CITY OF NEWARK
DELAWARE
BOARDS AND COMMISSIONS REVIEW COMMITEE
MEETING AGENDA

June 28, 2016 – 7:00 PM
Council Chamber

1. Call to Order

2. Approval of the Minutes of the May 31, 2016 Boards and Commissions Review Committee Meeting

3. Continued Discussion and Potential Action Regarding the Committee Review of the Planning Commission

4. Public Comment

5. Introduction of New Business
- **A.** Update on Council Direction Regarding DNP Review
- **B.** Update on Council Consideration of Committee Recommendations

6. Discussion Regarding Summer Meeting Dates

7. Adjournment

The above agenda is intended to be followed, but is subject to changes, deletions, additions, and modifications, as permitted under the Freedom of Information Act of the State of Delaware. The agenda is posted (7) seven days in advance of the scheduled meeting in compliance with 29 *Del. C.* Section 10004 (e)(2). Copies may be obtained at the City Secretary's Office, 220 South Main Street, or online at www.cityofnewarkde.us.

Agenda Posted – June 20, 2016

Attest: Sworn by:

_____ _____
City Secretary Notary Public (Seal)

CITY OF NEWARK
DELAWARE
BOARDS AND COMMISSIONS REVIEW COMMITTEE
MINUTES
MAY 31, 2016

Those present at 7:00 p.m.:

Members:	Chair Rebecca Powers, At-Large John Morgan, District 1 Christopher Laird, District 3 Roberta Sullivan, District 4 Maria Aristigueta, District 5
Absent:	Jo Anne Barnes, District 2 M. Howland Redding, District 6
Guests:	Katie Gifford, Newark Resident Nancy Willing, Newark Resident Alan Silverman, Chairman, Planning Commission Will Hurd, Planning Commission, District 2
Staff:	Renee Bensley, City Secretary Maureen Feeney Roser, Planning & Development Director

1. MEETING CALLED TO ORDER BY CHAIR REBECCA POWERS AT 7:00 P.M.

2. APPROVAL OF THE MINUTES OF THE APRIL 26, 2016 BOARDS AND COMMISSIONS REVIEW COMMITTEE MEETING

MOTION BY DR. ARISTIGUETA, SECONDED BY MS. SULLIVAN: TO APPROVE THE MINUTES.

MOTION PASSED UNANIMOUSLY.
VOTE: 5 TO 0.
ABSENT: BARNES, REDDING

3. APPROVAL OF THE APRIL 26, 2016 EVALUATION OF THE CONSERVATION ADVISORY COMMISSION BY BOARDS AND COMMISSIONS REVIEW COMMITTEE

MOTION BY MS. SULLIVAN, SECONDED BY MS. ARISTIGUETA: TO APPROVE THE EVALUATION OF THE CONSERVATION ADVISORY COMMISSION AS AMENDED.

MOTION PASSED UNANIMOUSLY.
VOTE: 5 TO 0.
ABSENT: BARNES, REDDING

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4. PLANNING COMMISSION PRESENTATION

Ms. Bensley presented an overview of the Planning Commission to the Committee.

Governing Authority

The governing authority for the Planning Commission is more complex than other committees that have been reviewed to date. State Code Title 22, Chapter 7 is the empowering bill by the state. Article IX of the City Charter and City Code Chapter 2, Article VIII are the city documents that govern the Planning Commission. The role of the Planning Commission is outlined in various sections of the City Code.

Qualifications

State Code (7 *Del. C.* §701) indicates that a planning commission can have "not less than 5 nor more than 9 members". City Charter Section 901 provides that the planning commission consists of "seven (7) members, one from each of the six (6) districts and one (1) at-large." The City Charter is put in place by the state legislature, therefore, City Council cannot amend the Charter unilaterally. City Code Section 2-78 provides for the same. Section 2-79 also states that "Members of the planning commission shall be qualified by reason of education, experience and familiarity with the city, and each member shall be a resident of the numbered district from which he was appointed."

Orientation/Training

Training for members of the Planning Commission was provided in April 2016 by the University of Delaware Institute for Public Administration and legal counsel for the City. The training was videotaped so future members would have the opportunity to review it. Additionally, several members of the Planning Commission have taken advantage of opportunities provided to attend other IPA trainings on topics such as the Delaware Freedom of Information Act and ethics.

