

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**August 22, 2016**

Those present at 6:30 p.m.:

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

Staff Members: City Manager Carol Houck  
City Secretary Renee Bensley  
City Solicitor Bruce Herron  
Deputy City Manager Andrew Haines  
Deputy Electric Director Sam Sneeringer  
Finance Director David Del Grande  
IT Manager Joshua Brechbuehl  
Planning & Development Director Maureen Feeney Roser  
Public Works & Water Resources Director Tom Coleman  
Purchasing Administrator Cenise Wright

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**EXECUTIVE SESSION**

- A.** Executive Session pursuant to 29 *Del. C.* §10004 (b)(3) for the purpose of discussion of activities of a law enforcement agency in its efforts to collect information leading to criminal apprehension.

MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: THAT COUNCIL ENTER INTO EXECUTIVE SESSION FOR THE PURPOSE OF THE DISCUSSION OF ACITIVITES OF A LAW ENFORCEMENT AGENCY IN ITS EFFORTS TO COLLECT INFORMATION LEADING TO CRIMINAL APPREHENSION.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**RETURN TO PUBLIC SESSION**

- 1.** The regular Council meeting began at 7:06 p.m. with a moment of silent meditation and the Pledge of Allegiance.

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: THAT ITEM #9B, MAIN STREET MOVIES 5 SPECIAL USE PERMIT REQUEST, BE MOVED AFTER ITEM #8A, BILL 16-20.

MOTION PASSED. VOTE: 5 to 2.

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

- 2.** **1. PUBLIC PRESENTATIONS:**  
**A. Resolution 16-\_\_: Retirement of Barbara Wilkers, Clerk of the Court**

**04:51**

The resolution was unanimously endorsed by Council recognizing Ms. Wilkers' retirement after she served the City of Newark for 34 years. Ms. Wilkers started her career in the Finance Department and transferred to the Alderman's Court in 1989 where she became Clerk of the Court in April 2005.

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

**3. 1-B. RESOLUTION 16-: RETIREMENT OF THEODORE RYSER, COMMUNICATIONS AND RECORDS SUPERVISOR**

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**07:51**

The resolution was unanimously endorsed by Council recognizing Mr. Ryser's retirement after 40 years of service to the City of Newark. Mr. Ryser began his career as a part-time Community Service Officer with the Newark Police Department. Mr. Ryser received many awards and commendations during his career and became the first Communications and Records Supervisor in 1998 after retiring from the Newark Police Department.

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

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

**A. Public**

**12:33**

Albert Porach, District 2, stated he filed a Freedom of Information request for RFP 16-03 on July 29, 2016 which related to the parking garage proposal. At this time he had not received the requested information. He said the Solicitor provided him with the argument he intended to use if Mr. Porach contested any decision he made on the FOIA request. If his request for the materials was denied then it would take about four months for him to file a complaint, go through the arguments and come back. The problem with that was by that time the City would already have entered into a contract to build that parking garage. In his opinion if the public was not allowed access to the RFPs, they were effectively eliminated from being able to participate in the decision on the parking garage.

Catherine Ciferni, District 2, asked when Mr. Porach's request would be honored. Ms. Bensley reported that Mr. Porach was sent a letter today which he saw a copy of when he came into the City Secretary's office saying that the City Solicitor would have a response by August 29, 2016.

Ms. Ciferni said members of the community approached her about the appointment process to committees. She was concerned with the issue of process and establishing parameters in advance to approve someone for a committee rather than determining whether they were qualified after the application was submitted and then determining what Council was looking for in those candidates. She believed that parameters should be held at all accounts for all positions at all times. If recusal was an issue, then there should be a plan for that. To say that someone working for the University disqualified them or presented a conflict of interest should have been an issue for a lot of people. In terms of background and qualifications, that should be evaluated ahead of time and not during the process because it looked like there was a bias.

