many Council members could participate in the club's long-range planning meetings.

Ms. Hadden thought the list of Council questions should be provided to Mr. Chapman since it was his district. She thought he should be involved with this from the ground up and hoped he would be involved with any meeting set up in light of his interest in the Country Club property. Mr. Morehead thought the summary should come to all of Council. Ms. Sierer agreed.

Mr. Chapman noted there were at least three members of the Country Club present and he thought they showed the City what they were looking to accomplish which was to have a public discussion to entertain the idea of the sale of the development rights in order to facilitate their ability to stay on the property and continue functioning as a golf course and country club. If clarity was needed as to who to direct questions to or who to be taking direction from in regards to not only the club but the committee, that seemed to be directly addressing this issue and trying to collaborate with stakeholders to initiate and drive the conversation, they could get that and that was what he envisioned for Carol's desire to have that initial fact-finding meeting. He agreed with some of the things being shared. In order to move into a charrette process, the City and the club, more specifically, both having created jointly the high-level basis of a foundation of what people were being asked to consider and address. By Council sending the initial concerns and questions to Ms. Houck, she could then share them with this body. They would mutually get to understand some of the things that would or that needed to be addressed in the initial design of the foundational request coming out of the club.

Ms. Sierer suggested that the board discuss and provide written communication about who the City and Council should be corresponding and working with.

15. MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: TO MOVE ITEM 9-A, SPECIAL USE PERMIT FOR EXODUS ESCAPE ROOMS, LLC, TO BEFORE ITEM 6-A.

02:32:03

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

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

- A. Request of Exodus Escape Rooms, LLC DBA Axxiom Escape Rooms for a Special Use Permit for a Commercial Indoor Recreation Facility at the Business Located at 280 East Main Street, Suites 125 and 132

02:32:56

Ms. Feeney Roser presented the request for a special use permit for Exodus Escape Rooms at 280 East Main Street also known as Market East Plaza. The property was zoned BC, general business, which allowed indoor commercial recreation as a conditional use requiring a special use permit. Exodus Escape Rooms provided themed rooms designed as puzzles to challenge teams of people to solve the puzzle and escape the room. The service was used by corporations to foster team-building amongst employees and by individuals and families for an interactive, social and recreational experience. Exodus planned to operate their facilities weekdays 9 a.m. to 4 p.m. for corporate clients, and the public was welcome weekdays after 4 p.m. and on weekends. Exodus closed at 9 p.m. weekdays and 11 p.m. on weekends.

The site was manned at all operation times. Each room was under video surveillance and equipped with an emergency key. The key was pointed out to participants before they began their timed adventure.

The special use permit application was reviewed by all the City operating departments and staff noted that the use did not conflict with the purposes or land-use designations in the Comprehensive Development Plan and the use would not adversely affect health or safety of persons or be harmful to property or improvements in the surrounding area. The department also noted the use would add recreational opportunities for the community and attract additional customers to downtown Newark.

Staff also indicated that a tenant fit-out permit would be required in this case as a condition of the permit because it would not normally be required because they were not doing anything electrical, mechanical or structural to ensure that the location would meet all building and fire codes. No other department, including the Police Department, had any concerns about the proposed indoor recreational use at this site. Therefore, the Planning and Development Department recommended that Council approve the requested special use permit for Exodus Escape Rooms to operate an indoor commercial recreational facility at 280 East Main Street, Suites 125 and 132.

Mr. Markham confirmed with Ms. Feeney Roser that the applicant was currently physically on Main Street. Ms. Feeney Roser explained the business was misclassified. It was a bit unusual. The property where they currently were was zoned BLR. For their business license they had to show their state license, which classified them as a professional service based on the number of professional corporation clients they had. That was classified as a professional service office use under City Code which was allowable in BLR. Because there was no tenant fit-out, there was not another review of that project before they got started. Once they opened and staff learned about what they did, staff realized it was not an office use under Code but was actually commercial indoor recreation. Ms. Feeney Roser noted they met all fire and safety codes, so because the City misclassified, they were allowed to continue. Mr. Markham confirmed that they were just moving back into the commercial area back behind Main Street. Ms. Feeney Roser said there were two parcels there and one of them was zoned BC, so they met the Code there. Mr. Markham assumed the church had no objection. Ms. Feeney Roser said they were notified and did not respond.

Mr. Morehead had not seen the facility and was concerned about fire code and so on and when moving he assumed they would continue to meet the fire and safety codes. William Wright, the principal partner for Exodus Escape Rooms said that was correct. Actually, right after they opened, the fire marshal visited and his question was, "You really don't lock them in a room, do you?" Mr. Wright responded they did lock the participants in a room, but they were given an emergency key that was actually in a box to the left of the door that was accessible for them. Also, every single room was on live surveillance and the monitors for the room were staffed in addition to staffing the actual location. Not only do they have access to a key, somebody was physically watching them the entire time they were in the room.

Mr. Morehead asked if the room was like a maze or was just four walls. Mr. Wright said it was four walls. They were themed. It was a puzzle, for example, they have one that was Sherlock. The room was driven around logic and problem solving. They had this conversation several times because they had a location in New Castle County. They were deemed recreation which was interesting because nobody really did anything but sit on the furniture the entire time they were in the room.

Mr. Morehead asked if there was a tragedy, would the first responders need to be specially trained to address the room. Mr. Wright said definitely not, they would just have to know how to open a door. It was a room.

There was no public comment.

MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THE SPECIAL USE PERMIT BE APPROVED AT 280 EAST MAIN STREET, SUITES 125 AND 130, ALSO KNOWN AS THE EXODUS ESCAPE ROOMS.

Mr. Markham would support the special use permit as it would not having any detrimental effects, was consistent with the comp plan and would provide recreational opportunities for the community.

Ms. Wallace would also be in favor of the special use permit as it conformed with the comp plan, provided recreational activities and was not a detriment.

Mr. Chapman planned to support the special use permit for reasons previously stated.

Mr. Ruckle planned on supporting the special use permit since it would be a great asset to the City and for other reasons mentioned.

Mr. Morehead planned to support the special use permit as he believed it met all three requirements that special use permits need to meet.

Ms. Hadden would support this as it will add to recreational opportunities for the community, would bring additional customers to downtown Newark and would not have an adverse effect.

Ms. Sierer would also support this for reasons previously stated.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

17. 6. RECOMMENDATIONS ON CONTRACTS & BIDS:

- A.** Recommendation to Waive the Bid Process in Accordance with the Code of the City of Newark on Utilizing State of Delaware Awarded Contracts for the Purchase of Wood/Brush Chipper

02:44:01

Mr. Spadafino presented the recommendation to waive the bid process in accordance with the City Code to utilize the State of Delaware awarded contract for the purchase of a wood brush chipper. Park staff were performing tree pruning, dead wooding and tree removal operations and smaller tasks that could be done in-house. They currently had to load tree branches and logs into the back of a truck and hand-transport them to another storage facility to be fed into a tub grinder. This was a strenuous process and consumed a considerable amount of time.

The recommendation was for the purchase of a tow-behind wood brush chipper that enabled them to chip branches on site, making the operation much more effective by reducing the amount of labor and time involved in lifting tree branches into the bed of a truck and transporting to another storage area. The wood brush chipper could be easily transported and positioned in locations with limited access and had the chipping complicity to meet the vast majority of in-house needs. Once chipped on site, the truck could simply go to the storage area and dump the load. Since chipping on site substantially reduced the amount of tree matter, this would in turn reduce the number of trips made to the storage area.