Rules of Procedure

The Planning Commission, per Chairman Silverman, utilizes past practices as the basis for its meeting procedure. Mr. Silverman has requested in the past for the Commission to consider adopting separate administrative procedures, a draft of which he attached to his comments to this Committee. However, the Planning Commission decided at the time of the presentation, they were satisfied with current procedures and elected not to discuss them. The chair and secretary are elected by the Commission members per *Del. C.* §701. Additionally, City Code Section 2-82 provides for the election of a chair, vice-chair and secretary. Per City Code, The secretary "need not be a member" per Section 2-82. This has been in place for over three decades.

Activity Level

The Commission is required by City Code to meet at least once per month (Section 2-83) and typically does unless a meeting is cancelled for lack of a quorum or bad weather. With the large numbers of development plans filed with the City, the ongoing update of the City's Comprehensive Plan, reviews of proposed Code changes related to development and special projects of interest to the community related to zoning, development and parking, the Commission consistently stays busy. The Commission has extensive responsibilities as outlined in Section 2-89 of the City Code and referenced in various places in Chapters 7

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(Building), 14A (Floodplains), 27 (Subdivisions) and 32 (Zoning). However, not all of the responsibilities referenced in other chapters are included in Section 2-89, such as their role in considering parking waivers.

There are seven members on the Planning Commission with no vacancies. Members are appointed for three-year terms. Members are required to be residents of the City, as stated in the Code. There is no compensation for this committee.

Reporting

Currently, the Commission is required to keep minutes under the State of Delaware Freedom of Information Act and Section 2-83 of the City Code. Minutes are up-to-date and have been posted on the City website since 2006. Ms. Bensley state that Dr. Morgan noted there were several months missing and they had been updated. Additionally, the Commission is required to submit an annual work program to Council by October 1 of each year for the upcoming fiscal year as outlined in Section 2-87 of the City Code. While this had not been done for many years, it was reinstated in 2015. Per 7 *Del. C.* §710, the Court of Chancery has jurisdiction over planning commissions. However, in practicality, as the Planning Commission is an advisory body to Council, any applicant can present an appeal to a negative Planning Commission recommendation during their Council public hearing for the project without having to file a suit in the Court of Chancery.

Stakeholder Viewpoints

All Commission members were contacted by mail to solicit comments for the review. Four of the seven members did respond. The following members and staff submitted comments:

Edgar Johnson is the District 3 representative on the Planning Commission and is the longest serving commissioner. He noted that he felt no special qualifications should be required and that being a citizen of Newark was adequate. He felt that common sense and a history of the City was helpful. He felt that the orientation and training provided for the Commission was sufficient. He stated that the chair should be a Commission member who wants to serve in that capacity, but that the chair should not force his own agenda on the group. He was satisfied with the existing meeting procedures. Regarding participation, he noted that everyone chose their own level of participation, which made for a diverse group. He felt that the existing reporting requirements and the compliance with those reporting requirements were sufficient. He thought that input from the department heads was most helpful and should be continued as required. Mr. Johnson noted that the Commission works for the citizens, they have adequate input and the input is both valued and respected. He stated change can create apprehension and fear and voicing opposition to change/development is part of the process and should be respected. He expressed concern that applications going to the Board of Adjustment prior to Planning Commission was problematic to the process. He felt that if the positions of the two groups were adversarial, that the Planning Commission recommendation should be heard prior to the Board of Adjustment or City Council.

Jeremy Firestone is the District 4 representative on the Planning Commission. He felt that the existing orientation and training seemed appropriate. Regarding meeting procedures, he noted that it might be useful to have time limits on public comment on a given issue. He stated that there was a healthy amount of active participation by members. Regarding the appeal process for the body, he felt that the final decision of the Planning Commission should be given some weight and either require a supermajority to reverse or, if a majority of Council, it should relate to some standard of review. He noted that the members of the Commission had a good balance of skills and knowledge, but the Commission lacked diversity and was not reflective of the community. He complimented Maureen Feeney Roser, Planning and Development

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Director, as top notch, knowledgeable, helpful and having good instincts. He noted that there was a "pretty narrow slice" of the public that interacted with the Commission and that, other than applicants, they tended to be the same one or two people with the exception of neighbors who turn out for a particular project. He felt that the Commission was "mission critical" and noted that the Board of Adjustment has some similarities and, at times, constraints on what the Planning Commission can do, which he noted as unfortunate.