Bob Stozek, District 1, was concerned about how the Comprehensive Plan was implemented in the City. He cited sections from Comprehensive Plan IV and Comprehensive Plan V and said if the Plan was understood to be a tool for building and rebuilding the City, that assists everyone – City officials, residents, land owners and developers, in making good and equitable decisions on the City's growth, and the Plan would be a working document rather than a dust collector. The Plan was not proposed as a warranty against alternative decision making but rather was intended as an official, adopted legally required public document designed to establish strategies and policies to guide community growth over the next five to ten years. The Plan incorporated and expanded upon previously planned efforts while at the same time updated previous existing and proposed land use analysis. The Plan included a detailed examination of physical, demographic and economic conditions that provide the parameters within which future growth would occur. While the private real estate market and regional and national economy were catalysts for change, the Comp Plan was the City's best opportunity to coordinate the overall pattern of physical development that affected the community and its priorities and goals. Comp Plan V (not yet approved) stated that the purpose of planning was to establish a sound basis for decisions. The Plan provided information and analysis, gave policy makers a factual basis for land use decisions and supported consistency of government action and limited the potential for arbitrary decisions. A comprehensive plan was not designed to prevent change but to serve as a means to control and direct the community's continuing evolution. Within the guidelines established by the Comp Plan elected officials had to make decisions for specific circumstances that would arise. As the needs and wants of the community evolve, the Comp Plan itself and land use prescriptions may need to be updated, but such changes should not be taken lightly since the Plan reflected the consensus derived from a lengthy process. Mr. Stozek said the reason he brought this up was that he attended most Council meetings and routinely saw amendments to the Comp Plan being made to approve projects within the City. In the last six months, four out of five development projects that came before Council required amendments to be approved. If 80% of what was being approved was outside the Comprehensive Plan, he would argue that the City did not have a Comprehensive Plan.

John Morgan, District 1, agreed with the previous three speakers. There would be a discussion on the topic of recusals at the August 23, 2016 Boards and Commissions Review Committee meeting. He believed if the taxpayers of the City were going to be financially responsible for the construction of a parking garage, that they had the right to know the financial information. He requested that Council give direction to staff to make those proposals available in their entirety to the public as soon as possible. If some companies insisted on maintaining confidentiality of their own financial information, Dr. Morgan did not think the City should be considering their proposals.

Helga Huntley, District 1, was disturbed that Council voted against Ms. Wallace's nominee for the Planning Commission. After listening to the recording of the discussion to learn what persuaded the majority of Council that Dr. Clarke-Sather was unqualified to serve, she was left confused. The only member of Council who stated a clear reason during the meeting was Ms. Hadden who stated concerns about the nominee's connection to UD and his lack of proper expertise. She pointed out that Ms. Hadden's nominee of a year ago, Dr. Firestone, had the same connection to UD as Dr. Clarke-Sather and had even less formal training in planning and land use. In her statement in support of Dr. Firestone's appointment last October, Ms. Hadden stated she was looking for someone with an analytical mind as well and felt that his background especially with his legal, environmental and natural resources expertise made him an excellent fit for the Planning Commission. Ms. Huntley said almost the same statement could be applied to Dr. Clarke-Sather. She believed Mr. Markham voiced concerns that Dr. Clarke-Sather would be biased in any STAR campus projects because of his vocal opposition to the TDC project a few years ago. By that standard, anyone who ever voiced an opinion on a development project would be disqualified to serve, including current and past members of the Planning Commission. Mr. Ruckle seemed to be concerned that Dr. Clarke-Sather previously conducted scientific research on real estate issues and was willing to share his findings in a legal hearing. In an interview with the *Newark Post*, Mr. Markham stated Dr. Clarke-Sather failed to convince him that he took potential conflicts of interest seriously. She questioned why a nominee from District 3 was singled out for extra scrutiny. Maybe there were legitimate reasons, but it looked discriminatory. Since the Planning Commission played such an important role in development projects in the City which were frequently contentious, she thought the public deserved an explanation as to why a well-educated, committed volunteer was turned down and what standards any potential new candidate would have to meet to gain Council approval.

5. 2-C. **UNIVERSITY**  
(1) Administration

**32:20**

Rick Deadwyler made the following announcements:

- A representative from the real estate office planned to attend a future Council meeting to provide an update of his new role and plans for the leadership of the real estate office.
- Saturday, August 27 was move-in day for students.
- 1743 Welcome Days (programs and events for students) started Saturday afternoon, August 27.
- Monday, August 29 from 7-9 p.m. was the candlelight ceremony.
- UD/Delaware State football game was scheduled at 7 p.m. September 1.