The State of Delaware entered into a master agreement with the National Joint Powers Alliance for the procurement of landscaping and grounds-related equipment, accessories, and supplies. Vermeer Mid-Atlantic Inc. was one of the vendors awarded the contract through the competitive bid selection process, and their bid was good through September 2017. The bid was at \$35,205.47. That would include two sets of blades and bolts and additional drive belt. In comparing prices for a comparable unit there was a bid of \$48,760, so the State bid price was considerably lower.

Ms. Hadden said it did not take a lot of thinking on her part when thinking about trips saved to the yard and the advantage personnel wise with the ability to chip on site. Mr. Spadafino added that the chippings could also be used under City picnic tables and bleacher units and also along trails. Ms. Hadden appreciated the fact that although a state-approved vendor was chosen, Mr. Spadafino took the initiative and got one more quote to get a good baseline.

Mr. Markham liked the cost savings for labor and asked if that could be quantified. Mr. Spadafino said that depended on what kind of year it was for storms and those type of things, but this wood chipper would take care of up to a twelve inch diameter tree. On a normal load that was probably two truckloads going out to Iron Glen Park, and this would cut down on those loads. Also, the tub grinder was a lot more labor-intensive to get out there as it had to be loaded by a six-wheel truck and could cause some rutting damage. The new unit would get into finer areas that normally could not be handled and would cut out a lot of the labor time. It could also get along Jim Hall Trail and into some areas of Redd Park as well.

Mr. Markham asked Mr. Spadafino in the future to take a stab at some of the labor savings as it made the decision clearer to Council. He asked if there were comments from the mechanics. Mr. Spadafino said Mr. Vispi was at the demonstration, took a good look at the unit and recommended it as a valuable purchase. Mr. Vispi also noted his staff could perform some of the maintenance if needed.

Mr. Ruckle added it was not just saving time, it was also work injuries. Mr. Spadafino said this would also provide the opportunity to chip away the wood and actually blow it into the forested areas. Mr. Ruckle asked what kind of decibels it put off. Mr. Spadafino was not sure. Mr. Ruckle thought it would be pretty loud, so there would be some time restrictions.

Ms. Sierer said when she volunteered with the Parks and Recreation Department right after a big storm, she hauled branches from a very large tree which was labor intensive.

Mr. Morehead pointed out this was in the capital improvement project budget for this year, so Council saw this before. He noted that with commercial tree folks, the Vermeer was a very common machine so this was standard, high-capacity, high-quality equipment that would provide good service.

Ms. Hadden referenced the comment about blowing the chips back into the woods. She asked if there was a concern about some type of acid level when you have freshly chipped wood that could actually damage vegetation. Ms. Sierer thought that was correct but it had to be inches thick. Ms. Hadden asked Mr. Spadafino to report on that question.

There was no public comment.

MOTION BY MR. MOREHEAD, SECONDED BY MR. RUCKLE: THAT COUNCIL APPROVE THE RECOMMENDATION TO PURCHASE THE VERMEER WOOD CHIPPER FOR THE AMOUNT OF \$35,205.47 IN ACCORDANCE WITH THE STATE OF DELAWARE CONTRACT NUMBER GSS13673 INCLUDING THE REPAIR PARTS.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

18. 7. **FINANCIAL STATEMENT:** None

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

A. **Bill 16-15** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Creating Additional Pay Grades and Updating Management Classifications

02:52:46

Ms. Bensley read Bill 16-15 by title only.

MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 16-15.

Mr. Haines presented Bill 16-15 and referenced Ms. Houck's 4/12 memo outlining the intent behind why the bill was being introduced as well as the follow-up memo of 5/1 that provided background showing comparisons and the basis for the various positions. The bill requested title and pay grade changes and discussed the positions, why some were public-labor law, some from an organizational theory and some from a market-rate perspective. Administration tried to outline not only intent, the initial memo of why it was before Council and why these specific positions and then also the follow-up memo, the background behind each one, not only from Newark recruitment, but working with Newark peers from a public-labor perspective, working with some of the limited restrictions when viewing comparables and trying to provide the background with each position.

Ms. Hadden asked how in the reclassification it was determined to make the pay grade jumped from, for example, 26 to 31 or 31 to 33 and whether that was based on current salaries. Mr. Haines responded that in looking at position by position and also trying to overlay with existing organizational structure, the Electric Department specifically was the genesis for this specific effort. As part of the budget, there was a second deputy director. As noted, there were some very challenging efforts. That was when they started working with Dover as another public utility, and they were running into the same issues. Their own market studies put the director at \$150,000-\$175,000 as a public utility which would still be below the private sector peers but would invert a salary scale issue from a municipal standpoint.

So, they were currently launching a recruitment for an assistant director. They budgeted a starting salary of \$100,000 for that assistant director. They wanted to recruit and have well qualified electrical engineers to come in and run the resources and the infrastructure. Newark was really running into a challenge with the private sector. They lost interns that they were hoping to groom to PECO for about \$10,000 difference coming right out of college without the responsibilities from a management perspective. The City wanted that three, five, ten years growth showing they could manage staff or contractors and grow into a management position. That was where it started and it was also overlapping the existing pay scale structure. That was the balance administration was trying to do with each one of these positions.

Ms. Hadden asked if recruitment was done within a certain geographical area or done on a national level. Mr. Haines said it depended on the position. The previous recruitment regarding the deputy director previously was national through professional associations such as the APPA which get national exposure, and DEMEC helped out as well. Staff tried to use every resource they could such as professional associations or postings to have that broad reach. Over 27 positions were reviewed over the last few years looking at just job descriptions and where they were located and then doing the cost-of-living adjustment to see where those positions rank comparative to Newark. A spread was found of 10% to 35% deviation up over Newark pay grades.

Ms. Sierer asked if all of the pay grades were based on benchmarks and wondered why the Director of Electric was recommended at 34 while the Police Chief and Finance Director were 33. Mr. Haines said it was difficult when looking at the private sector comparisons as they did the market rate. The discussion started with staff. They did a management critique in August and started having a dialogue about being able to benchmark the City and look at that piece. This was a difficult discussion among the staff and management team that the Electric Director position was probably the highest paid one. Then the other ones got a little more challenging when looking at the Police Department, and then noted, there were specific comparables through the Public Employee Relations Board. That set some of those benchmarks that they worked off of, which was some of the positioning here to help with some of that growth and structure within the Police Department overall.

Staff tried benchmarking to Newark peers, benchmarking to size when they talked about the Police Chief. The Finance Director (and Mr. Vitola was a part of this memo from the beginning) if Council wanted to hear from him.

We value, and state this in the memo that, from a CFO perspective there were a lot of operations that could be conventional CFO's, that were making sure accounting standards and budgets were being met. As a public utility, they valued from the manager's office a higher level from the Finance Director. As Council was aware, they were an integral part of the City's utilities. Rate setting was a key part, as a public utility model budget that was a very essential factor for Newark. The argument could probably made it could be higher, but then they started running into that structure standpoint of which position should be a pay grade higher.