The concerns of Messrs. Johnson and Firestone were submitted to Bruce Herron, City Solicitor, and Maureen Feeney Roser for review regarding the Board of Adjustment and Planning Commission roles in the development process. Mr. Herron and Ms. Feeney Roser agreed that the Planning Commission should not consider a project that does not meet Code, so any variances that would be needed must either be considered by the Board of Adjustment prior to the Planning Commission's consideration of the development or the applicant must elect to apply for Site Plan Approval, which is subject to discretionary approval. If the applicant elects to go to the Board of Adjustment and the variances are granted, the Planning Commission then considers the development. If the applicant elects to go to the Board of Adjustment and the variances are not granted, the Planning Commission does not review the project until it is either changed to meet Code or the applicant applies for Site Plan Approval. Mr. Herron had further noted that the Board of Adjustment and the Planning Commission have different roles and decide different issues under the City Code and State Law. Once the Board of Adjustment granted a variance, neither the Planning Commission nor Council could overturn it. Any changes desired regarding the relationship between the Planning Commission and Board of Adjustment would require an amendment to State law and was not necessarily something that City Council can accomplish.

Alan Silverman is the District 5 representative and chair of the Planning Commission. He expressed concern regarding the absence of by-laws, administrative procedures, rules or a compendium of past practices. He felt this "deprives the sitting commissioners and the public of continuity of actions, transparency and context." He submitted a suggested administrative procedures document (entered into the record). He also felt a job description should be developed. He noted in his comments the various orientation and training offered to the Commission, however, he did not make any qualitative comments. He noted for the current term, there was no Commissioner willing to serve as vice-chair, so the Commission agreed, in the absence of the chair, the most senior Commissioner would lead the meeting. He noted that the Planning Commission was the first opportunity the public had to comment on land use and comprehensive planning items or discussions which may be brought before City Council; or on proposals or recommendations by the City administration, such as the Hillside Road stormwater management proposal. He felt that the Planning Commission was unlike most in that it provides a legally required advisory opinion before Council could act on land use issues.

Frank McIntosh is the District 6 representative on the Planning Commission. He noted that the Commission members put much effort into each application that comes before them and felt that over time they have developed an expertise in these matters that Council was less likely to have. He wondered why the Commission's decision was only advisory. He felt the Commission should be the verdict and Council should be the appeal mechanism. Ms. Bensley reported this approach would take a change in state law as well. He thought that the qualifications of the Commission members could be better. He used himself as an example in that he knew very little about the technical aspects of what was presented and had little desire to learn what he would need to know in order for it to make a difference. However, he listened carefully, was intelligent and asked good questions. He thought he had been able to contribute effectively within the scope of his knowledge to the process. Mr. McIntosh felt the orientation and training was lacking, could be better and recommended that a person who is versed in training, in conjunction with the Planning

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Department and Council, should put together a "thorough and formal session before anyone serves." He noted that time on the commission should not be a deciding factor for leadership selection, only the ability and interest to lead. He felt there should be a limit on how long a person can talk and that they should not be allowed to speak on a subject unless they sign up. He also felt that public comments should only come from Newark citizens unless requested by the Commission. He felt the Commission was very necessary and important to the City and that it should have more clout. He felt more attention should be paid to small details including what commissioners can comment on or question about. He noted the role of a commissioner was specific in nature and "not about an individual's personal agenda."

Maureen Feeney Roser is the Planning and Development Director and acts as staff liaison for the Planning Commission to the City of Newark. She noted that the Planning Commission is essential to the land use process. It provides citizen review of all land use projects and ordinances pertaining to Chapters 27 and 32, reviews the Capital Improvement Program, the Comprehensive Development Plan and the official City Map. The commission also conducts special projects of interest to the community regarding zoning, development and parking. The current commission is dedicated and hardworking and takes the job seriously and provides well thought-out recommendations to City Council. She stated they are always prepared and engaged. A mild criticism would be the commission, on occasion, sometimes "get into the weeds." For example, trying to get concessions from the developers beyond the City's ability to require or questioning professional findings. She further stated there are issues on understanding their respective roles and responsibilities as commissioners; when to recuse, or when it is appropriate to speak for against a project at a council meeting, etc. Ms. Feeney Roser reported the commission recently had a good training session in April 2016 that addressed these issues. Ms. Feeney Roser was hopeful these concerns were in the past. Regarding a residency restriction on public comment, this issue had been broached at City Council and the City has been advised by the ACLU that this was not something that could be restricted in this manner. There had to be equal treatment of anyone who comes to speak regardless of where they live.