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

7. 2-D. **LOBBYIST:** None

8. 2-E. **CITY MANAGER:**

**34:55**

Ms. Houck thanked Nic DeCaire, Fusion Fitness and Bill Sullivan from the Courtyard Marriott for their support in the annual Battle of the Bars event raising funds for NPD's K-9 officers. Greene Turtle was awarded the Paco Cup. She also noted trail markings were put in place. She thanked Mr. Coleman for his work in achieving the "Safe Route to Schools" grant that would impact the area around Downes Elementary School and help provide a safer way for children to and from school.

9. 2-F. **COUNCIL MEMBERS:**

**36:10**

**Ms. Sierer**

- Kudos to all for their work on the Battle of the Bars
- Congratulations to Ms. Bensley for achieving the designation of Certified Municipal Clerk from the International Institute of Municipal Clerks.

**Mr. Markham**

- Thanked the *Newark Post* for their article on the Cleveland Avenue Task Force. The trails idea was discussed as well but was not part of the Cleveland Avenue project. It would probably come from Parks and Recreation in the future.
- Trucks stopping on Cleveland Avenue for deliveries was an issue people were upset about. They were being fined, but it did not seem to have much impact. Discussions on other way to discourage this would continue.
- He asked that Council begin thinking about prepping the State reps for the City to request their support to do something with the Chapel Street CSX bridge which would make a major difference to traffic flow in that area. The other major CSX bridge on Casho Mill Road would be a whole different animal when it comes to trying to fix it.
- August was the month where finances needed to be revisited to determine if there were any issues and whether any steps had to be taken. Ms. Houck replied it did not to be revisited and there was a notation in the weekly report last week. Mr. Markham stated that he saw the one about property tax but nothing about finances as a whole.

**Mr. Wallace**

- She thanked the public for coming out tonight and for attending the Cleveland Avenue Task Force meeting and all of the other boards, commissions and committee meetings and workshops which were important, she appreciated it and was listening.
- Her coffee/community meeting would be August 27 at Café 67 in Newark Shopping Center from 10:00-11:30 a.m.

**Mr. Chapman:** None.

**Ms. Hadden:**

- Congratulated Ms. Bensley on attaining her CMC designation.
- Thanked the Parks & Recreation Department for compiling memory books for Safe Kids Camp and Camp REAL and encouraged continuing with the City's goal of community involvement and participation in these and other programs.
- Next Meet & Greet was at Pat's Pizza on South Main Street on September 1 from 5:00-6:00 p.m.
- Encouraged staff to designate September 11, 2016 as a Flag Day to commemorate the 15<sup>th</sup> anniversary of the terrorist attacks on the country. She asked that two flags be displayed in front of City Hall commencing September 11 for one week to memorialize the two Delawareans who lost their lives in the attacks, Robert Fangman and Matthew Flocco. She also requested that a proclamation be drawn up to recognize the occasion. Council members supported this measure.

**Mr. Morehead:**

- Reported he attended the K-9 event and appreciated the community's support of the K-9 team.
- The City's Electric Department had difficulty navigating the bridge at Chapel Street as well.

**Mr. Ruckle**

- Attended the opening of Perfect Blend coffee and waffle shop on Main Street.
- Would be attending the Delaware State and UD football game as he loves that rivalry.
- Requested staff to put together a community meeting for Yorkshire for discussions regarding the demolition of the Red Roof Inn. Mayor Sierer reported she received inquiries as well.
- Needed an update on the double left as neighbors were asking for a completion date. Also asked Mr. Coleman what was happening about cutting trees down on the land near Porter Chevrolet which they were donating back to the City.

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

**11. 4. APPOINTMENT TO BOARDS, COMMITTEES AND COMMISSIONS**

- A.** Appointment of Matthew Van Rensler to the Board of Building, Fire, Property Maintenance and Sidewalk Appeals For a Five-Year At-Large Term to Expire August 31, 2021.

**47:46**

Ms. Sierer said this new board resulted from the recommendation of the Boards & Commissions Review Commission to combine some of the boards that do not meet very frequently. Volunteers were needed for the five permanent positions and two alternate positions, and Mr. Van Rensler was the first appointee.

There was no public comment.