Ms. Sierer noted that the Deputy Director of Electric and the Deputy Chief of Police was the same pay grade. Then when you jump to promotion as Chief of Police, was the recommendation that it was less of a pay grade than Director of Electric. Mr. Haines said yes, they have other department directors that could also note what the pay scales are. Mr. Haines and Ms. Houck had discussions with other staff members that went to the question, which they started with the team in August, "if you have the title director, is everybody the exact same pay level". There was a real challenge with the Electric Department when it came to recruiting and succession planning, would they to be able to provide the infrastructure ... at the budget hearing last fall, the dialogue happened and if the director retired were they ensuring they could recruit and hire qualified people behind him to support him and the deputy. That was why they felt strongly about this ordinance to be able to position the City from the Electric Department side.

None of this would create an immediate pay increase for anyone. These were pay scales that allowed recruitment on a pay scale. That same issue was experienced with the Finance Director recruitment. Some of the pay scale operations for more conventional CFO's were \$20,000-\$30,000 above Newark. All that went into the mix of each pay grade and recommendation for the reclassifications.

Mr. Ruckle asked for clarification that if Council decided to increase these pay scales, there would not be raises this time around. Mr. Haines confirmed that was correct. As noted, they had the opportunity to grow if they merited it. Mr. Ruckle asked if it would be next year that the impact of the raises would be felt, and Mr. Haines said that was correct.

Ms. Hadden asked if the City was just changing these pay scales for recruitment purposes. Mr. Haines said that was correct. Ms. Hadden continued, but next year if somebody was one third of the way

up the previous scale, did that mean they would be adjusted one third of the way up in the new scales. Mr. Haines said by Code, they could not be lesser than the minimum, but greater than the max. Any of these re-classifications would not place anyone below the minimum. It would be within either that 50th percentile or the 75th percentile. From a reclassification perspective, it would overlay the new pay scale, and any of the individuals through merit base, no different than they would budget through any other budget process, could somewhat have a growth potential. They would budget that. Through the review process and for any of these staff members, all but two would go through the City Manager, whether there was a merit based award for any growth like anybody else if they were in the middle of growth of a pay scale.

Ms. Hadden stated an employee making \$21,000, at pay grade 31 and that pay grade 31 turned into pay grade 33, and the \$21,000 was not below the minimum, that employee would still make \$21,000 on the new scale. Ms. Sierer responded that was perfect.

Mr. Morehead commented that three pay grades were also being added to the top – 32, 33, and 34. Mr. Haines replied yes.

Mr. Morehead fundamentally disagreed with the concept that a municipality or government could compete with the private sector. For example, the Governor of the State made \$175,000, and the President of the United States made \$400,000. They were different people making different choices. Government typically was a much more stable environment with better benefits whereas, the corporate or private world on salary could be cut throat and could end tomorrow. Typically government did not go away the next day. Mr. Morehead had trouble with some of the conceptual planning referenced here because he saw both sides.

Mr. Haines said specifically with the Electric Department, the results were what they were. That stability was not recruiting people in. The stability was not what was looked at by the up and coming millennials. It was a reality in statistics for recruitment. There was a whole balance of the compensation piece. Mr. Morehead's comment about the President or a Governor, there was often dialogue about the public based salary, but in looking at the total compensation when they got on boards of directors and had stipends, they were compensated way greater than the base wage. It was an interesting dialogue if they went down that road too. Governments could not just sell stability to recruit people in. That was seen to some extent with the Finance Director recruitment with the Deputy Director last fall and this year with the Director. The Electric Department was, without question, a tangible concern that the City would not be able to recruit. They had zero before, and Mr. Haines was not sure if they would have more than that difference this time around even with different opportunities to try to recruit in different locations. Mr. Morehead was not sure the results would change given the amount of money being discussed.

Mr. Sierer thought they were benchmarking. She was not convinced that the Chief of Police and the Finance Director should not be at level 34. Both the Deputy Electric and Deputy Police Chiefs were at 31. Mr. Morehead noted the Police Chief certainly had more people, and the Electric Director had a huge percentage of the City's income and revenue. Ms. Sierer did not think a decision could be based on that. Mr. Morehead said the question was, what would it be based on and that was what Mr. Haines was getting at earlier. Mr. Haines responded it was a mix if you talk about electric. They could say it was driven more from the private sector from a recruitment standpoint. The Police Department was more public labor, direct comparables, and it was driven more from a public labor standpoint.

Ultimately the question was, were all the department directors on the same level and how were they valued. If Council felt they should be adjusted, he did not think anyone would argue if they were adjusted up. Ms. Sierer said they were all valuable. Mr. Haines agreed and said that was one piece discussed when he and Ms. Houck met with individual staff members. This did not demean or marginalize the work of anyone else. That became a challenge when assigning a pay grade to a position. Part of it reflected the realities of labor. Some of it was a reality of recruitment and retention.

Ms. Sierer pointed out they were all the same at 31. Mr. Haines reported there had been a pay grade 35 that was eliminated in 2010 or 2011. Ms. Hadden noted that although the Police Chief, Electric Director and Finance Director all used to be level 31, one now was a 34 and two were 33's. Ms. Sierer asked what this was signaling to those people. Mr. Haines said it signaled that from a fiscal standpoint one of the most expensive and challenging positions to fill was the Electric Director. They tried to objectively say there was a complete value to all of them. A pay grade did assign the fiscal piece that they had to try to tackle.

Mr. Chapman said this was similar to the philosophical position that Mr. Morehead took in response to, I think the question that Ms. Sierer was calling, was he did not think that in a government, a

title entitled someone to a level pay grade. He thought it was worth saying for the emotional side of it that they all knew how valuable each one of these positions were, not monetarily, and everyone deserved to be paid appropriately. The only reason he was willing to entertain any of this conversation was because of the lack of responses to fill vacancies for vital roles in the City. Ms. Sierer added, not just electric.

Mr. Chapman was willing to consider making changes to the specific positions where there was trouble recruiting recognizing the market demands for specific industries and specific roles. A municipal government was not a typical organization or a for-profit organization. He did not believe that there was some tier of management that said just because someone over here reached a level, everyone else in management had to be at least that or more, especially when they got to the tiers of deputy manager and manager where everything kind of ran up through.

The fact of the matter was, a very large percentage of the City's budget came from the Electric Department and therefore, the electric utility the municipality owned and operated. The market was saying they needed to pay greater wages for that department. Mr. Chapman was not prepared to continue what has been a trend in his last four years on Council of increase the top tier wages, union contracts come up right on the heels, then they had a problem where folks in the union did not want to ascend out of the union contracts into management, therefore, increase the pay schedules again. Two or three years later, union contracts come back up and bring it right to the heels of where management was.

Mr. Chapman said there was a significant increase in salaries over the last four years. His position on this was evolving over those four years in that during 2012, 2013 and 2014 he was excusing and fighting for some of the changes being made. Administratively he believed they were the right changes - some unification of pay grades, some clarity or parity with the state pay grade system, etc. However, he felt it was time to draw a line in the sand with regards to a trend that he was seeing, not that there was any malice in it, but he knew there was a possibility this would be in front of Council this year after making the changes a year and two years ago. He took a different position than where he heard the conversation going. He would entertain pay grade changes for the Electric and Finance Departments or at least deeper conversation about those two, but he did not know about the rest.