Mr. Silverman stated he had been counseled he was not permitted to ask where a public speaker resides. He believes it would be in interest of all to know whether the person was brought in from an external national group with a particular agenda and listed a few examples. Ms. Bensley stated at council meetings the public is given various options of what they can do when it comes to providing an address. This approach has been deemed to be proper.

Additionally, Ms. Feeney Roser agreed with Mr. Johnson that the Commissioners did not need specific expertise in building or zoning codes, stormwater management, civil engineering or planning to adequately serve the community as there was professional staff to provide them the information that they need in those areas.

Necessity

The Committee is not similar to any other boards or commissions. It is necessary as it is required by State Code and provides an essential venue for citizen involvement in the City land use process.

Recommendations

Staff recommends that the Boards and Commissions Review Committee submit a positive review to Council regarding the work of the Planning Commission. However, this Committee should consider recommending updates to Section 2-89 of the City Code to make it more comprehensive and create a centralized listing of all of the Planning Commission's responsibilities. The Commission should also continue the improvements

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in training over the past year and ensure that training is continued for new members.

Mr. Hurd stated he is in general agreement with most of the comments made by the commissioners.

Dr. Morgan stated in his discussions he may have referred erroneously to the City Charter as the City Code. Therefore, some of his comments may need to be adjusted. Dr. Morgan suggested that because some of the commissioners have extensive professional backgrounds, they may be qualified to question some of the professional findings. Ms. Feeney Roser stated her comment in this regard was not a criticism and the City is more than happy to answer any questions a commissioner may have, whether or not they have professional experience. She does believe, however, that sometimes significant time is spent when it would be easier to ask a question of the professional staff when the commissioner receives the packet and has a question rather than doing it at the meeting.

Mr. Silverman stated some of the commissioner are not comfortable with the process if the applicant meets the minimum codes then the commission is not in a position to demand beyond the code. Council can make that request, but planning commission cannot.

Dr. Morgan stated in the State Code it does say that annually a chair person and a secretary from among its own members and may employ experts, clerical and other assistants. It seems this requires the planning commission elect one of its own members, which is inconsistent with the city code. Ms. Bensley stated this may just be semantics as regardless of whether the secretary was a staff member or a commission member, the staff member would continue doing the minutes. Dr. Morgan asked about the provision in the City Code that was not in the State Code about electing a vice chair. He stated the Planning Commission had chosen to, in the absence of the chair the most senior member of the commission to occupy the position of chair. It was his opinion this was a sensible approach.

Ms. Sullivan asked for clarification on the non-negotiables on the duties on the boards (Planning Commission vs. Board of Adjustment and Council). Ms. Bensley stated Council is the final decider on approval of the final recommendations for plans. Ms. Sullivan asked if there any other boards or commissions that impact the Planning Commission besides the Board of Adjustment. Ms. Feeney Roser stated the commission often coordinates with other committees such as the DNP, the Bicycle Committee, etc. Ms. Sullivan asked if there any other boards or commissions that impact the Planning Commission besides the Board of Adjustment. At times, the Conservation Advisory Commission does so. Ms. Feeney Roser stated the Planning Commission, at times, coordinates with other committees such as the DNP, the Bicycle Committee, etc.

Ms. Sullivan asked for clarification regarding competing interests with the commission. Ms. Bensley stated it was her opinion that when seven individuals work together not everyone agrees. Ms. Sullivan inquired if there were clear rules about when a person should recuse. Ms. Feeney Roser stated the training covered it in some manner. However, it was Ms. Feeney Roser's opinion there had been some question of when they should recuse themselves. At this time, there is no hard and fast rule. She further reported there are times she sends them to the City Solicitor for clarification.

