

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

July 11, 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: Deputy City Manager Andrew Haines
City Secretary Renee Bensley
City Solicitor Bruce Herron
Communications Manager Kelly Bachman
Community Affairs Officer Megan McNerney
Finance Director David Del Grande
Planning & Development Director Maureen Feeney Roser
Recreation Superintendent Paula Ennis

EXECUTIVE SESSION

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

01:34

MOTION BY MR. RUCKLE, SECONDED BY MR. MARKHAM: TO REMOVE THE EXECUTIVE SESSION FROM THE AGENDA

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

1. The regular Council meeting began at 7:03 p.m. with a moment of silent meditation and the Pledge of Allegiance.

2. 1. PUBLIC PRESENTATIONS:

A. Resolution No. 16-__: Resolution Designating July as Parks and Recreation Month

03:11

Ms. Sierer presented the resolution to Ms. Ennis recognizing the valuable part that parks and recreation programs play in the community.

MOTION BY MS. HADDEN, SECONDED BY MR. RUCKLE: TO APPROVE THE RESOLUTION DESIGNATING JULY AS PARKS AND RECREATION MONTH.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(RESOLUTION NO. 16-Q)

3. 2. ITEMS NOT ON PUBLISHED AGENDA

A. Public

06:12

Catherine Ciferni, District 2, spoke about the attempted abduction incidents at Colonial Gardens and Main Towers and expressed her concern regarding the notification to Colonial Gardens residents and management. She encouraged better notification by the City to the involved properties.

Mr. Haines reported that after reviewing what was done by the Police Department in addition to the University alerts that went out, staff planned to get to the larger complexes throughout the City to work on enrolling residents in the InformMe citizen notification system. Mr. Markham suggested expanding the categories available for residents to choose the form of alert they wanted to receive, and Ms. Wallace thought it would be a good idea to have a kiosk for people to enroll at Community Day and other City sponsored events.

John Morgan, District 1, questioned whether it was appropriate to have a vote at the last Council meeting on the parking RFP because on the agenda it said it would be a request for proposal discussion and did not specify a vote. Mr. Herron believed in that instance for the City Manager to take the action that she did it was not necessary for Council to act as she could have taken that action without a vote. Mr. Herron would have to look into whether specifically in order for a vote to occur there had to be the word "vote" on the agenda.

Dr. Morgan noticed in the RFP that went out that the due date for the proposals was August 9. He asked what the schedule would be for bringing the RFPs back before Council. Mr. Haines responded it would be at the next feasible Council meeting. Staff would review them for consistency and completion and any submissions that were deemed completed would be able to come back to Council and be submitted and potentially have presentations. The conversation with Council at the last meeting was that the ideas, the concepts being requested, would be brought back to Council for their consideration and action. Mr. Haines thought with the turn-around time the earliest meeting would be in September. Ms. Hadden asked Dr. Morgan if he was concerned a vote might be taken at an August meeting instead of allowing a considerable amount time for discussion for the public to weigh in as well. He said it was. Ms. Hadden did not anticipate there would be a vote would be at the August meeting. Ms. Sierer confirmed there would be at least one workshop. Dr. Morgan referred to the number of parking spaces specified in the RFP and, based on comments made at the June 13 Council meeting by Ryan German of Caffé Gelato, was concerned about building a parking garage that was too small. He suggested modifying the RFP.

Charlotte Maring, District 1, was disturbed about speeding in her neighborhood where there were a lot of young children on the street. She asked for help with the Pickett Lane entrance problem. Mr. Morehead said there were several issues here, the cars coming from the Maryland side on Barksdale Road turning left on Rahway and then turning right on Pickett and run up to go north on Casho Mill and avoid the light. That happens for a certain period of time in the morning and in the afternoon they come back the other way. The kids typically were not in the street in the morning, and in the afternoon there was some selective enforcement. He believed they were looking for a more permanent solution. Ms. Sierer noted that staff would forward Miss Maring's concerns to the Traffic Committee for review.

Hunter Graves, a bartender at Arena's restaurant Main Street, raised questions about a recent Council approval on policing bars with unruly customers. He noted Arena's was diligent in its enforcement practices, but was concerned about the implications if establishments were made responsible for patron behavior they could not necessarily control. He was also concerned regarding determining responsibility of behavior in public places and if a patron had visited multiple establishments. He felt it was outrageous that two establishments on Main Street were grandfathered. He had other questions regarding what details may lead to an infraction. He noted the better solution seemed to be to hold the actual person responsible for their actions. If someone were concerned about being punished for being in a fight or defacing property, then held accountable for it, then perhaps that person would not do it again. He thought this policy put too much on the shoulders of a business to be responsible for the behavior of adults on City property or shared private property and put at risk further issues with policing the public.

Mr. Markham recommended looking at the presentation online which explained examples of who would get points when. He noted it was not law, it was a recommendation from the police on how to decide if a special use permit can be revoked. The two establishments that did not have special use permits pre-date the special use permit and that was really the only thing Council could pull.

Ms. Sierer would have City staff and Sgt. Aniunas from the Police Department reach out to explain it further. She confirmed there would be an education component that would be made available for the businesses on Main Street.

Mr. Morehead told Mr. Graves that this was a tool and guideline for repeat offenders. He thought it made sense to have something in place to separate egregious repeat offenders from responsible parties. It was not meant to penalize the person that made an honest mistake, but was a tool for repeat offenders that were causing serious problems to the community. Right now it was a guideline so that everybody knew where the limit was. He noted the City appreciated that Mr. Graves was responsible and expected adults - students or non-student members of the community - to act responsibly on their own.

Mr. Ruckle added that it would take a vote of Council to revoke the special use permit.

Katie Gifford, District 3, pointed out that Lot 1 where a parking garage was proposed currently had plentiful parking and was underutilized at dinner time with 100 or more empty spaces even on weekend evenings when other lots further down the street were busier. She felt the real issue was most people did not want to drive past their chosen restaurant and then walk back a quarter mile or more. Ms. Gifford noted another issue with Lot 1 was having to drive all the way down Main Street to park there. At dinner time, traffic could be slow, especially when UD was in session. She believed a garage in the proposed location would be an expensive, symbolic gesture that would not help people parking where they wanted to park, and through its location, even if it succeeded by drawing additional cars down the length of Main Street, would add to traffic at the busiest times of day. In a public-private partnership for a garage, the City may likely spend significant taxpayer dollars to support monthly lease payments to the private partner. Those funds could possibly be better used for more impactful priorities. A typical projection in municipal projects like this was that it took 20 or more years to break even, and carried the risk of significant debt. If the City proceeded with a garage in that location, it would be wise to ensure that the financial risk would not fall on the taxpayer perhaps by following the example of Hartford, Connecticut and having the debt guaranteed by the private partner instead of by the City.

Helga Huntley, District 1, felt that the RFP for the public-private partnership to build a garage on Lot 1 was premature at best, and ill-advised at worst. She reminded those present that the latest parking study found there was an adequate parking supply along Main Street today, in spite of anecdotal reports to the contrary. She noted the counts Ms. Gifford mentioned certainly supported that. Possible solutions to relieve the perception problem such as improved signage or technology to direct drivers into parking spots had also been discussed many times in the past, but had not been implemented today. She was curious why there was not a similar RFP issued for these kinds of ideas as for the parking garage. She said there was no factually established need for a parking garage, and easier and cheaper solutions were not similarly pursued. If City Council chose to agree to a public-private partnership, the City committed itself to funneling hundreds more cars down practically the entire length of Main Street multiple times a day every day. Otherwise this was a money losing venture, and how would such a traffic nightmare make downtown attractive to anyone. She urged both staff and Council to consider creative alternatives for how to get more people onto Main Street without worsening the traffic and parking situation, and to do so more seriously and comprehensively than has been done so far. She noted those solutions could include sharing parking with College Square Shopping Center and providing convenient public transportation to Main Street; other public transit options, possibly repurposing the Unicity system, which was in need of a review; partnering with UD to encourage students to use UD parking resources more, making Main Street more bike and pedestrian friendly; making Main Street between College Avenue and Chapel Street a pedestrian mall, like Ithaca Commons in another college town, with parking options provided off Delaware Avenue, South Main Street, and possibly Cleveland Avenue; partnering with the State and DART to make better use of the transit hub and its associated parking lot off Main Street, maybe even build a parking garage there, serving both those interested in jumping on a bus for regional travel, and those who want to frequent businesses all along East Main Street and Delaware Avenue; and reversing the direction of the one way traffic on Main Street. She thought none of these ideas had been seriously considered so far. She urged Council and staff to listen to the proposal the developers brought to them for building a profit making venture for the developers on City land, but to start thinking outside of the parking garage box as well, and give just as much attention to other ideas on how to keep downtown Newark lively and even more attractive.