The way Mr. Markham looked at this, the City needed to have the ability to attract good people. In thinking back over time, and thinking about what the police were able to do right now ... the crime rate was very low because of the initiatives and the people who were in place. In thinking back to the Electric Department, when he was an undergrad, the City lost power, computers lost memory, and it was not a pretty sight. Things changed with the right people in place. Rick Vitelli had a lot to do with that, so he was not willing to take the next step up to another pay grade, or change this because he did not have the research that said that was appropriate and take that step. He was willing to take a step to try to fill positions with good people, people who want to serve, but they want to be compensated appropriately so the City continued a good level of service with electric and police.

MOTION BY MR. CHAPMAN: AMENDMENT 1 – REMAIN AS IS. AMENDMENT 2 – DELETE THE CHIEF OF POLICE. AMENDMENT 3 – DELETE THE DEPUTY CHIEF OF POLICE AND CHANGE THE DEPUTY CITY MANAGER FROM 31 TO 32. MOTION FAILED FOR LACK OF A SECOND.

MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: THAT BILL NO. 16-15 AMENDING CHAPTER 2, ADMINISTRATION, CODE OF THE CITY OF NEWARK, DELAWARE, BY CREATING ADDITIONAL PAY GRADES AND UPDATING MANAGEMENT CLASSIFICATIONS, BE APPROVED AS SUBMITTED.

MOTION PASSED. VOTE: 4 to 3.

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

(ORDINANCE NO. 16-18)

20. 9-B. REQUEST OF DANNEMAN HOSPITALITY, LLC, FOR A SPECIAL USE PERMIT FOR A 125-ROOM HOTEL AT THE BUSINESS LOCATED AT 400 OGLETOWN ROAD

03:29:56

(Secretary's Note: Items 9-B and 9-C were discussed simultaneously.)

Stephen Kessler, Esq. represented Danneman Hospitality, LLC, and its application for a special use permit and approval of the major subdivision pursuant to Newark Code section 32-78. Danneman Hospitality, LLC, was run by George Danneman, President. The proposed site was at 400 Ogletown Road,

last used as a Toyota dealership. The proposed use was for a five-story hotel and attached restaurant. The current plans were for Springhill Suites by Marriott. They were currently working with the newest available Marriott model for Springhill Suites.

They previously met with the Board of Adjustment and received a parking variance by unanimous decision. They also met with the Planning Commission where a unanimous decision was also received approving the special use.

Mr. Kessler introduced the team here to present this evening: George Danneman, President, Danneman Hospitality; Jeff Bross, Principal, Duffield Associates; Michael Kaszyski, Senior Project Manager, Duffield Associates; Toren Williams, Architect, Architectural Alliance; Craig Johnson, North Star Construction and Kostas Kalogeropoulos, President/CEO TKO Management.

Mr. Kessler stated the legal standard. In order to qualify under the Code, the applicant had to demonstrate that the project did not adversely affect the health or safety of the residents of Newark and surrounding area, it was not detrimental to the public welfare or injurious to property in the City, and it was not in conflict with the Comprehensive Development Plan. They believed the application met these standards on its face and highlighted that it was a relatively low legal standard, but they wanted to show how the project went above and beyond the legal standard with the presentation.

Mr. Danneman provided a background on Danneman Hospitality and on his family's involvement in the City of Newark over the years. After Danneman Fabrics closed on 400 Ogletown Road, his grandfather leased it to car dealerships. After Toyota moved its operations to Cleveland Avenue, the process began to determine the highest and best use for the property. Many uses were considered and it was determined the hotel-restaurant combination with a flagship brand hotel, would be the highest and best use for the property and for the City. Mr. Danneman believed this would transform the intersection into the gateway to the City and the downtown Main Street District.

Mr. Kessler restated that the goal of the project was to transform the gateway to Main Street. The project was located at the corner of Ogletown Road and Capitol Trail next to the Aetna Fire Hall which also supported the project. They wanted to take the property and redevelop what they believed to be an underutilized and unattractive property use into a vibrant Main Street-focused property. They viewed it as an economic driver and were incorporating high standards of site and architectural design and were utilizing modern planning principles without burdening the City's resources. The project and the specific location were designed to encourage pedestrian traffic on Main Street, designed to reduce the number of people driving to and from the site by providing a shuttle service loop that would service Main Street and the downtown district on a regular basis and provide transportation to and from public transit sites.

The project was designed to encourage economic development in the City by drawing business people, families and tourists to stay within walking distance of Main Street businesses. The applicant hoped to demonstrate how this project would create an aesthetically-pleasing and high quality eastern gateway to Newark, stimulate the local economy by providing construction and permanent operating jobs to the City, generate tax revenues and permit fees to the City, further the goals of the Comprehensive Development Plan, both old and new, hotel guests would patronize the Main Street businesses, prevent the overcrowding of land by responsible planning and by reducing impervious cover, provide storm water quality and quantity management, further the goals of transit-oriented development by shuttling guests from points of arrival and to Newark attractions and provide high quality lodging in the City. At the suggestion of Ms. Sierer, the applicant planned to explore installing an electric vehicle charging station on site since there was a shortage of those in the area.

Toren Williams, Architect, Architectural Alliance, presented the aesthetic and architectural features of the project. Mr. Williams referred to the rendering which showed the site from the McDonald's area. It incorporated high-end materials and created a layering effect with the architecture and aesthetics. They were keeping with the existing context incorporating the post office, the fire house, the office building and the library.

The next rendering showed the view coming out of the post office and included the vegetation going in and around the building. They were trying to open up some of the public areas with larger opening to maximize the indoor-outdoor activity and connectivity and bringing around some color to the entry of the building. Coming back around was the restaurant and the massive openings. The aluminum storefront materials kept a modern aesthetic, which he thought fit in with the existing context.

Mr. Williams said the interior had a very warm, residential feeling with durable materials. The walls would have vinyl wall coverings and architectural millwork. This residential feel would be done in a

modern sense with all the lighting fixtures. The ceilings would incorporate soffits and bulkheads to break up the interest, but yet bring that exterior to the interior. They were bringing the whole project together. The interior of the units would break the space up, again more of a modern feel with a sleeping area, a work area, a place for rest and relaxation, and again, with the finishes and the millwork with the open public area and the interior of the suites, this whole thing came together with a more contemporary feel.

Jeff Bross, Principal, Duffield Associates, reported that the team worked to lay the building into the site so that it fit, not only in terms of its scale, but also its position within the site, recognizing it as a gateway structure. The restaurant was in the lower-right corner of the building and the hotel behind. A lot of attention was paid to circulation. The site took access off of both Ogletown Road, as well as Capitol Trail. They were currently working with DeIDOT on the configuration of the entrances. They also spent a considerable amount of time on appropriate pedestrian mobility on the site and to accommodate bicycle traffic onto the site as well. In regard to the landscaping they saved a number of existing trees on the site and were adding a considerable number over what was there now. Mr. Bross said a lot of time was spent trying to develop something they thought was handsome that was going to serve as a gateway.

Mr. Kessler noted that a parking variance was granted by the Board of Adjustment in March 2016. Regarding traffic, DeIDOT determined a traffic impact study was not required based on prior site use traffic and de minimus impact on adjacent intersections. DeIDOT was in the process of going through the property with Mr. Bross' team.

The goals of the Comprehensive Development Plan were broken up into key components:

The first key component was economic. This was directly from the Comprehensive Development Plan to encourage high quality business and industrial growth. Marriott targets for this brand, business travelers, average income of \$94,000 a year, average of nine business trips per year. The hotel would encourage guests to walk or take the hotel shuttle to Main Street. Based on the number of guests anticipated, the average amount of money typically spent on a Main Street like Newark was estimated between \$1.2 and \$1.5 million in new annual revenues to Main Street businesses.