Mr. Alan Silverman, Chairman of the Planning Commission stated he provided a working packet (entered into the record). Mr. Silverman reported he thought the training and the manual provided good guidance from reliable sources. In addition, he said Ms. Feeney Roser met with new appointed commission members to walk them through the planning operation within the City and describe the relationships between the planning process and the other working city departments.

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Mr. Silverman reiterated Ms. Bensley's comment about the absence of administrative rules. He believed part of the education process needs to be further enhanced for the commission. Mr. Silverman reported he, as Chair, would take extra time at certain meetings to offer extra guidance to attendees/developers/applicants. He reported he will even change the order of the agenda if there is a large public presence to make the process easier. Mr. Silverman walked the Boards and Commission Review Committee through the process he uses when acting as chair at a meeting as outlined in his handout.

Ms. Bensley commented that Delaware FOIA currently does not require public comment. She reported there is a bill in the state legislature to change this. It would require at least one minute of public comment at public meetings. However, if there is a public comment policy it needs to be equally applied.

Mr. Silverman stated he is hoping this process encourages the commissioners to follow the recommendations of the court and give their reasons for their decisions. Ms. Powers asked Mr. Silverman if he thought the commissioners lacked reasoning and/or lack of documentation of the reasoning. Mr. Silverman stated he believed documentation was not an issue with the planning commissioners. However, Mr. Silverman stated that from time to time a commissioner will simply say no.

Dr. Aristigueta asked Mr. Silverman how he proposed to have the new policies and procedures drawn up. Mr. Silverman said the proposal was included in the packet he had provided to the Boards & Commissions Review Committee. He stated he had suggested these changes to the Planning Commission approximately a year and half ago but the existing Planning Commission was unwilling to make any changes.

Dr. Aristigueta asked Mr. Silverman if the Boards and Commission Review Committee recommended his proposed changes would the proposal have a greater chance of success. Mr. Silverman stated he felt it would have a greater chance for success.

Dr. Morgan asked at what meeting Mr. Silverman made the proposal. Mr. Silverman replied he believed it to be in December, 2014.

Mr. Laird asked Mr. Silverman if the Planning Commission had any impact on community character and annexing land for the City. Mr. Silverman stated that, by law, the Planning Commission is part of the process. It is also part of City Code.

Dr. Morgan stated he was not clear on the disclosure of confidential information. He stated he is not clear what the information would be. Ms. Feeney Roser stated she had developers state they are considering a proposal and may solicit Ms. Feeney Roser's opinion. She will then report to the Planning Commission that she has met with the developer and discussed development. She will not report beyond that. However, if the developer applies to the City for the project, then it becomes public information. The Planning and Development Report is not typically released until such time as it is available to the commission, because it is a report to them. Ms. Feeney Roser stated a project with a well-qualified engineer takes, on average, four to six months to prepare and reach the Planning Commission. Ms. Feeney Roser stated there is substantial advertising done in various forms to notify the public of upcoming projects including dates and time of meetings that will discuss these projects.

Mr. Hurd stated his impressions were that he is in general agreement policies including informal ones would be beneficial. He stated at times during the meeting, the commissioners are unsure of the "next step." He stated his general concern in the roles of the commission is the ability for the commissioners to have influence is getting narrower. It is his opinion the commission is losing its purview to make a decision based

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on just more than meeting the minimum requirements. Projects are getting approved that he felt do not meet the intention of the Comprehensive Development Plan. He further stated at times, the commission lacks "data" to assist them in making an informed decision.

Ms. Sullivan asked Mr. Hurd what he believed to be the most important recommendation. Mr. Hurd stated he believed it was crucial the planning commission is supported by the Code. There are discrepancies that need clarification. Administrative policies need to be in place as well in addition to documentation of what the commission currently does. He suggested the planning commission have a workshop.

Dr. Morgan stated the Planning Commission does not need a recommendation from the Boards and Commissions Review Committee or from Council to write its own by-laws or to approve a version of the document Mr. Silverman has drafted.

Ms. Bensley stated any recommendations from the Planning Commission are included in the subdivision agreement draft that goes to Council for their final consideration. If it is something the applicant disagrees with once the subdivision agreement is drafted, it goes to the departments for review and then following departmental comments, it returns back to the applicant for review. If they disagree with Planning Commission recommendation, the Planning Commission recommendation stays in the subdivision agreement. However, a memo is sent to Council stating the points the applicant disagrees with and the contents of the subdivision agreement. They may be addressed at a council meeting.