MOTION BY MS. SIERER, SECONDED BY MR. MOREHEAD: TO APPOINT MATTHEW VAN RENSLER TO THE BOARD OF BUILDING, FIRE, PROPERTY MAINTENANCE AND SIDEWALK APPEALS FOR A FIVE-YEAR AT-LARGE TERM TO EXPIRE AUGUST 31, 2021.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

13. 6. **RECOMMENDATIONS ON CONTRACTS & BIDS**  
A. Recommendation to Award Contract No. 16-13, the Rewind and Overhaul of a 3000/3750/4200 KVA Outdoor Type Single Circuit Unit Substation

**50:11**

Sam Sneeringer stated that a transformer blew up during a lightning storm and needed to be replaced. The lowest bid was \$96,331 by Uptegraff, a Pittsburgh company. The cost would all be paid by insurance except for about \$25,000 for the deductible.

Mr. Morehead asked if the City has used Uptegraff before and if the bid included shipping. Mr. Sneeringer stated the City had not used the company before but said everything was covered except the \$25,000 deductible. Mr. Sneeringer said they had high marks and made and rewound transformers.

Mr. Markham asked if references were checked. Mr. Sneeringer assumed references were checked but said they had an extensive line of repairs. Mr. Markham was not aware the City had insurance on transformers for failure.

There was no public comment.

MOTION BY MR. MOREHEAD, SECONDED BY MR. RUCKLE: TO APPROVE THE RECOMMENDATION TO AWARD CONTRACT 16-13 FOR THE REWIND AND OVERHAUL OF A SINGLE CIRCUIT UNIT SUBSTATION TRANSFORMER FROM UPETEGRAFF MANUFACTURING IN THE AMOUNT OF \$96,331.00.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

14. 6-B. **RECOMMENDATION TO WAIVE THE BID PROCESS IN ACCORDANCE WITH CITY CODE FOR THE PURCHASE OF A DRAGON MILLINGS MACHINE BY APPLIQUE TECHNOLOGIES**

**53:49**

Mr. Coleman presented the recommendation for the purchase of a pothole patcher. A number of different units were tried out before settling on this one. The Dragon Millings machine by Applique Technologies would allow us to make hot mix on demand year-round, as opposed to now when during the winter we throw cold patch at it and watch it fly back out the next day.

It was estimated that it would pay for itself over the life of the equipment vs. what the City currently did, and it came in roughly \$30,000 under budget. It was one of the least expensive units demonstrated. The only downside was it was somewhat unique, so if the City bid it out, they would have just gotten them, and the manufacturer sells direct. They would have gotten effectively one, or maybe two. The only other one that was similar cost \$110,000, so it was way out of the City's price range. Thus staff was asking to waive bid for the Dragon Millings machine for \$39,429.17.

Ms. Hadden said under ongoing operational and maintenance costs it said assuming it lasts ten years, this would save \$25,000 in materials over the life of the equipment. She asked the average life of the equipment. Mr. Coleman was using an average for a trailer-mounted piece of equipment. They tended to last longer than trucks because they could park them in a garage when not in use. That was a relatively reasonable expectation for that unit.

Mr. Markham asked if they had considered buying something before or if they just had a lengthy conversation during the budget. Mr. Coleman said a lengthy conversation. Mr. Chapman remembered Mr. Coleman mentioning that he was testing an interesting new product for the market and referred to this.

Mr. Chapman commented that this was a rare scenario where he was not concerned about the costs, especially since it was a quarter of the cost of the other one that was available but one of those things that added to the high quality of life in Newark. When the City could avoid worsening road conditions or improve bad road conditions, he was happy to do so.

Mr. Morehead asked why \$70,000 was budgeted. Mr. Coleman explained the original unit they looked at was a hotbox. They were bigger, they were loaded and heated overnight and staff was not even aware of this when they originally budgeted it. Mr. Morehead asked what happened to the extra money. Ms. Houck replied it would remain in the budget through the end of the year, and then it would be part of the surplus at the end unless there was some other reason to come back for something.

There was no public comment.