The next component was jobs to provide employment opportunities for Newarkers. The current jobs on the site were being relocated to the new Toyota dealership, so any jobs coming to the site were new jobs to the City. The project would provide approximately 200 construction jobs and would bring approximately 50 new permanent jobs to the community, both full and part-time. The estimated five-year payroll for the hotel exceeded \$5 million.

Key component three was preservation, and that was to preserve and protect the national environment, including streams and waterways. The project would provide both storm water quantity and quality management that met the new Delaware storm water regulations. The landscape plan proposed 20% more trees, 775% more shrubs on site. The redevelopment allowed 11 larger existing trees to be preserved and in addition, Marriott on the corporate level had a number of conservation and environmental programs that were a part of hotel operations. These would be things like low-flow shower heads, and other things used as part of Marriott's package.

The next key component was revenues to maintain adequate municipal revenues. The estimated property taxes for the proposed project were between 700 and 1,000% higher than current property taxes on the site. The estimated five-year lodging tax was \$1,975,000 and the project would involve multiple City permit and licensing fees.

The fifth component was limiting sprawl to limit, in so far as possible, unattractive sprawl development that unnecessarily dispersed services and utilities and increased traffic congestion. This project employed very high architectural standards for attractive, desirable development. The project redeveloped a prior site, using existing utilities and infrastructure. The project supported City attractions on Main Street. The group guest arrivals and hotel shuttle service to and from transportation hubs reduced traffic impacts on the local road network, and the project, consistent with Smart Growth and new urbanism planning principles, incorporated infill redevelopment with emphasis on reducing congestion.

The last component was the planning section. Under the Comprehensive Development Plan, this was in planning Section J. Planning Section J encouraged commercial development consistent with the proposed hotel project and the property's part of the downtown district would be an iconic gateway addition to Main Street. So the new Comprehensive Development Plan, although not yet adopted formally, was instructive because it would show where the City was moving and with the major goals, addressing parking and transportation issues, encouraging economic growth and architecturally pleasing smart redevelopment. The applicant believed the project fit into all of these goals as well.

Mr. Kessler returned to the legal standard. The applicant believed the project did not adversely affect the health or safety of the residents of Newark and the surrounding areas. It was not detrimental to the public welfare or injurious to property in the City and was not in conflict with the Comprehensive Development Plan. Rather, the project was a benefit to the City and its residents and furthered the goals of the Comprehensive Plan.

The applicant asked Council to approve the Special Use Permit for a five-story hotel and attached restaurant but asked that it be done without the traffic conditions imposed by the Planning Commission as DeIDOT was still in the process of completing its review of the project and may determine that the conditions imposed by the Planning Commission were less safe than what they may require. The applicant was happy to communicate the City's position on the traffic flow at the intersection to DeIDOT, but preferred that DeIDOT's traffic decisions and jurisdictions regarding the site remained in place.

Also, regarding storm water regulations, DNREC's storm water regulations were recently held to be unconstitutional by the Supreme Court of Delaware. While the new regulations were pending, the applicant requested that the storm water regulations in effect at the time a building permit was issued be applied to the project.

Mr. Kessler presented a marked up development agreement with the two changes he mentioned, which were the DeIDOT jurisdiction over traffic and the DNREC storm water regulations.

Mr. Chapman addressed the traffic restrictions and noted that the delineations were going back and forth between what DeIDOT suggested vs. what the Planning Commission suggested. He was under the impression that what the Planning Commission suggested was based on what DeIDOT had suggested. He asked what the applicant to explain their request.

Mr. Kessler requested that DeIDOT be the ultimate arbiter of traffic decisions for the site. The Planning Commission gave its recommendations for traffic as far as entrances and exits from the site. They were still talking to DeIDOT and felt that DeIDOT may look at that and say it was really safer to have an exit out here or an entrance in here where the Planning Commission may have disagreed, and this was why the applicant felt it was safer. They felt that it would be best to leave those decisions up to DeIDOT.

Mr. Chapman said DeIDOT had not made any recommendations of any restrictions yet and what the applicant was asking for was for no restrictions with regard to traffic and egress specifically. Mr. Kessler said that was correct. They were still in discussions with DeIDOT. It was typical for a project of this type to be at this point with DeIDOT. It would be premature to dictate what traffic movements should or should not occur at the site. DeIDOT took a lot of factors into account, as did the applicant as they worked with them, including accident history, volume of traffic, when the traffic was moving, what the peak hours of traffic looked like. There were a lot of moving parts that had to go into this.

Mr. Chapman noted that DeIDOT said rather than doing a traffic impact study, just ask the group here to be paying an area study fee. Mr. Kessler reported the traffic fee was to cover potential offsite improvements that might be necessary. The configuration of the entrances was dictated by DeIDOT subdivision and traffic sessions who look at this and again, dictate the type of movements and also the geometric configuration of the entrances.

Mr. Chapman asked Ms. Feeney Roser to confirm that everything just said was in line with what she understood the recommendations from the Planning Commission at this point. Ms. Feeney Roser confirmed that the Planning Department sends the plan to the Planning Division of DeIDOT, and they look at it and send a letter. What they said in that letter was that they had concerns about the full movement onto Ogletown Road and also the egress onto Capitol Trail. That was what was told the Planning Commission, and then they discussed it. They were more concerned, she believed, through their discussion about the full access on Ogletown, but they made the recommendation that egress be eliminated onto Capitol Trail and that the left turns eliminated out onto Ogletown Road. They were both DeIDOT streets. Mr. Chapman said the genesis of the Planning Commission recommendations was from a letter listing concerns, not necessarily recommendations of solutions to the concerns. Ms. Feeney Roser confirmed that was correct.

Mr. Chapman said as far as the whole project, most of his analysis was around traffic flow and impacts and understanding parking and the conversation that went through the Board of Adjustment's variance. The question was what the agreement was for offsite parking of staff. Mr. Kessler said the agreement with the Board of Adjustment was for the owner to provide 16 parking spaces at an offsite location. The owner had multiple options pending at this point, one of which would be 100% fully in place by the time we get to recording.

Mr. Chapman's concern was the long-term addressing of that issue. If on the onset the developer was recognizing a need for offsite staff parking and not necessarily owning that offsite or being able to create a contractual agreement for some long-term (more than a couple of years). Mr. Chapman asked the applicant to address this earlier on in the process for their sake because the variance was dependent on that provision of offsite parking.

Mr. Kessler said the first answer to the question was when pursuing it, it would be pursued for as long a period as feasible for the owner. He did not want to jump from location to location. The second way to address it, the owner had to find the parking somewhere. It had to be in place, or else there was an enforcement mechanism, and he could lose his occupancy permit. There was an enforcement mechanism for the owner to meet the parking requirements. Also, in addition to that, there was a shuttle service provided by the hotel. One of the shuttle purposes would be to shuttle employees from various parking locations. Having a private agreement in place at all times was Mr. Danneman's responsibility.