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

5. 2-C. **UNIVERSITY**
(1) Administration: None

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

7. 2-D. **LOBBYIST:**

32:33

Mr. Armitage thought it was an okay year other than there was no real movement around PILOT. He said next year the City should find a lot more sponsors to try and move the bill forward and probably start shortly after the election. Mr. Markham asked whether an education process should be started now with new members. Mr. Armitage asked if he could think about that – he thought leadership was well aware of the concern, as well as the two members who were chairs of the Joint Finance Committee. He felt the City needed a different strategy but was not sure exactly what strategy he could suggest going forward. He would think about that in the next few weeks and try to come up with some better ideas.

Mr. Chapman suggested going beyond confirming that everyone was aware and being downright annoying. This had to be Newark's squeaky wheel. Right now the City had nothing to lose, and if they did not talk to the City about something else that was important because they were beating the door down about PILOT, if the City got another dollar from PILOT, that was a worthy sacrifice. That was his opinion, and he would rather have that conversation now over the next few months or post November to see what progress could be made rather than waiting till March, April, May next year.

Mr. Armitage said part of his frustration this year was never even getting a committee hearing. Representative Baumbach thought he was going to be able to at least get onto Representative Melanie George Smith's agenda, but it never happened. He did not know whether that was her decision or leadership's decision. The other dynamic was the Office of Management and Budget, who reported to the Governor – they would rather not see any of that money be appropriated for PILOT at all. Having talked to former budget directors, the recommendation would be not even to put it in the budget.

Mr. Armitage said many times during JFC discussions, both the chairs as they discussed the votes for each different entity in the budget talked about, "We didn't delve into this as deeply as we should have." Part of their problem was that going forward, the state's budget was growing 5% every year while revenues coming through the door were growing at 3%, so the sustainability was not going to happen going forward. The real estate transfer tax he thought would be one of the things that they discussed next year. Mr. Markham said that just became a vicious circle, because they would push it back on the City and say, "Just raise property tax," and 43% of the City was off the hook.

Mr. Chapman thought the answer to Mr. Markham's question was yes, and he was willing to volunteer to make office visits to those members in a strategic way to have these conversations and progress with that education process and lobbying effort, in addition to Mr. Armitage's voice. Mr. Armitage thought phone calls from Council to the City's regional members might be more valuable initially. A real dilemma and problem for Newark was that Representative Kowalko goes against the budget, and that did not help much with the leadership when asking for money in the city he represented.

Ms. Sierer thought the suggestion of coming up with a plan was a good one, and a well thought out layout of what Council and staff needed to do. She asked that Mr. Armitage work with staff on a plan.

Mr. Morehead offered another perspective. They heard in the past about counties commenting on how much money they have in excess. His perspective was that the City had a responsibility to limit its spending as well, because if they were seen being excessively spending, the state could very easily say, "You don't need our money." As a council, he noted they had the responsibility to limit the budget and to keep tighter control. Mr. Armitage's numbers were very interesting. The state's budget was going up 5%, and Newark's budget went up 10%. That would be an unsustainable situation, especially if the City was asking them for PILOT. He encouraged Council to consider that the City did not have an endless supply of money and they needed to do the things that are necessary, such as stormwater, and maybe the parking garage should be put off, or some other alternate ideas needed to be considered that might be cheaper.

Mr. Armitage said part of the presentation that was prepared by staff and shared with the members around the PILOT program talked about what was done to contain costs. But as pointed out, at the same time costs were increasing.

Ms. Hadden asked who was on board with the City right now. Mr. Armitage said there were only three sponsors. He would like to get some sponsorship with the leadership which would at least guarantee the City a hearing. Ms. Hadden suggested reaching out to the League of Local Governments for help.

Mr. Armitage reported the next two DEFAC meetings would be in September and December. December would be the DEFAC meeting that the Governor would base his recommended budget on. Governor Markell would make a recommendation, but he would be a lame duck governor. What happened this year was that the numbers he based his budget on decreased by the time they got around to passing a budget, so there was an increase in the operations budget, an increase in grant-in-aid, and a big decrease in the bond bill, which Mr. Armitage thought really hurt. If they were trying to create jobs, he thought the bond bill was the most effective place in the state to create more jobs, rather than in operations or in grant-in-aid. He was not sure what they were going to do next year. They did not know going forward what they needed to do around revenue. In the past, what they did so often was cut things across the board rather than cut things strategically.

Next year he expected the disability parking bill to come back. The group that pushed for that was not going away. What they were asking for, they could not get. The plastic bag issue – he knew there was some input from the Conservation Advisory Commission and suggested they do some research in the off

season and find a less complicated bill that worked someplace else, then it could be suggested to members of the legislature, Representatives Longhurst and Hudson, who introduced them in the past.

Mr. Armitage expected to see something around public works again next year. The non-union groups fought that, and it would have been a negative impact in the cost that the City had to deal with. He did not think minimum wage would go away – that would come back again next year. They would continue to push for Del Tech’s taxing authority. One of the things that happened in the bond bill this year, the governor recommended \$9 million to each of the higher eds, and they ended up with \$8 million, and that was one of the things that Del Tech said for years – they could never depend upon what their funding would be around capital projects.

Mr. Markham asked to open the discussion to public comments to see if anybody had any ideas, or if there were people that might be willing to go to bat for us with PILOT or something. Mr. Armitage felt it was valuable for constituents to call legislators about issues in the City. Every phone call made a difference.

Ms. Hadden referred to the plastic bag issue and would reach out to the Conservation Advisory Committee about doing a little more research so the bill could be made simpler and easier. Mr. Armitage said it had wonderful support for the concept, but was too complicated for the implementation. Hopefully with modifications it would come back again in some different form.

John Morgan, District 1, agreed with Mr. Morehead that it would be difficult for the City to make a convincing case in Dover about getting PILOT funds unless the City demonstrated its needs in comparison with Wilmington and their serious problems. Dr. Morgan thought the City should focus on the essentials starting with public safety and said more should be done in partnership with the University to control unruly behavior on Main Street. This would free up police resources and alleviate as much need for PILOT funds which would be hard to get in the next several years.

Catherine Ciferni, District 2, said the legislature would also be looking at what rents go for in this community to look at average income and need. The City would have to do a lot more strategizing on what the money was needed for and how it would be used. If student housing continued to be built, it would appear that Newark had a big economic generator in terms of rental property and retail. Also, she pointed out that the University said they would be selling 189 West Main Street and the adjoining property, so that should come back into taxable property.

Helga Huntley, District 1, commented about the plastic bag issue. In addition to the CAC, she thought there was a coalition of nonprofit organizations across the state that was working on the plastic bag issue. If Delaware thought this particular version was too complicated, she was sure there were many other examples of successfully implemented laws that could be considered.