Dr. Morgan asked the commissioners present if seven days was enough time to review the packet on large and complex issues. Mr. Hurd stated additional time would not matter to him. Mr. Silverman concurred with Mr. Hurd.

Ms. Sullivan stated in her opinion, there were three items that needed to be addressed. The first was "cleanup" as there are things mentioned in the Code that need to be reflected everywhere correctly. The second is to emphasize the need for the training. The third item is the need for documented roles, responsibilities, procedures, rationale, reasoning on the record and documentation of results. Ms. Feeney Roser asked for clarification on Ms. Sullivan meant by documentation of results. Ms. Sullivan stated it was the reasoning and rationale tied together on the record.

5. **DISCUSSION AND POTENTIAL ACTION REGARDING THE COMMITTEE REVIEW OF THE PLANNING COMMISSION**

Ms. Power said there was a lot of information presented and felt there was a lot to process. She was not prepared to finalize anything this evening. Ms. Sullivan and Dr. Morgan agreed. Ms. Bensley suggested the next meeting be dedicated entirely to the final discussion and finalization of the evaluation of the Planning Commission. Ms. Sullivan proposed in the interim Dr. Morgan make the corrections he suggested. Dr. Morgan concurred.

MOTION BY DR. MORGAN, SECONDED BY MR. LAIRD: TO POSTPONE THE FINALIZING THE EVALUATION UNTIL THE JUNE 28, 2016 WITH THE CONDITION THAT DR. MORGAN UPDATE THE EVELUATION FORM.

MOTION PASSED.
VOTE: 5 TO 0
ABSENT: BARNES, REDDING

Dr. Morgan suggested clarifying who makes the appointment of the members of the Planning Commission He stated the practice in the City for the last fifteen years does not comply with the letter of the law in the State Code. It is his opinion this needed to be cleaned up before September 2016. The other issue he believed needed clarification is the matter of recusal or perceived conflict of interest.

Additionally, he suggested the commission recommend Council revise the section of the Code so it formalizes what has been the established practice of the last fifteen years in which individual Council members nominate members of the Planning Commission who are then appointed to Council by the Mayor subject to confirmation by the entire City Council. Dr. Morgan asked the commission members to consider this matter between now and the next meeting.

6. PUBLIC COMMENT

Ms. Nancy Willing, City Resident stated she was in support of Dr. Morgan's proposal regarding recusal, which Dr. Morgan distributed at the dais. Ms. Powers stated they need to give the commission members time to review and it should be addressed at the next meeting.

Katie Gifford, District 3 wished to compliment the Planning Commission stating she likes and prefers their verbatim minutes and finds it extremely helpful. She attended the recent Downtown Newark Partnership board meeting and Dr. Morgan and Ms. Barnes and found their contributions to the meeting constructive.

7. INTRODUCTION OF NEW BUSINESS

A. DNP Update

Ms. Bensley reported at the last DNP meeting, the committee voted to reject the consultant's entire report (whether they would adopt it in its current form). There was discussion about whether some pieces may have some merit. There is going to be a subcommittee developed from the group to talk about the future of the DNP and what direction they want to go in. The DNP is actively moving forward from what the consultant provided and trying to find another direction. She further reported the motion was made whether or not to accept the report in its totality. They voted not to do that.

Dr. Morgan said all of the appointed members present at the DNP Board meeting were opposed to the concept of the report of the DNP ceasing to be operating under the City of Newark and becoming a private non-profit organization. They wanted the current arrangement to remain in place with minor tweaking. There was concern expressed by City staff about the increased time spent coordinating events for the DNP.

Ms. Powers stated the June 28, 2016 meeting will continue with the Planning Commission. Ms. Bensley stated she believed Ms. Barnes had suggested the DNP be revisited in August and had indicated such to the DNP. Additionally, Ms. Bensley stated Board of Adjustment was scheduled for July.

7. NEXT MEETING DATE

The next meeting is scheduled for Tuesday, June 28, 2016 at 7:00 p.m.

8. THE MEETING WAS ADJOURNED AT 9:13 P.M.

Renee K. Bensley
City Secretary

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