Mr. Chapman commented on the egress and ingress traffic. Looking at the egress restrictions that Planning Commission recommended going out onto Capitol Trail, he thought the same methodology would then cause even a greater concern egressing out onto Ogletown to shift four lanes to be able to turn left onto Library Avenue, and that people had to come out somewhere. He was willing to entertain removing the restriction of egress out onto Capitol Trail, but an absolute must for him was restricting a left-hand egress out onto Ogletown. Other sites were already a problem (the biggest concern was health and safety) but the havoc that it wreaked on traffic when somebody was trying to do that.

Mr. Ruckle said his constituents were concerned with the left-hand turns. Mr. Kessler said currently people leaving the site were able to make lefts, but currently DeIDOT was weighing that. There had to be an exit out of the site somehow. While DeIDOT may restrict one access or another, they were driving traffic to another movement, and that could create more problems. They were taking their time and were looking out for the public safety here. There was a meeting to talk about that very issue later this week with their traffic and subdivision people to work through that. That was why they were asking for Council to let the experts make that decision because they could not bottle up the site but also wanted to have ingress and egress that was safe.

Mr. Kessler said they had to meet design criteria for that type of movement and believed they did. DeIDOT did not have any questions about the geometry. What they were looking at was the traffic movements that occurred. DeIDOT recently restriped that intersection, so that now there were two lefts. One of them also was a combination through and left turn, which the applicant believed meant the weave (people coming and wanting to make a left turn only had to cross one lane of traffic) was an acceptable parameter. DeIDOT was taking that into consideration.

Mr. Kessler mentioned this was really an urban setting, a downtown situation. During rush hour, there were very low speeds and high volume of traffic, so a lot of the safety concerns go away because of the speed at which traffic was not moving.

Mr. Ruckle asked Mr. Herron how there would be a fallback or a safety measure to make sure it went back on DeIDOT. Mr. Herron said in what the applicant had now submitted as part of the subdivision agreement, he thought it was contained in there because the developer agreed to abide by all DeIDOT requirements regarding ingress and egress to and from the development. He thought it was covered there. Mr. Ruckle did not see any way DeIDOT would approve a left-hand turn there. It was too tight.

Mr. Chapman said all he was asking to have considered (and recognizing DeIDOT was the greater authority on traffic and flow), if they completely disagreed on any restriction placed, that they could come back to Council to be addressed effectively.

Mr. Morehead appreciated that the goal of the development was to transform the gateway of Main Street. He referred to the rendering. A lengthy discussion ensued regarding the branding and the approach to the restaurant and the site. Mr. Morehead felt this was a difficult site if someone was trying to get out and headed down Library Avenue, they had to cross many lanes of traffic. Trying to get out of the site headed to Main Street involved another challenge point. Also, the egress requested onto Capitol Trail involved traffic coming around that corner at high speeds with limited visibility there. Mr. Morehead was concerned about the pedestrian access and did not think it was the benefit it was being presented as – he referenced the island and the difficulty getting to and getting off the island. Mr. Bross said the team spent a lot of time on the location, the building, the shape, they reconfigured the building with an idea toward noise, access, circulation around the site. It was a challenging site but they felt they had a workable solution and the team was comfortable with the site as presented.

Mr. Kalogeropoulos stated there would not be a signage problem with this hotel. The lobby of the hotel and the entrance were on the left side of the building which also included the commercial space, the breakfast area, the swimming pool and the back of the house. There had to be a big box to put all that next to each other to avoid bouncing around from a customer service point of view. Further, it did not make any sense to take a restaurant with a great name and a great experience and put it back by the railroad. The building could not be turned any other way and the Marriott had to approve the feel of their customer – the curb appeal when they come in, customers want to find the hotel and want to be able to come in, park their car and go have a good time.

Mr. Morehead said the minutes of the Planning Commission meeting, mentioned the timing of the restaurant that it may not be built immediately. Mr. Danneman responded it was hard to market without an approved plan. That said, a letter of intent was received and they were talking to a restaurant. The hope was to build the shell at the same time as the hotel because it was less expensive and with the hope that the restaurant might open before the hotel.

Mr. Morehead noted the agreement currently required the storm water to be in accordance with applicable law. The proposed agreement said the storm water shall be in accordance with applicable law in effect at the time the building permit was issued. He asked Mr. Herron if those were different to the degree that Council should change that. Mr. Herron said no, he thought in essence they said the same thing and he had no problem with the proposed addition by the developer. Mr. Morehead would like somebody else to take the responsibility for saying these two documents were identical before he voted on them because this would become law other than the blueprint. He did not know how they did that.

Ms. Sierer said she checked the bullet point memo that Council received. Mr. Morehead said that was different. This was something new. Ms. Sierer said she checked to make sure the bullets on the 5/4 memo from Ms. Bensley were not in the new agreement Council received tonight. Mr. Morehead said yes because they were not in the original as well. Ms. Sierer said in other words, those changes were not here. Mr. Morehead scanned it quickly. As far as he could tell they were the same. He was just uncomfortable having that change brought to Council at the last moment. The last thing was, the two letters of support there were identical sentences with words that he did not use. He was extremely surprised to see that. It was as if one hand wrote both letters and then two different people changed a word here or there. Mr. Kessler said the letters were actually signed by the people who sent them in. Mr. Morehead said they were written by somebody else. Mr. Kessler replied that in a Google search of zoning approval letters, one would notice that a committee or a board would receive letters of support and they would almost all be identical, signed by different parties. Those parties review them, run them by their boards and if they were comfortable signing or not signing, that was up to them. Mr. Morehead accepted the explanation.

Ms. Wallace referred to the building height, which in BC was three stories with exceptions. She did not know what the exception was. Ms. Feeney Roser said there was a ratio to the lot size. She could get the actual code – it was very difficult to understand but staff checked it and it met Code.

Ms. Wallace addressed the traffic situation. Because this was a DeIDOT road, she asked to clarify that there was no City of Newark requirement for a traffic impact study. This would be through DeIDOT and they were saying it was not necessary. Ms. Feeney Roser responded that the City did not have its own but the subdivision regulations allowed the City to require a traffic impact study, if something met the threshold of what might require or trigger it on DeIDOT's end. DeIDOT had an opportunity to go with the area wide fee rather than a traffic impact study. In an appendix to the subdivision regulations the City had the authority to request a traffic impact study. In this case, a traffic impact study would be triggered at 500 vehicles per day or 50 per peak hour. It did go over that for the day as the peak hour was at 58, a little less than one a minute. Ms. Feeney Roser called DeIDOT to talk with their planning folks about it and asked what would be the scope of a traffic impact study for this project. She was told it would be the access points to the hotel and the intersection of Ogletown and Library which they and the City knew was a difficult intersection. They also were not sure what improvements could be made with Main Street being two lanes in one direction without much room to widen it what could be done by studying it. They said if they contributed to the area-wide study fee, it could be used for the transportation improvement district in the Comp Plan that would study this intersection anyway. The money would go to a larger study in an area that the City had identified which she thought would be more beneficial. Ms. Wallace noted in the Planning Commission minutes they had some concerns with the entrance egress. She asked if the Planning Department was still recommending those suggestions that were made by the Planning Commission. Ms. Feeney Roser said they were not in the original Planning Department report. That was something the Planning Commission added and was brought to Council to consider and believe their report said Council should discuss it with the applicant at the meeting about getting DeIDOT to finalize it. She hoped that DeIDOT would have made their decision before it got to Council but it did not and she believed DeIDOT's recommendation in this matter would be satisfactory.

Mr. Markham referenced the lodging tax which he said was not for the City but was for the state.