Mr. Ruckle said at the last meeting Council was pretty clear on House Bill 427. Council as a whole was against the bill, yet somehow it was directed to the State representatives that the City was for the bill. He talked to some other Council members who agreed they did not want the state taking a future Council's right away to create any type of breed-specific legislation. Mr. Ruckle received emails from Representative Osienski and Senator Peterson who said the City was all for it and had no issues with it. He felt that was a direct conflict of what happened at Council. At this point, if there is a serious issue, he thought Council had to vote on it and give exact direction to Mr. Armitage.

Mr. Morehead added that he was one of the folks that thought Council had overwhelmingly given Mr. Armitage direction that they did not want this bill having Newark’s support because from his perspective, while he disagreed with the bill, he specifically said that the City wanted that type of thing in Alderman's Court and wanted to retain that control. He thought Council was understood on that and did not know how that got turned around.

Ms. Hadden did not feel that Council was against it. She thought direction was given to Mr. Armitage to sort of nose around and see if there could be an amendment to see if it could come before the Alderman's Court.

Mr. Armitage reviewed what he thought Council told him. Bill 427 specifically would prevent any other jurisdiction from creating a breed-specific prohibition on “this is now a dangerous dog”. The other parts of the bill were already in the law. He was able to determine Newark still could do legislation that would be one and done. It would still stay in Alderman's Court. Mr. Armitage’s sense from watching people at the table was they were not as concerned about the breed specific part of the bill as they were about Newark’s local control. This bill would not change that. It passed the House and died in the Senate.

He thought it may be back next year because the group that pushed for this bill would probably hire the same lobbyist next year and it would again be before the legislature. There was plenty of time to think about what Newark wanted to do but what he was able to determine was that Newark still had the ability to create its own ordinances. The only one they could not have created would be a breed-specific bill that said, "This dog is dangerous because of breed" and they might be able to do something more around the behavior. That was what they were trying to change about this bill right now was to create a process. They took it away from an oversight board that was a group of nonprofessionals and try to have it through the animal control officers who would take a specific set of circumstances before some sort of judicial official whether it was at JP or in the Alderman's Court. Newark was still going to be able to manage that on its own. That was the direction Mr. Armitage thought he had from Council. Council was not as concerned about the breed-specific part as about managing local control. He was able to determine this bill did not take that away. The conversation he had with Representative Osienski and Senator Peterson said Newark did not oppose the bill because they were still able to manage local control around most of the issues other than the breed-specific.

Ms. Sierer agreed with Mr. Armitage. She did not believe there was consensus at the table to oppose the bill. She talked to Representative Osienski during the session. She listened to the audio as did City staff and thought maybe Mr. Ruckle was right in that Council needed to develop plans that they had consensus and gave clear direction to Mr. Armitage but she believed Mr. Armitage thought he had clear direction. It was not that Council opposed in its entirety, it was that they were looking for potential amendments and what Newark could do on its own. Going forward, she thought they needed to have a plan. Mr. Ruckle said they needed to be clearer so when they left the table, no one was confused.

Mr. Morehead felt Council came a long way even having this conversation. It was time to continue moving forward and being clearer going forward.

Mr. Armitage said last year Ms. Bensley put together a table on a number of different issues and included the perspective each Council member gave on the particular issue. This gave him pretty clear direction, and he thought that might be helpful in the future for specific bills. Mr. Morehead stressed that those things stay public. Ms. Bensley explained that the table was a cross-reference compiled from the minutes of Council meetings from the public discussions that had taken place.

Mr. Armitage realized he left three things out of the table that he sent the other day, so he revised that. Three of the bills were around the PJM project. Only one passed and that was the sense of the legislature to oppose what was done – ask the Public Service Commission to go back and try to get that re-heard again. The other one was the special assessment around displaced workers which had a minimal impact on the budget but it only passed the House and did not move forward into the Senate.

8. 2-E. CITY MANAGER:

01:01:43

Mr. Haines noted everyone had thoughts about what happened in Dallas last week. He made several comments about what was seen around the City – a three-year-old girl coming into the Police Department with a cake to say, "thank you", the lemonade stand giving out hugs on social media to officers and EMTs to say thank you. They had long-standing volunteers come in just to say thank you or want to speak to an officer or any of the staff members to express their appreciation and shake hands. He felt the community engagement that the City had which built a foundation that made the community great was demonstrated by the public as well. Everyone was saying their appreciation and thank you. The City had a great foundation of people working here to make it the best possible. From a staff standpoint, seeing that go on was enriching and warming and appreciated.

Mr. Haines reported that staff continued to develop Channel 22, but there was a lot more video content going on each time. They were trying to continue to build that so any suggestions were welcome. Ms. McNerney was happy to shoot different things going on including the fireworks presentation.

Friday, July 15 was the deadline for getting comments to Ms. Bachman for feedback about the website logo redesign. It was almost 100% consensus of "do what you need to do" to the website. Everyone agreed that it needed to be updated to modern standards for greater accessibility. There was a variety of commentary so far regarding the logo. It was going to be an interesting process to go through, but there were a lot of different opinions and ideas and staff continued to welcome them.

9. 2-F. COUNCIL MEMBERS

01:04:44

Mr. Chapman:

- Had several constituents ask if there was a rape aggression defense class offered by the Newark Police Department (he knew the University of Delaware provided one). He thought it might be something worth adding to the Parks and Rec programs or from the Police Department.
- Regarding the Casho Mill Road underpass, the signage and alert system added for over-height vehicles was terrific. He said it helped prevent issues where people would just drive through. Last week a constituent stopped and helped someone driving a truck pulling a horse trailer. They were not from the area, and the warning system saved them, but they did not know what direction to go in from there. Mr. Chapman suggested some type of detour signage.

Ms. Wallace:

- Noted the Casho Mill Road underpass was in her district near her house and was an issue for constituents. She talked with Public Works about it recently. They suggested some things that DelDOT did not care for. They were looking at a new sensor system and better signage, so changes would be coming.
- Had an issue with a constituent who as a pedestrian was continuing to have a problem on the Hall Trail with both bicyclists running into her as well as loose dogs. She encouraged her to reach out to the police whenever she had problems. Ms. Wallace knew there were patrols that went on but asked if those patrols could be increased for a period of time.
- Asked if Mr. Armitage could provide a brief update on what happened with the administrative warrants legislation. Mr. Armitage reported that the meeting for July 12 was cancelled. In the interim, Mr. Haines and some of the other staff members were meeting with the Newark Landlords Association. They put together a draft ordinance that was being vetted by the landlords themselves. It would include third party inspections. For the time being, the administrative warrant idea at the state level was put on hold. At some point in time, an ordinance may be brought forward.

Mr. Markham:

- Enjoyed the fireworks from the reservoir and thanked Martin, Porter and Toyota dealerships for turning out their lights.
- Noted that he had asked Mr. Del Grande the question about Newark United Methodist at the last meeting. He responded there was a \$30,000 grant sitting out there waiting to be paid against the Green Energy Fund that had not yet been paid. Hopefully, that would be taken care of this month and then the fund was free and clear for projects. He would like Council to consider letting him go pursue some other ideas, maybe another solar project or maybe an electric charging station. Any ideas were welcome.
- Thanked the police for the suspect apprehension in the attempted abduction case.

Ms. Hadden:

- Received complaints about people speeding on Apple Road. Working with Public Works, she hoped in 2017 they may be able to proceed with a traffic calming project. A small pedestrian island was proposed and should do a lot to slow the traffic down and allow safe pedestrian crossing there.
- Got to see the fireworks from the second floor of her house and it was lovely.
- Congratulated the Newark Police Department for receiving a community policing award for the "Hug a Cop" project.
- Asked when the broadband results would come forward to Council and the public. Ms. Bensley responded that August 22 was when the next presentation was scheduled for Council with the consultant.