MOTION BY MS. SIERER, SECONDED BY MR. MOREHEAD: TO WAIVE THE BID PROCESS IN ACCORDANCE WITH CITY CODE FOR THE PURCHASE OF A DRAGON MILLINGS MACHINE BY APPLIQUE TECHNOLOGIES IN THE AMOUNT OF \$39,429.17.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

**15. 6-C. RECOMMENDATION TO WAIVE THE BID PROCESS IN ACCORDANCE WITH CITY CODE FOR THE PURCHASE OF WATER MAIN CONDITION ASSESSMENT SERVICES**

**58:36**

Mr. Coleman presented the recommendation for the purchase of water main condition assessment services. This was another lengthy discussion during the budget process where some funding was identified in this year's capital project to do an investigation. Originally it was going to be the water lines under Delaware Avenue, Main Street, and Cleveland Avenue. At that time DelDOT anticipated they would be resurfacing one year further out than they are. Since then, DelDOT's schedule accelerated – all the streets were on effectively one year out paving schedule. Staff was able to determine the age of Delaware Avenue was much younger than originally thought. The age of Main Street was actually so old that the condition assessment technology did not apply because the wall thicknesses were much different then. So it was not a very good candidate for it.

Instead they took another look at the system and determined the most failure critical lines, so for this year's project they were intending to do the condition assessments of all of the City's rail and stream crossings that were older than the last couple of years because the City just put one stream crossing in on the White Clay Creek. It would be 11 rail crossings in the City and one stream. In addition to that they were going out into the Oaklands and Nottingham Manor to do some representative streets. They had some discoloration issues out there – open a fire hydrant or have a disservice in the system, usually that was indicative of the pipe needing to be either replaced or relined.

They identified a few streets that were of a representative age of the neighborhood and were going to test those streets and then tell from that data whether or not they should be cleaned and relined or replaced. Most of the streets were repaved so that was another reason they wanted to look at possibly relining there as opposed to replacing. This contract was with Echologics as they were one of only a handful of companies that would do condition assessment services. Pure Technologies was one of the others and then they could do external where they actually had to dig down and investigate the outside of the main. Pure Technologies was exponentially more expensive, and they did not have the remaining life technology that Echologics had. Echologics recently did a pilot in New Castle for the Municipal Services Commission. MSC was very happy with their product, and recommended them to the City.

Mr. Morehead asked if this technology in the extreme short term while they were running the equipment would cause the discoloration. Mr. Coleman said it did not. It was all external, they hook up the valves. It was similar to the way they detect for leaks. It was an acoustic technology. They flip two sensors and then make a sound outside the bracket and they can tell by the speed of the sound through the pipe based on the material and the wall thickness how much wall thickness was left. It was pretty unique. They would be in and out of the City in a couple of days and nobody would know they were there.

Ms. Hadden asked what the difference was in purchasing the water main condition assessment services versus the City purchasing the electric acoustic equipment. Mr. Coleman said they sold the leak detection software but it was a technology they kept proprietary for the expected life. The City had similar leak detection equipment where they put on them on the sensors and they could tell acoustically whether

or not there was a leak, but they did not have the ability to tell the remaining wall thickness. That was all patented technology.

There was no public comment.

MOTION BY MS. WALLACE, SECONDED BY MS. HADDEN: TO WAIVE THE BID PROCESS IN ACCORDANCE WITH CITY CODE FOR THE PURCHASE OF WATER MAIN CONDITION ASSESSMENT SERVICES FROM ECHOLOGICS IN THE AMOUNT OF \$69,129.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

**16. 1-C. MUNICIPAL BROADBAND RECOMMENDATION PRESENTATION – CTC TECHNOLOGIES**

**01:03:23**

Andrew Afflerbach, CEO and Director of Engineering with CTC, reviewed a PowerPoint presentation outlining the outcome of the feasibility study of municipal broadband within the City.

To recap the process started with a public workshop that included about 50 people who had time to talk about their needs and interests as far as broadband. Various possibilities for the City of Newark were discussed and Council decided to pursue this as part of this project.

The project included technical field surveys, a stakeholder analysis which included meetings with City staff, University of Delaware, the town hall session, a survey that went out with the utility bills and an informal outreach to the business community. In the report candidate technical approaches and network designs were discussed, and cost estimates of financial models were provided.

The possibilities that Council asked CTC to look at were first of all a citywide fiber to the premises network. That was fiber to every home in the city. The other was looking at more of a middle-mile backbone fiber network augmenting the fiber network that the City had in place right now and also augmenting the existing wireless infrastructure which had several potential benefits, including expanded public Wi-Fi to places like parks and in the Main Street corridor and also potentially expanding Wi-Fi for use by City government for its wireless needs. Also potentially, when they went about building fiber like that, there were excess fiber strands in place that had a multitude of potential uses including potential lease to the public.