Mr. Markham mentioned the comment that traffic was de minimus and had a hard time believing that 570 trips per day above the car dealership was de minimus. Mr. Kessler said it was the additional traffic, it was not 570 above the car dealership. Mr. Markham read from the report, "would increase traffic beyond what was generated by the car dealership by 570 per day." Mr. Bross responded that was correct but the traffic that was being generated from this site was less than 1% of the traffic passing by the site. That was the "de minimis" comment source. That was terminology used by DeIDOT, it was less than 1% of the total traffic in the area. Mr. Markham understood that. Knowing that intersection and how it backed up around the corner and how Cleveland backed up and how DeIDOT just spent a lot of time fixing a highly dangerous intersection, he would probably stick with the Planning Commission's recommendations.

Mr. Markham noted they wanted to use the storm water regulations that were in place at the time of the permit. He saw that as a step back and detrimental to the area based on the site because other developers came before Council and chose or were still using new regulations. He would be looking for using the new regulations based on the size of the lot and its proximity to the White Clay Creek. Mr. Bross reported that the new regulations were voided and were back to the old. Mr. Markham understood that but said they were re-instituted on an emergency basis as well. Mr. Bross acknowledged that was correct and they were currently rewriting the regulations to try to address the court's concerns. The new regulations may be implemented before the building permit was issued, and they wanted to comply with whatever current regulations were in effect at the time of the building permit. They may be more rigorous than the old regulations currently in place and would probably be different than the new regulations. It was not known whether they would have any measurable impact on the site, but out of an abundance of caution, they asked to do that. Mr. Markham said the new regulations said the runoff could not be more than existing. Mr. Bross said this site had no storm water controls on it right now and so whether they took the old regulations or new regulations, it would be 1,000% better in both quantity and quality management. The difference between the new and the old regulations was not terribly significant from a design standpoint. Mr. Markham's understanding was that they were more stringent.

Mr. Markham asked how truck deliveries would be handled with getting in and out of the site with the traffic. Mr. Kessler said deliveries were scheduled and would mostly be done during off peak hours to get trucks in and out of the site. The entrances were designed to accommodate truck movements. That was a requirement of DeIDOT and the City. Mr. Kalogeropoulos added it was a simple 125 room hotel with few deliveries, maybe three trucks per week. Deliveries for the restaurant were done by 5 or 6 a.m.

The Chair opened the discussion to the public.

John Morgan, District 1, referred to the site layout. He attended the Board of Adjustment meeting where a parking waiver was granted and there was some discussion about what typical occupancies would be. He had concerns about the situation on homecoming and graduation when every room would be filled with people from out of town driving cars and the parking lot was completely filled. He said the obvious place to accommodate overflow parking was the Aetna lot. Dr. Morgan would feel better about this project if the developer had a signed agreement with Aetna to provide a back entrance into their parking lot so people would not have to come out again hunting for a parking space. He thought that ought to be a condition of approval of the project. Dr. Morgan urged Council to stick with the recommendations of the Planning Commission. He thought the Planning Commissioners had more familiarity with local conditions than the typical expert at DeIDOT. He also commented about the dangers of making turns out of here since almost all the people who would be staying at the hotel would be from out of town. They would not be familiar with the traffic flow and he thought accidents would be much more likely to happen, especially at night.

Jean White, Radcliffe Drive, was unhappy about the proposed hotel with regard to its height of five stories. Although it did meet the Code, she felt that it was too visually intrusive at this corner property at this large four-way intersection. The developer talked about how this mirrored the post office across the way, the library and so on. All those buildings were one or two story and this was five story.

Mrs. White corrected something she said at the Planning Commission. She referred to the visuals and said that to make a left turn here, one had to cross three lanes. Actually it was four lanes. She argued that should not be allowed and that a left turn out there was a recipe for disaster. Mrs. White also provided details about her experience when she decided to cross the intersection as a pedestrian. She emphasized that people had to be very cautious in making this crossing.

David Kenny spoke on behalf of the Danneman family. He reported that the family had been in Newark for many generations and contributed to the well-being of the City of Newark when it was not as

prosperous as today. They were members of the Rotary Clubs, not only in Newark, but in other areas in Delaware. They contributed financially to the City and to the well-being of the City and also to some religious organizations in and around the area. They also helped out through non-profit organizations as well. In looking at the holistic approach that the family took to their community, they were very beneficial to the community.

Ms. Sierer reiterated that Council needed to vote individually on item 9-B, the special use permit. That would be the time to make any recommendations regarding items A and B on page 11 from the March 29, 2016 (revised April 6, 2016) Planning and Development Department Report. Mr. Herron stated a motion was needed to approve the special use permit with conditions.

MOTION BY MR. RUCKLE, SECONDED BY MR. MOREHEAD: TO APPROVE THE SPECIAL USE PERMIT FOR A 125-ROOM HOTEL AT THE BUSINESS LOCATED AT 400 OGLETOWN ROAD WITH THE RECOMMENDATION OF NO LEFT TURN ONTO OGLETOWN ROAD UNLESS DELDOT SAID THEY COULD.

Mr. Chapman noted the proposed motion was different than what was recommended to Council by the Planning Commission and the Department as well as different than what was proposed or requested by the developer. Mr. Ruckle thought his motion agreed with what staff said (no left turns onto Ogletown Road) but he thought the applicant should be given the left-hand turn onto Ogletown Road if DeIDOT believed it was safe.

Mr. Chapman offered a friendly amendment. He thought the motion itself needed to be clarified and believed the intention might have been to make a motion in line with the Planning and Development Department's recommendation. Mr. Morehead helped clarify – he thought the idea was to take the Planning Commission's recommendation.

Ms. Sierer said that needed to be stated if that was the case. Mr. Chapman asked if he was wrong in believing that the Planning Department and Planning Commission's recommendations were not aligned. Ms. Feeney Roser said that was correct, they were not. Mr. Chapman said that was his mistake then – the Planning Commission's recommendation was what he thought Mr. Ruckle had intended.

Mr. Herron thought Mr. Ruckle's motion was different from both the Planning Commission and the Planning Department. Ms. Sierer agreed. Mr. Herron thought Mr. Ruckle stated that "unless DeIDOT permitted the left turn" which was the difference from the Planning Commission. Mr. Ruckle said that was the difference but was giving the applicant the turn if DeIDOT allowed it. Mr. Herron said correct, he was just pointing that out.

Mr. Morehead pointed out the other difference would be the egress onto Capitol Trail, because the Planning Commission recommended against that. Mr. Herron added their motion did not include that. Ms. Sierer confirmed the motion did not include Capitol Trail. Mr. Morehead said DeIDOT might require something different. Mr. Chapman noted the Planning Commission recommended two traffic restrictions – any egress onto Capitol Trail, which by default would only be a right-hand turn and a left-hand egress onto Ogletown Road. In his motion, Mr. Ruckle only mentioned the egress of a left turn onto Ogletown Road. It was really an omission of referencing anything related to traffic egress onto Capitol Trail which if that was the intention, fine. Mr. Sierer clarified that Mr. Ruckle's motion was restricting a left-hand turn onto Ogletown only unless DeIDOT said otherwise. Mr. Ruckle stated that was his intent because two ways in and out were required for emergencies.

Mr. Morehead withdrew his second.

MOTION FAILED FOR LACK OF A SECOND.