Mr. Morehead:

- Noted it was a heart-wrenching week and also a celebration of the human spirit in many ways, and a celebration of courage in many ways. Mr. Morehead "was brought up in Boston where kids were taught that the American Revolution started in Lexington and Concord. He said this once to someone who was brought up in Philadelphia and they corrected him that the American Revolution and our country started after conversations and a commitment that people made to put their lives on the line to promote some ideas and the ideas of democracy and the courage that took. So we celebrate that courage and us being here as a result of that representative democratic government. We also celebrate the courage of our first responders and of our police force. On behalf of District 1, he thanked the men and women of the Newark Police Department for the work they do on a daily basis and continued to do, and from the bottom of our hearts, he wished them the ability to stay safe and go home to their families every night."

Mr. Ruckle:

- Thought the Newark Police Department performed a phenomenal job. He could not say enough for what they did for his family and the community keeping it safe. He had their back, and so did District 2. He thought "a lot of this has to do with communication between the police and the public and it actually comes down to a simple thing and it was called your hands. The officer must always see both of them. If they see both of them at all times, this is not going to happen. So I think we need to start and really have that conversation where we have the police going to the schools, going to community events and just say,

'I just want to see your hands. If your hands are here they are not... Nobody was grabbing a gun, nobody was shooting' and it was going to make things real simple. It was that fast motion when they see it, and have lack of communication or you get nervous, and then mistakes are made on both sides. He thought that was where we need to focus because that one simple mistake is going to ruin two people's lives."

- Had his monthly meeting with Representative Osienski at the Senior Center, and it was the largest turnout so far. They felt the City was doing a great job, and they felt the paint job on the water tower was fabulous. They were looking forward to whatever was done next with it.
- Regarding the attempted abductions and the need for notification, he felt there was that emergency, and they needed to wake people up. He knew one time it went out for a road closure and that really upset a lot of district residents, but if it was an abduction or a major fire or a catastrophe, that decision had to be made or maybe have a workshop and make a decision as a community on what call that would be.
- Watched the fireworks from his office. A large number of people came out and avoided the traffic.
- Regarding Mr. Markham's comment requesting ideas about solar power, he saw something where there were floating solar panels. The entire reservoir could be loaded up with solar panels and the City would have an unbelievable amount of power. It was all space not being used anyway.
- There were several break-ins at Stafford. He thought it was kids who were stealing change and things like that. He reminded people to lock their doors and hopefully that would stop the problem.

Ms. Sierer

- Spent some time in the past couple weeks volunteering with Parks and Recreation where she played tennis with kids at Handloff Park, and they had a great time. She also volunteered at the tennis camp which was fun as well.
- Worked last Friday with the Public Works Department and thanked Jason Winterling and the crew that assisted in her ability to work with them. She got to do some things like demo the portable asphalt machine being considered for purchase which would be a great benefit for pothole repairs and spent some time flushing sewer lines. The most eventful part of the day was hanging off the side of the trash truck and emptying the Big Bellies on Main Street which was hard work. She was glad she was able to participate to see what their day was like, the equipment they needed, the hard work it took and the interaction with residents.
- Also thanked Ms. Bachman and Ms. McNerney for the logo and website workshop. She attended one of those sessions and encouraged everyone to take a look at the presentation on the website and offer them suggestions. That was the purpose of the workshop. It was especially low attendance, but it was important that the public reach out and give their suggestions on the new website and logo.
- Recently, there was a Bike Basics in a Minute event. It was a fun race between the English Language Institute, UD Graduate Student Government, DelDOT, the Newark Bike Project, White Clay Bicycle Club, Newark Police, and the Newark Bicycle Committee. They set up posters and had a free bike tune-up stand, bike skills course, and a lot more in front of Memorial Hall. It gave the ELI students an opportunity to learn about riding safely around campus and town. She thought it was a positive education piece for the ELI students. They engaged over 100 students, and the committee planned to build on this event to offer similar educational opportunities regarding safe biking practices beginning this fall.
- The Newark Bicycle Committee, an important committee in our community with a lot of volunteers, was featured in the WILMAPCO Transporter (their quarterly newsletter). The article could be found on the WILMAPCO website.

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

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

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

13. 6. **RECOMMENDATIONS ON CONTRACTS & BIDS:** None

14. 7. **FINANCIAL STATEMENT:** None

15. 8. **ORDINANCES FOR SECOND READING & PUBLIC HEARING:**
A. **Bill 16-16** – An Ordinance Annexing and Zoning to RH (Single Family Detached Residential – One Half Acre) a 5.43 Acre Parcel Located at 0 Darien Road (**See 9-A**)

01:23:34

(Secretary's Note: Items 8-A and 9-A were discussed simultaneously.)

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

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

Eileen and Dave Hall were the applicants requesting approval for the annexation, rezoning, and minor subdivision of 0 Darien Road. Ms. Hall explained they were ready to downsize and started searching several years ago for land where they could build the last house they hoped to own. They found this property at the end of January and knew it was what they were looking for with its beauty, natural state and privacy that the five plus acres would afford. This parcel was already identified for annexation by the City and that encouraged them to move forward to explore the possibility of obtaining the property.

One of the biggest reasons they considered this parcel was their personal ties to Newark. Both were UD graduates, and all three of their sons attended UD as well. In addition, Mr. Hall did a great deal of volunteer work for the Newark Senior Center, the Newark Jaycees and the Food Bank of Delaware.

Ms. Hall introduced Mike Early of Merestone Consultants, who would walk briefly through the site plan and the plans for the site. Mr. Early was a land surveyor with Merestone Consultants.

Mr. Early was here to support the annexation and subdivision for Mr. and Mrs. Hall who wish to subdivide the 5.4 acre parcel into two parcels. One would contain 4.25 acres, the other approximately 1.18 acres. The plan was to build a one story home on the larger parcel, and it was decided to attach the building shown as the shed or an outbuilding on the site plan to the house next to the garage to further minimize the disturbance on this parcel, thereby reducing the additional potential for disturbance by approximately 3,000 or more square feet.

The home and the driveway were situated in a location he thought was the most suitable for topography, drainage, access and privacy in an effort to minimize the clearing process that would occur as part of the development, hoping then to protect the wetlands that form the border of the property along the waterway to the east and northwest boundary of the property and to help provide some privacy to the surrounding neighbors.

The driveway shown there would be shortened in a southerly direction so it would not extend quite to the property line between the two parcels. The garage, instead of the side entry, would be front entry and that would facilitate the moving of that future shed next to the house. The limited disturbance shown in both parcels was targeted at trying to remove the trees within 80 feet of the house, in order to preserve as many as possible while mitigating the risk of trees falling on the home in a severe storm. Tree removal on the 1.18 acre piece would be done now or at the time of construction for the Halls' home since later removal would risk damage to the utilities and the driveways. Stumps would remain and be removed if a home was developed on that piece. There were no current plans by Mr. and Mrs. Hall to develop or build a home on that piece.

Mr. Hall said this was a six month effort of consulting with the applicable City departments and personnel, trying to become educated on the process and the appropriate personnel to work with in pursuing the development of this parcel and ultimately, understanding what needed to be done to conserve this property as well because it truly was a very special piece of land.

They met with Tom Zaleski and Joe Spadafino of Parks and Rec who had two Delaware State Foresters come out with them on April 7th and look at the site. Assessments and different recommendations were made as far as how best to preserve the trees and the site there. A follow up consultation was held with Parks and Rec on June 15. Nine different tree services and certified arborists came to the site to assess and provide recommendations on the best way to do tree removal and preservation and assessing unhealthy trees on the site. After looking at five different builders, they were down to two. They consulted with the Public Works Department about drainage issues, talked with the Fairfield neighbors and talked about erosion control methodology and storm water management. They spoke with Ms. Feeney Roser on numerous occasions following the Planning Commission meeting to review Planning Commission recommendations and seek her further guidance.

Mrs. Hall said it was important to them to take into account the neighbors' concerns. After the Planning Commission meeting when they became aware of some of the concerns raised, they invited them to share what was on their minds and what could be done to address them. Some Fairfield neighbors said they supported the plan since it was only one home site on two parcels compared to the rumors of five houses on the lot.