After all that analysis the recommendations that came back that seem to be most favorable to the City would be the option of pursuing the middle-mile fiber network and the Wi-Fi expansion. In order to better enable that and make it more cost effective, substantial fiber optics were in place with the University of Delaware and the Delaware Department of Transportation that could get a head start on that project. Mr. Afflerbach said they recommended against fiber to the premises deployment, and he would go into more detail about that.

First discussions were started with the stakeholders. The City had the interest he mentioned in terms of improving broadband to the public, both to the premises and in public spaces. University of Delaware provided some input. They at the time of the discussions were somewhat in a holding pattern on their fiber and broadband projects but expressed the importance of students as a stakeholder given the number of the students and the important role of all the University on and off campus. University of Delaware provided broadband services to the students living in the dormitories and was looking for ways to do that with off campus students and was also interested in a more seamless approach to the off campus office locations relative to the service they had to the office locations and classroom locations that were on campus.

DeIDOT had four miles of fiber in place and three and a half miles planned in the City. The ITS Director of DeIDOT was somebody CTC dealt with quite regularly on their projects and was very interested in collaboration with the City both on this and any other potential projects.

As far as the business community and residents, there was a written survey that was distributed. This was a backup approach pursued after the University withdrew from the project where they were going to conduct the residential survey. CTC provided the formatted questions and those were circulated with the utility bills, and the responses came in. Mr. Afflerbach emphasized that as a survey method it was not a statistically scientific survey method but was self-selected to a large extent going to utility bills, but the information gathered could be a basis for a follow up at a later date with a scientific method.

CTC also approached the ten largest businesses in the City that were identified. A couple of them who responded indicated they thought it was a good idea that the City was looking at this, that this was an interesting approach but indicated it would have been better a couple years ago because they were quite satisfied with their current service but to keep them posted. The bottom line was no firm orders or demand right now.

The fiber to the premises was one of the main things that CTC was charged with looking at, in other words, the City building out a fiber network to the home similar to what Verizon FIOS constructed. A field survey was done of a representative area. There were varying density areas in the City and one thing of note was the low density areas. That ended up driving the cost of construction really high. It was his experience, having gone through a lot of these items of being a key determining factor in the cost of building out infrastructure. The green was a backbone fiber and the dash was a local distribution to the premises fiber. The construction cost was \$26 million, and that came down to \$2,600 per premises.

As far as the Wi-Fi network, the approach CTC looked at was to focus on the Main Street corridor due to the large concentration of commercial and leisure activity in the area and expand the Wi-Fi there so it ran faster and better and also look at providing a best effort outdoor Wi-Fi coverage for the majority of the City. He said that was easier than it sounded since they were looking at fiber because the City had fiber and were looking at Wi-Fi because the City had widely deployed Wi-Fi to read utility meters. They were talking about how they turned the Wi-Fi system up to the next level from being a very low speed to something that was broadband. That would require expansion of fiber and Wi-Fi.

Mr. Afflerbach referred to visuals of the public parks and Main Street. There were 219 access points that could be seen hanging off the light poles. What was necessary was to provide more connectivity to those APs, by building more fiber to get them running faster. In the Main Street corridor more APs would have to go up. The fiber would have to be expanded quite a bit, essentially 30 miles. For context, it was 170 miles to build the whole City. Five miles of those was the DeIDOT fiber, give or take, and this would basically do the trick. Once built there was not much additional cost to connect to a number of key UD locations that were not on fiber at this point and also to connect the ten largest businesses. Those were itemized separately.

The cost of the wireless infrastructure was about \$200,000 for the additional access points and the various pieces of equipment needed to set those up. Most of the cost of the fiber was the \$3 million to build out to connect the wireless points, and then it was an additional few percent to connect the University sites and very little to connect those corporate sites.

One thing that was quite interesting about this was that having built that backbone, a lot of progress was made toward a lot of possibilities. One thing that came up a lot, just from what he saw in government was Smart City communications taking this where it was not just the fiber for the free Wi-Fi but this would also make it possible to do more connectivity to things like cameras, parking meters, sensors, all sorts of different things that cities were going along with that were at the infancy stage right now. Having this kind of backbone in place would not only take care of current needs but would also situate the City so that five or ten years down the road, rather than starting from scratch with a private provider, Newark would be able to run its own show. The City of Atlanta was going that approach right now. They were taking a backbone and going out looking for public-private partners for Smart grid.