MOTION BY MR. RUCKLE, SECONDED BY MR. MOREHEAD: TO APPROVE A SPECIAL USE PERMIT FOR 125-ROOM HOTEL AT THE BUSINESS LOCATED AT 400 OGLETOWN ROAD, FOLLOWING THE PLANNING COMMISSION'S RECOMMENDATIONS.

Mr. Ruckle thought this would not be a detriment, would add value to business and that was why he would recommend approval for the special use permit.

Mr. Morehead would support the special use permit because he believed it met the three reasons required for special use permits.

Ms. Hadden would support the special use permit with the recommended conditions. She felt the restriction of the egress to prohibit left turns out of the site onto Ogletown Road would make it safer for the community. She felt that it was in line with the land use recommendations of the Comprehensive Plan.

Mr. Markham would not support the special use permit because he believed it would adversely affect the health and the safety of persons residing or working within the City of Newark boundaries.

Ms. Wallace would also not be supporting the special use permit because she thought that would adversely affect the health and safety of persons residing in the City of Newark.

Mr. Chapman planned to be supporting the special use permit as he believed the applicants met all the requirements necessary.

Ms. Sierer would also be supporting the special use permit as per reasons stated by Mr. Chapman.

MOTION PASSED. VOTE: 5 to 2.

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

Nay – Markham, Wallace.

21. 9-C. REQUEST OF DANNEMAN HOSPITALITY, LLC FOR THE MAJOR SUBDIVISION OF 2.34 ACRES IN ORDER TO DEMOLISH THE EXISTING STRUCTURE AND CONSTRUCT ONE FIVE-STORY BUILDING WITH GROUND LEVEL PARKING AND A FOUR-STORY, 125 ROOM HOTEL AND ONE 4,730 SQUARE FOOT BUILDING WITH A 100-SEAT RESTAURANT

04:52:58

(Secretary's Note: Items 9-C and 9-B were discussed simultaneously.)

Ms. Sierer addressed the changes requested by the applicant to the subdivision agreement. Regarding Item 7, Council just voted to restrict that. Mr. Herron said it would still apply, the language that was originally in the agreement should remain in the agreement because that was voted by Council to be included. Ms. Sierer noted that Council would not make that change on item 7. Mr. Ruckle thought it was all the same. Mr. Herron said correct.

Ms. Sierer said there was also a change on item 16 on the agreement the applicant handed to Council at the meeting. Mr. Morehead asked that question earlier and Mr. Herron said that was not necessary because it was effectively the same sentence.

Mr. Herron asked Ms. Sierer to clarify which agreement she was speaking of. Ms. Sierer noted she was speaking about the agreement handed out this evening by the developer. Mr. Herron said so then there would be a change to item seven because the agreement handed out took out the condition that Council just placed on the special use permit. Several people felt Council should be working with the old agreement. Mr. Herron said it made more sense to him to reference the new agreement and say the only change was what was added by the developer to item 7 was not agreed to. Ms. Sierer asked about item 16. Mr. Herron believed that had been agreed to. Ms. Sierer said not necessarily.

Ms. Wallace said she had not had time to read the agreement handed to her by the developers, and was not comfortable voting on it. Ms. Sierer said the only change was item 16. Ms. Wallace suggested making changes to the original agreement. Ms. Sierer and Mr. Herron agreed with her suggestion.

MOTION BY MR. RUCKLE, SECONDED BY MS. HADDEN: TO APPROVE THE MAJOR SUBDIVISION OF 2.34 ACRES IN ORDER TO DEMOLISH THE EXISTING STRUCTURE AND CONSTRUCT A ONE FIVE-STORY BUILDING WITH GROUND LEVEL PARKING, AND A FOUR STORY 125-ROOM HOTEL AND ONE 4,730 SQUARE FOOT BUILDING WITH A 100-SEAT RESTAURANT, FOLLOWING THE ORIGINAL AGREEMENT SUPPLIED TO COUNCIL.

Mr. Herron pointed out that Council did not discuss whether or not to add the change to item 16. Mr. Chapman said a change to item 16 made sense to him. He believed it was something the City should do but he understood Mr. Markham's comments though the City had no authority to enforce what he would like and they were not getting an offer from the applicant to meet the former requirements. Ms. Hadden had no objection.

Mr. Morehead was confused because he asked Mr. Herron about this and thought Mr. Herron's answer was that those two were effectively the same. Mr. Herron thought they were the same because applicable laws would not include the laws that had been found to be null and void by the Supreme Court.

Mr. Chapman thought specifically what the applicant was asking for was the inclusion, more importantly, of “effect at the time a building permit was issued”. They were looking for that moment in time to dictate which laws they were following. He understood that and wanted Newark to be a business-friendly community that set clear upfront expectations for people, rather than be breaking ground and forced to a different direction after money was expended.

Mr. Morehead asked Ms. Feeney Roser at what point the decision would happen where the City could then determine which law normally without the special wording. Ms. Feeney Roser responded it was at the building permit stage – whatever law was in place at the moment they applied was what they were asking to be done. Mr. Morehead said that was what we would do anyway. Ms. Feeney Roser said yes, in this case it was a little confusing because there was an emergency order to keep the regulations in place that were thrown out on a technicality. Whether or not that would stay she did not know as it was a six month extension. She was not exactly sure when that started. Ms. Sierer asked if Ms. Feeney Roser felt the original agreement covered the added phrase “in effect at the time the building permit was issued” by saying “applicable law” and that was how she would interpret that. Ms. Feeney Roser said the original was approved by Mr. Coleman, and he was happy with that. She thought Mr. Herron said it was the same language though, just said a different way.

Mr. Morehead asked if there was a difference in time between when the building permit was applied for and when it was issued. Ms. Feeney Roser said yes because it took some time to go through it and make sure that the plan was ready, including pre-construction meetings. Mr. Morehead asked whether the applicant cared based on when the permit was applied for and when it was issued. Ms. Feeney Roser thought the applicant would like it approved as soon as possible after application.

Mr. Danneman understood storm water management regulations may change any time because the legislature may step in. He was trying to fix the time that if the building permit process was started in July, they would be under those regulations. Mr. Morehead added the Planning Director said on application it was fixed, which was standard practice. Mr. Morehead said the applicant was asking when the permit was issued which could be sometime later which they would not know and could be a problem.

Mr. Chapman thought based on the conversation Council was sufficiently meeting their request by leaving the agreement as it was originally written. Mr. Morehead agreed.

Question on the Motion was called.

MOTION PASSED. VOTE: 5 to 2.

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

(RESOLUTION NO. 16-K)

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

05:02:56

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 1.

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

23. Ms. Houck introduced David Del Grande, the City’s new Finance Director.

05:03:09

24. 10. ITEMS SUBMITTED FOR PUBLISHED AGENDA

- A. Council Members:** None
- B. Others:** None

25. 11. APPROVAL OF CONSENT AGENDA

05:03:50

Ms. Bensley read the Consent Agenda in its entirety.

- A.** Approval of Council Organizational Meeting Minutes – April 21, 2016
- B.** Approval of Council Meeting Minutes – April 25, 2016
- C.** Receipt of Alderman’s Report – April 27, 2016

D. Receipt of Planning Commission Meeting Minutes – April 5, 2016

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

26 . Meeting adjourned at 12:05 a.m.

Renee Bensley
Director of Legislative Services
City Secretary