The Halls met with Mr. Chapman since the parcel was in his district to find out his concerns and recommendations. Another meeting was held in June with the Fairfield residents that border the property and Mr. Chapman to get everybody together to address the issues that were raised.

Mr. Hall said they accepted the great responsibility placed upon them in regards to the preservation of this site. They would preserve as much of the tree canopy as possible. The schematic showed the line of disturbance where the trees would come out. There were over 400 trees on the site. About 60-65 trees were within that line. Another four or five were identified as unhealthy where the tree was within 130 feet of either the Stanford Drive houses or where their footprint would be. Those unhealthy trees would be removed as well. There was still a formal audit to be done with whatever tree service was selected. They were trying to make sure they were starting with a healthy bunch of trees to begin with. Their commitment was that the trees would be assessed every five years, or if they notice a tree with some sort of problem, they would get someone out so it was dealt with immediately.

It was important to the Halls to make sure that the unique flora identified by Parks and Rec were preserved and moved to other sites. In the smaller lot the stumps would remain and they would plant a wildflower meadow back in there which should improve erosion control. It would improve the wildlife bird habitat in the area and was also going to restore the natural beauty of the site.

Mr. Hall put out a special thanks to Messrs. Zaleski and Robinson who were two special employees who both understood environmental issues as opposed to just development and they provided amazing support to the Halls. He said the City was miles ahead of the County from the standpoint of doing the right things when it came to tree maintenance.

In talking with the neighbors, they learned this lot was bush hogged every five years to maintain the beauty of it. Their commitment to the neighbors was that would continue with the property. A landscape plan would be submitted at the building permit stage for bushes and the right amount of trees around the house. They also agreed at the Planning Commission meeting to have a clearly defined cross access agreement or a maintenance agreement.

Although the Halls were in agreement with Planning Commission recommendations in regards to this parcel, they respectfully declined to accept the conservation easement. Unfortunately the conservation easement was not defined in the City Code. Therefore it was open to different, sometimes conflicting interpretations. They did not want to risk being tied down to unknown restrictions and costs. Since a conservation grant usually required the involvement of the applicable government agency, they did not feel they could accept this condition without knowing what the City's role and responsibilities would be to such an easement.

In lieu of the conservation easement, Mr. Firestone had suggested that the Halls come to Council with their own proposal. They proposed deed restrictions to the lot because what they heard from the neighbors was they were afraid the Halls would come in and just flip this and it would turn into something else. They suggested three different types of deed restrictions:

- Deed restrict to two RH-zoned lots for a period of ten years.
- Deed restrict RH-zoning on both lots to one family detached dwelling
- Deed restrict against outbuildings or structures being built within 35 feet of the eastern/southern property lines for the next 10 years as well.

Mrs. Hall felt it was important to mention that the neighbors recognized there were alternatives. If this property remained in New Castle County, Newark would not have any control over what happened to the parcel. As a result if somebody wanted to come in and build five homes, that could happen and that was something they did not want to see.

In addition, egress through Covered Bridge Farms was mentioned. That would require coming across a stream and putting in a septic tank and a leach field. To them that was much more destructive and was not an option to them.

Mrs. Hall relayed that Jack Arnold, the Arnold's grandson who was co-executor of the estate and was handling this for his grandparents felt that this plan was most in line with what his grandparents wished and said that was why he went with their offer. That was important to them because they wanted to do what they could to honor the memory of his grandparents and try to do the right thing. The Halls were grateful to all the people within the City who had taken time to guide them through this process.

Ms. Hadden asked how the Halls came up with the ten year time period they wanted to put on the deed.

Mrs. Hall said they wanted to demonstrate good faith to the neighbors that they were not going to come in and flip the property to turn it into something like townhouses. Mr. Hall said the second reason was they were making a decision now based upon the taxes and the rules and regulations within the municipality, and obviously they did not stay static. If in 10 years it was not appropriate for them to hold the property because of an exorbitant increase in tax rates - this was going to be one of the larger privately held properties within the City. As a municipality had flexibility with its rules and regulations and tax rates, the Halls were doing what they felt was necessary to have flexibility in the future.

Mr. Markham did not think the zoning could be deed restricted to ten years, it was either RH or it was not RH. Mr. Herron said that was correct. Mr. Markham did not think that was a valid case. Mr. Hall agreed with the zoning comment but thought that stood differently from the RH issue. If ultimately they decided to change it to something other than RH or a future owner did, they would have to come before City Council. Ms. Hadden agreed that was true. Mr. Markham said anytime you say deed restrict the two parties' zone, and the Council grants the zoning, that was his point. Mr. Hall agreed.

Ms. Feeney Roser explained that RH allowed lots of a half-acre, so it would technically be possible for them to come back and ask for another minor subdivision at a later date if they wanted to. She thought that was the point, that they were agreeing to have just two houses and two lots for 10 years at an RH zoning. Mr. Markham said if they wanted to protect them now, they could say they could have one lot that was RH and when they were ready, they had to come back to Council to subdivide. Ms. Feeney Roser said Council could do that, certainly, but it was not what the Halls were requesting. Anyone could come back again and ask for a change.

Mr. Markham asked if this was a driveway and not a road, so the City would not be plowing and that trash collection would be at the end of the driveway. Ms. Feeney Roser confirmed that it was a private drive, so the City would not be plowing and that trash collection would be at the end of the driveway.

Mr. Markham noted this property was landlocked, there was no road from the County into this property. Ms. Feeney Roser replied that Darien Road was in Covered Bridge Farms and it stopped at the houses but she supposed it could continue. It was Darien Road (in the County) that did not go through the property. Ms. Feeney Roser said there was Darien Road in Covered Bridge Farms and then there were houses along the way. Mr. Chapman stated there was Darien on both the Covered Bridge side and the Fairfield side. Darien in Fairfield was really just a little stub with four houses on it. Mr. Markham confirmed that it was in the City, not in the County. Mr. Markham's question was, there was no access from the County at this point. Mr. Chapman said not as direct. One would have to go through private property from Darien in Covered Bridge to get to this lot which was not the case from Darien at the Fairfield side.

Mr. Markham questioned whether the County could force the City to take access from a property. He thought he saw something like that on Cullen Way. Mr. Herron was not aware of a procedure where the County could force the City to provide access. Mr. Markham said (inaudible) so it was either go through the City or go through County review. Ms. Feeney Roser said County review and the County was notified that this proposal was before Council. They were notified before the Planning Commission meeting and had no comment.

Mr. Markham asked Ms. Feeney Roser to confirm what they could build in the County. She confirmed that it would be half-acre lots as well, but the topography here was not conducive to getting ten lots out of it, but when she spoke with Mr. Coleman about it, he thought there was a possibility of five in the County.

Ms. Wallace found it surprising that they did not have a conservation agreement on the books and asked if this something the Planning Department should be directed to look into. Ms. Feeney Roser reported that the City had not defined conservation easement. There were some properties where things like conservation easements were referred to, but it really meant there would not be development in that area. She said what the Halls were proposing was in response to the staff's concern for the houses that backed up in Fairfield to this property so they would have some space between any development. If Council directed, she and Mr. Herron could look at that in the future. Ms. Wallace thought perhaps the City should look at that.

Ms. Hadden asked if a septic system would go in if this were not annexed. Ms. Feeney Roser confirmed that was correct.

Mr. Morehead asked how many properties were possible if this was in Newark. Ms. Feeney Roser reported that Newark had half-acre zoning as well, so it was potentially possible that they could get five here. He asked if it would have to be half-acre zoning. Ms. Feeney Roser responded no, Fairfield was RS.

They could come and ask for a smaller lot size, but they did not, so they were actually larger than Fairfield lots. Mr. Morehead asked if the zoning could be limited to what was adjacent, or could it be something completely different as well given the size of the property? Ms. Feeney Roser verified that RH was the City's largest single family residential lot, and they could have come in and asked for other zoning categories, RA, for example. She did not think considering the Comprehensive Plan and the adjacent areas plan said that it should be relatively large-lot residential there that they would have much of a chance, but it was possible they could have asked for a different zoning.

Mr. Morehead believed he understood their thought process as far as themselves living there, but he was concerned about the future. He understood this was (or would be) their property. They had property rights at that point in time. By the same token, the neighbors enjoyed this land that was not theirs, and this happened a lot in the City when someone lived adjacent to a park or the Country Club, etc. He was concerned about the ten year limit and asked the Halls how flexible they were with this restriction.

Mrs. Hall asked Mr. Markham if the best protection for his concern would be the fact that if any further changes were going to be made, they would have to be brought before Council and voted on. Mr. Morehead said that happened all the time. Frankly, people say things to Council all the time that did not end up being that way in the end. If the Halls were to say 25 years, he would be thrilled because that would put a stake in the ground deeply, versus a stake lightly in the shifting sand.

Mrs. Hall said she understood. From a personal perspective, in 25 years they would be close to being 85 years old. So that was hard for them that way because they did not want to be in a position where if something happened to one of them, that they were restricted to the point where their sons would have a major problem because of something they did. The understand Council did not know them. This was them coming here to plead their case, but her hope would be that with everything they did and tried to demonstrate in terms of the information they provided of all the work they did, the people they tried to work with that, at the end of the day, if they did ten years, and came back in 12 years and said they wanted to subdivide this into three more lots because they needed the money that Council said no.

Mr. Hall stated that they never developed a land before and never built a home before, and they made a commitment. They were open to discussions with the City from a lot of different ways with this, but they were talking about a site here that was 10-12 times larger than what a normal lot was in the City. The question was whether the City would provide flexibility to understand that sort of thing from an acreage standpoint. For example, they were provided the rules and regulations from the standpoint of developing the property, and the regulation only went up and dealt with a two acre lot for clearing. There was nothing on the books that dealt with five acres. This was a very unique situation here.

Mr. Chapman did not think the idea of a deed restriction was very impactful. It did not affect what would be required to request a change or to actually be successful in a change outside of what was approved tonight. He thought it was almost ceremonial. It added or put at ease some of the concerns that were trying to be addressed by the Planning Commissioners with relation to a conservation easement. In conversations with some adjacent property owners, at different points in the conversation it was already clear that the deed restriction would not really have too much to do. Timeline or not, if the deed restriction was ten years or 25 years and that deed restriction fell off which nobody would be paying attention to. The application to make the change would be exactly the same, and the most recent deed restriction he remembered Council overturning was for the property on Main Street (now Arena's) that got overturned.

Ms. Hadden appreciated the thought Mr. and Mrs. Hall put into this, the outreach with neighbors and the environmental concerns they were facing. She felt they were sincere in their wish to preserve as much of it as they could. She asked for clarification on one driveway with no more than four houses on the private driveway. Ms. Feeney Roser reviewed the Code, and there was no provision for the number of homes that could be built on the driveway. She learned from Mr. Coleman that was a County regulation.

Mr. Ruckle thanked the Halls for wanting to come to the City of Newark. This was his first annexation, and he always felt the City should be promoting this. He did not see why the Halls would not want the RS zoning because everything around there was already RS. Mr. Ruckle did not have an issue with deed restrictions as a realtor and said this was an issue of land, and the Halls had a by-rights to build. He understood why the neighbors wanted the trees all around but would not be in favor of an easement.

Mr. Markham commented that the City did not have to do an annexations, and unfortunately for them, this was the City's strongest point. They could negotiate and request a lot for an annexation, and whatever Council agreed must be in writing for it to be enforceable. He had to look at the size of the land and future possibilities and kind of treat the applicant the same as a developer. If a developer came in and said they were not going to subdivide or put X number of houses on it, he had to be a little skeptical.

The Chair opened the discussion to public comment.

Jack Teague, Patterson Schwartz real estate, 680 South College Avenue, was the agent for the Arnold family to help them with the sale of this parcel as well as the property that would be remaining in the County which was the Arnold home on four acres fronting on Darien Road in Covered Bridge Farms and adjacent to this 5.43 acre parcel known as 0 Darien Road. The executors of the estate of Mr. and Mrs. Arnold, Jack Arnold and Leslie Hill, asked Mr. Teague to mention several things on behalf of the estate. They were not directly involved in the technical aspects in the engineering, the design and annexation process. They observed the process and believe that Mr. and Mrs. Hall developed a plan for this parcel that was in line with the wishes of the heirs, and they were confident the plan would have pleased the late Mr. and Mrs. Arnold.

Mr. Arnold purchased the subject lot in April 1987, for which he paid \$130,000. In studying the complete site, and he referred to the house on Darien Road on 3.96 acres and the property in back, the 5.43, it became apparent that Mr. Arnold had the overall property originally consisting of four individual building lots engineered for his personal use but with an eye toward the future value of the land and how it might best be used by him and benefit his heirs. The executors understand from having watched the process that Mr. and Mrs. Hall have gone substantially beyond normal regulations that might be required for a similar subdivision. It also appears to them that Mr. and Mrs. Hall went to great lengths to develop the site more than just as required, but with sincere consideration given to the use of the site itself, the vegetation, the woodlands and the neighboring property owners.

Mr. Teague said if and when the annexation was approved, the Halls planned to build a fine, custom home for themselves. Likewise, if any home was indeed someday build on the additional lot, he assured Council from his nearly 40 years as a Newark realtor, builder, and developer (he had Stone Spring annexed into the City in 1990), the ultimate appeal of the site, the homes to be built and the finished product would enhance not only the immediate adjacent properties, but also the City of Newark, add to the tax base and generate revenue for the school district.

Doug Gordon, a resident of Stamford Drive adjacent to the property in question, said the property was still owned by the heirs of the Arnolds, so the Halls did not own it yet. They would, if Council approve all of their requests. He did not understand why the City would want to go through that for a net revenue of about \$160 a year. He thought the Planning Commission was very deficient in their approval. It appeared that none of the people on the board had ever seen the property. They did not have an environmental or a landscape survey showing the before and after the development in the re-subdividing of the property. They went along with whatever was suggested by the Planning Department.

There were questions about fire control, whether or not a fire engine could get back into the property for the two lots that were proposed, and it seemed odd to him that there was not some kind of estate zoning on the City land use plan, something that would be 5 to 25 acres, should that ever come up. He did not know why the City was limiting the size of lots to an RS 25,000 square feet. For some reason, Newark did not have that ability. It was something he would like Council to take a look at in the future as it would provide a lot of leeway when special things like this come up.

The discussion was returned to the table.

Mr. Ruckle asked Mr. Teague if he represented the Arnolds on the sale to the Halls. Mr. Teague said he represented the Arnolds only. The Halls had a different agent representing them as a buyer. Mr. Ruckle confirmed with Mr. Teague that they had a contract that was accepted by his seller. Mr. Teague said subject to the approval of the City of Newark. Mr. Ruckle clarified that they had an equitable interest, and no else could put a contract in on this to supersede that contract. Mr. Teague noted that they were offered back-up contracts, but the heirs did not want to entertain agreements of sale. There was a certain family pride and the personality and wishes of their grandparents and parents that was driving the estate's motivation here. They wanted to do something that would be good for the whole area.

Mr. Chapman asked Ms. Feeney Roser to confirm that the conservation easements that were discussed in the Planning Commission meeting were not included in any of the final agreements in front of Council tonight. Ms. Feeney Roser pointed out that clause 5 referred to the conservation easement because that was part of the Planning Commission's recommendation, so therefore it showed in Council's agreement. If Council did not want that to happen, they would need to amend the agreement.

Mr. Herron commented that Mr. Markham's statement about Council having discretion on an annexation was correct, but once the property was annexed and zoned, an involuntary conservation easement or an involuntary deed restriction, in his view, was likely to be deemed unlawful. Again, once

the property was annexed and zoned, Council could not prohibit development which was permitted under the Code. The reason he said that was that he did not want a Council member to vote for the annexation and rezoning and then seek to impose those conditions at the subdivision stage. Mr. Herron said Council should vote on the annexation first.

Mr. Chapman did not have any amendments to propose for the annexation. He commented that he would be supportive in offering approval here but was withholding comments until everyone at the table had gotten questions answered as well as the public.

He spoke with the majority of the surrounding or adjacent property owners as well as the applicants. In recognition of statements and actions taken by the selling owners, there was no doubt in his mind that this property would be developed and through annexation, the City would get to weigh in on what that looked like. He could not think of another applicant who came before Council with the amount of genuine sincerity and quality of character and amount of money put forth to provide the quality of application.

MOTION BY MR. CHAPMAN, SECONDED BY MR. RUCKLE: TO APPROVE BILL 16-16, AN ORDINANCE ANNEXING AND ZONING TO RH (SINGLE-FAMILY DETACHED RESIDENTIAL – ONE HALF ACRE) A 5.43 ACRE PARCEL LOCATED AT 0 DARIEN ROAD.

Mr. Chapman would approve this and referenced his immediate past comments and felt that this was going to provide benefits to the City and allow us to weigh in as much as possible.

Ms. Wallace would support the annexation. She thought it was the best case scenario for this property and appreciated the future owner's willingness to be so understanding of the neighbors. She did not think this would negatively impact the area.

Mr. Markham would not be supporting the annexation and rezoning. He believed it was detrimental to the neighbors, and he believed the City was missing an opportunity to put restrictions on the annexation at this point in time.

Ms. Hadden would support the annexation for reasons previously stated by other Council members and she thought the control that the City of Newark would have would be much better for the environment based on what could potentially happen to the property.

Mr. Morehead believed that Mr. Markham was right in that Council missed an opportunity. Having said that, he believed this property should become part of Newark and that was a benefit to the adjacent neighbors. He appreciated that the potential new owners were looking to conserve as much of the property as possible. He would support the annexation.

Mr. Ruckle would also be supporting the annexation. Adding over five acres to the City would be a good thing. Also, putting one less septic system into the ground was a good thing, (potentially two septic systems). It was going to be on public water. He said that septic systems were becoming overly burdensome to realtors and to the public on how much they failed at costs of approximately \$30,000 to home owners. He said that the Halls did an outstanding job presenting this and commended them for wanting to be part of the City, so he would support this.

Ms. Sierer would vote yes for the annexation and rezoning. She believed it did not conflict with Comp Plan IV. She believe that the site density was well within the typical range for single family developments and the development pattern was compatible to the surrounding area.

MOTION PASSED. VOTE: 6 to 1.

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

Nay – Markham.

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

- A.** Request of David and Eileen Hall for the Minor Subdivision of 5.43 Acres Located at 0 Darien Road In Order to Subdivide the Parcel Into Two Lots (4.25+/- Acres and 1.18+/- Acres) and to Construct One Single-Family Home on the 4.25+/- Acre Parcel (*Subdivision Agreement and Resolution Attached*) (*See 8-A*)

02:28:53

(Secretary's Note: The public hearing for this item was held under item 8-A.)

Mr. Chapman wanted to propose an amendment removing section five from the subdivision agreement. He thought in the absence of a clear definition of what a conservation easement meant, it would be imprudent for Council to have that in a guiding and restrictive document. Following that, he would propose a second amendment adding in the applicants' voluntary deed restrictions suggestions. He thought that the gesture was one of sincerity and the fact that it was being brought forth and supported by the applicants, he saw no reason why they should not do that, especially the third deed restriction referencing outbuildings and other structures being no closer than 35 feet of the eastern/southern property lines for a period of 10 years. Ms. Bensley asked for clarification that Mr. Chapman was looking to substitute just the first paragraph of item 5 with the Halls' proposed restrictions and for the same in item c of the resolution, which Mr. Chapman confirmed.

AMENDMENT BY MR. CHAPMAN, SECONDED BY MR. MOREHEAD: TO DELETE THE FIRST PARAGRAPH OF ITEM 5 IN THE SUBDIVISION AGREEMENT AND ITEM C IN THE MINOR SUBDIVISION RESOLUTION AND TO SUBSTITUTE THE FOLLOWING LANGUAGE "THE DEVELOPER AGREES TO VOLUNTARILY DEED RESTRICT THE PROPERTY TO THE FOLLOWING CONDITIONS:

- DEED RESTRICT TO TWO RH-ZONED LOTS AS IDENTIFIED IN THE MERESTONE PLAN FOR A PERIOD OF TEN YEARS;
- DEED RESTRICT RH ZONING ON BOTH LOTS TO CATEGORIES A (A ONE-FAMILY DETACHED DWELLING), M AND R (PER THE APRIL 19, 2016 PLANNING AND DEVELOPMENT REPORT) FOR A PERIOD OF TEN YEARS; AND
- DEED RESTRICT AGAINST OUTBUILDINGS/OTHER STRUCTURES BEING BUILT WITHIN 35- FEET OF THE EASTERN/SOUTHERN PROPERTY LINES FOR A PERIOD OF TEN YEARS."

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

MOTION BY MR. CHAPMAN, SECONDED BY MR. MOREHEAD: TO APPROVE THE MINOR SUBDIVISION AGREEMENT AND RESOLUTION AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(RESOLUTION NO. 16-R)

17. **8-B. BILL 16-17 – AN ORDINANCE AMENDING CHAPTER 7, BUILDING, CHAPTER 14, FIRE, CHAPTER 17, PROPERTY MAINTENANCE AND CHAPTER 26, STREETS, CODE OF THE CITY OF NEWARK, DELAWARE, BY DELETING THE BOARD OF BUILDING APPEALS, PROPERTY MAINTENANCE APPEALS BOARD AND BOARD OF SIDEWALK APPEALS AND CREATING A NEW BOARD OF BUILDING, FIRE, PROPERTY MAINTENANCE AND SIDEWALK APPEALS**

02:32:32

Ms. Bensley read Bill 16-17 by title only.

MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 16-17.

Ms. Bensley stated that the Boards and Commissions Review Committee had been continuing to review the various boards and commissions of the City. The recommendation presented was from their reviews of the Board of Building Appeals, the Property Maintenance Appeals Board and Board of Sidewalk Appeals, which they heard at their January 26 meeting and unanimously approved their final recommendation on February 23 to consolidate the three boards. The evaluations for the boards were different from some of the previous evaluations presented in that while the boards were discussed individually, two of those three boards had been inactive for over a decade.

Much of the discussion revolved around the needs for three separate boards, if existing volunteers would be disenfranchised by consolidation and qualifications that would be required for the new board. The final recommendation was to consolidate those boards with qualifications for the new members to be determined at a later date.

Additional discussion points that were not included in the formal recommendation were the provision of training for new members, maintaining the more stringent membership requirements of the Board of Building Appeals for the new board, and the adoption of rules and procedure for the new board.

Ms. Bensley noted that staff supported the recommendation made by the Boards and Commissions Review Committee regarding the consolidation of the three boards into one. This recommendation was incorporated in to Bill 16-17.

Mr. Morehead noted that Ms. Bensley had distributed a memo to Mayor and Council dated July 11 with an amendment that he had submitted, which clarified wording in the first paragraph of Amendment 1, subsection (d)(1). He felt that as Council struggled to write good law, they needed to be clear especially when it came to boards of appeals. He noted he would be supporting that amendment to make that change. He noted it was important that boards of appeals have a full body and an odd numbered body. They did important work and they had seen cases where they had not been able to come to a decisive result based on the absence of folks having to recuse themselves.

Mr. Morehead also noted that he liked John Morgan's comments regarding changing the wording of people serving at the pleasure of and tidying that up. He thought that would make sense and he would like to see Council consider doing that.

Ms. Sierer asked for Dr. Morgan's requested changes to be identified. Ms. Bensley noted that in amendment 1, the third sentence read as proposed, "The board of building, fire, property maintenance, and sidewalk appeals shall be nominated by the mayor and appointed by the city council and shall hold office at the pleasure of the mayor and council." Dr. Morgan had proposed substituting in lieu of that sentence, "The members of the board of building, fire, property maintenance, and sidewalk appeals shall be appointed by the mayor subject to confirmation by a majority vote of all of the members of the city council. Any member of this board may be removed from office for cause after a public hearing by a majority vote of all of the members of city council." Ms. Bensley noted that she had also suggested in her memo that if Council would like to preserve the existing language regarding nomination and appointment, but amend the language regarding service, that could be amended by making a motion to amend sentence 3 in subsection (d)(1) in Amendment 1 by ending the sentence after the word "council" and adding a new sentence after reading "Any member of this board may be removed from office for cause after a public hearing by a majority vote of all of the members of city council."

Mr. Markham wanted to ask a question about the majority. He thought that would mean this would be at the same level as zoning where it was four of seven members, not majority present. He asked if that was the intention. Ms. Bensley noted that as proposed by Dr. Morgan that was what would happen. Mr. Morehead thought Council usually said majority present, which Ms. Bensley confirmed everything except ordinances required a vote of the majority present. Mr. Herron believed that Dr. Morgan took that language from State Code for the board of adjustment and the planning commission, but noted there was no requirement that the council would adopt that language.

Ms. Hadden noted that she really was having a problem with voting on something that came out of a committee and already someone who was a member of that committee was making a change and she did not know if that committee as a whole would agree with that change. Mr. Chapman noted that was his first thought.

Mr. Chapman asked if the comments about the removal were in the original document. Ms. Bensley stated they were not in the bill and were from Dr. Morgan's submitted comments that were emailed on Sunday. Mr. Chapman asked for confirmation that was completely new language that was not in any of the other board or committee language before. Ms. Bensley noted that if Council looked at the minutes for the Boards and Commissions Review Committee meeting where this was considered, Dr. Morgan did express this concern at that meeting. However, the Committee did not take a position on those comments. Mr. Chapman said that he read this and saw it raising a lot more questions, such as what was cause and what did a public hearing look like. He thought that serving at the pleasure was pretty clear. He did not know if they needed to add this language.

Ms. Sierer said she was not comfortable adding that language without the Committee's consent and she was concerned about that as well. She did agree with Mr. Morehead's proposed change, which Mr. Chapman agreed made sense.

The Chair opened the discussion to public comment.

John Morgan, District 1, apologized for not bringing the issue with the citation of State Code earlier. He had his attention drawn to this issue within the last several weeks when the Committee was reviewing the Planning Commission for which there were specific procedures in State Code for removal of members of the Planning Commission for cause. He noted the language had been in State Code for decades and thought there must be case law at a minimum if not explicit definition of what cause was. He also noted that in Sussex and Kent Counties, the functions of the Newark Board of Building Appeals were handled by Boards of Adjustment in those counties for which the language he quoted applied for removal. He stated that judges did not serve at the pleasure of a legislature for an obvious reason as judges were not supposed to be swayed by popular whim or by their elected officials. Judges were supposed to have some security in their positions so they did not have to fear that they were going to be removed from office because for some reason the legislature did not like the way they ruled on something. He thought it was appropriate that when the City had a quasi-judicial body that they not serve at the pleasure of a legislative body but rather that they could be removed for cause which might be things like failure to attend meetings or exhibiting partiality in their judgments. He urged Council to incorporate his suggested language, but noted Council could refer the question back to the Boards and Commissions Review Committee if they wanted their judgement on the issue.

Helga Huntley, District 1, agreed with Dr. Morgan's comments and thought that the boards that served a quasi-judicial function had a fundamentally different purpose within the city government than the advisory boards and commissions. She thought there should be a higher level of scrutiny necessary in order to remove people so that they were not subject as much to political pressure. She reiterated her support for Dr. Morgan's suggestion and recommended that Council not refer this back to the Committee as she thought they were all very smart people who could make an intelligent decision based on the arguments made.

Mr. Chapman did not disagree with the comments made about the quasi-judicial body and the separation. He noted the members of council and mayor were already the body that would have to agree to remove or replace somebody. They accepted resignations by vote and replaced by vote. He was sure if he suggested removal of somebody who had not said that they were moving or would like to step down, some questions would be asked by virtue of it being a public meeting, and, therefore, was a public hearing where Council would be taking votes. They infrequently just removed someone. He was comfortable with the way Council currently was operating and thought that it met the concerns being stated.

Ms. Wallace thought that Council needed to take this suggested change by Dr. Morgan seriously. She noted this was not an advisory board and that this had legal implications. It was quasi-judicial and she thought they needed to respect that. She thought it was very telling that this was the language that was used in the State Code. She thought that was for good reason. She supported this change and Mr. Morehead's change.

Mr. Morehead believed that while all of these decisions would come to council the two words "for cause" were what was at stake here. He felt those two words ensured that the quasi-judicial body had the protection it deserved under the democratic system. He did not see the harm in putting them in.

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: TO AMEND SENTENCE 5 IN SUBSECTION (D)(1) TO READ "AN ALTERNATE MEMBER SHALL..." INSTEAD OF "THE ALTERNATE MEMBERS SHALL".

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

MOTION BY MR. MOREHEAD, SECONDED BY MS. WALLACE: TO AMEND SENTENCE 3 IN SUBSECTION (D)(1) IN AMENDMENT 1 BY ENDING THE SENTENCE AFTER THE WORD "COUNCIL" AND ADDING A NEW SENTENCE READING "ANY MEMBER OF THIS BOARD MAY BE REMOVED FROM OFFICE FOR CAUSE AFTER A PUBLIC HEARING BY A MAJORITY VOTE OF ALL THE MEMBERS OF CITY COUNCIL."

Mr. Markham offered a friendly amendment to add the word "present" after the proposed new sentence. Mr. Morehead asked Mr. Herron if a majority of members present was acceptable. Mr. Herron said if they wished to amend it by a majority vote of all members of city council present, he thought that was the clear way to do it. Mr. Morehead accepted the friendly amendment.

REVISED MOTION WITH AMENDMENT: TO AMEND SENTENCE 3 IN SUBSECTION (D)(1) IN AMENDMENT 1 BY ENDING THE SENTENCE AFTER THE WORD "COUNCIL" AND ADDING A NEW

SENTENCE READING “ANY MEMBER OF THIS BOARD MAY BE REMOVED FROM OFFICE FOR CAUSE AFTER A PUBLIC HEARING BY A MAJORITY VOTE OF ALL THE MEMBERS OF CITY COUNCIL PRESENT.”

MOTION PASSED. VOTE: 4 to 3.

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

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: TO APPROVE BILL 16-17 AS AMENDED.

MOTION PASSED. VOTE: 6 to 1.

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

(ORDINANCE NO. 16-22)

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

19. 10-B. **OTHERS:** None

20. 11. **APPROVAL OF CONSENT AGENDA**

02:54:17

Ms. Bensley read the Consent Agenda in its entirety.

- A. Receipt of Alderman’s Report – June 21, 2016
- B. Receipt of Planning Commission Minutes – June 7, 2016
- C. ***First Reading – Bill 16-18 – An Ordinance Amending Chapter 32, Zoning, Code of the City of Newark, Delaware, By Clarifying Exceptions for Height of Buildings and Building Setback Lines – *Second Reading – August 8, 2016****

MOTION BY MR. MARKHAM, SECONDED BY MR. CHAPMAN: 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.

21. **Meeting adjourned at 9:52 p.m.**

Renee K. Bensley
Director of Legislative Services
City Secretary