In finishing up the financial analysis, CTC recommended against fiber to the home. Even if Newark entered into a partnership similar to Westminster, Maryland, which was discussed at the public broadband meeting, that would still incur approximately a \$2.5 million per year cost in addition to user fees and in addition to what the partners would pay. That was a large deficit.

By comparison the middle-mile Wi-Fi would depend on how the approach was financed, but an approach of \$3.4 million from bond proceeds and \$1 million from an internal loan (cash paying into it), that cost would come to approximately \$670,000 annually to cover that. This took into account equipment replacement and everything needed to maintain this on a long-term basis.

In conclusion, it was not surprising that the fiber to the premises was a very costly, risky approach that CTC would not recommend the City got into at this point, but they saw a number of lower risk approaches including a fiber backbone and a limited wireless build out that could set the stage for not just public Wi-Fi in those areas but future Smart City applications.

Ms. Hadden asked what the return on investment would be if the City did the middle-mile fiber and Wi-Fi. Mr. Afflerbach said that was a difficult think because the Wi-Fi was a free service so there would not be a lot of revenue coming in from that and also talking to the business community, there may be

people who come forward who said keep them posted, but that was very different from a firm order and he would not count on that. It would have to be looked at in terms of a quality of life benefit. This was not the only backbone/Wi-Fi scenario that existed, there were ways to do a much more modest approach and then that number became a lot smaller.

Ms. Sierer asked Mr. Brechbuehl what staff was looking for from Council tonight. Mr. Brechbuehl said staff was looking for general direction as to which way Council would like to go. This was brought to Council by the residents of Newark, and City staff went into this with open eyes and ears looking at what they considered to be all opportunities or options for this project.

Mr. Chapman did not want to put any more money into this.

Ms. Wallace agreed she was not in favor of pursuing either option. She did not see the benefit to the City in relation to the annual cost with no guaranteed revenue. She did not think it was a good fit.

Mr. Morehead raised a number of technical questions about the report:

- Page 41 there was a map of the current access points in the current wireless system that were fiber connected. He referenced the one fairly far south, the one fairly far east, the couple right up against the northern border and the one all the way down Elkton Road on the southwest and asked if that was all connected. Mr. Afflerbach said that was his understanding.

- Page 42, footnote #18 related directly back to Main Street and said it would be a free best effort service that would generally provide strong outdoor coverage but would not reliably provide indoor signal strength on Main Street. Mr. Afflerbach said that was correct. Mr. Morehead said despite \$3.1 million and \$700,000 maintenance a year, once someone stepped inside a restaurant or store, the wireless coverage was gone. Mr. Afflerbach said it was not guaranteed by any means and this was one direction CTC was given, so the emphasis was not to build all these places because that would be a reasonable approach to look at this and say maybe the Main Street businesses would throw in money. They could have an approach where the City could have more APs, the power could be turned up and he would recommend (because Wi-Fi being Wi-Fi), they would then also work with the business owners or whoever else to have an internal type approach as well and that way there was coverage indoors and outdoors.

Mr. Morehead asked for Mr. Afflerbach's professional opinion that for \$3.1 million and \$700,000 in yearly maintenance they would not be inside the buildings, they would be outside on the sidewalk. Mr. Afflerbach said not with this approach but there were a lot of ways to slice and dice this if you wanted indoor coverage.

- Page 44 – A lengthy discussion ensued between Mr. Morehead and Mr. Afflerbach regarding technical details. Mr. Morehead assumed that was where the access point was connected directly to the fiber. Mr. Afflerbach said correct, those maps were the points talked about earlier and were operating between 50 and 60 megabits per second. It cascaded down from there. Mr. Morehead said they talked about making those one gigabyte per second. Mr. Afflerbach said not really a gig but probably in the few hundred meg range. They would bring the fiber to it, there would be a gig, but then what would be going out there in terms of what they would be able to pick up would be in the hundreds range. Mr. Morehead so they would have to bring new fiber to get the gig. Mr. Afflerbach said that was exactly it. The existing fiber was great but only went to certain places. Mr. Morehead said they already figured that those were attached to fiber, Mr. Afflerbach said correct. Mr. Morehead said but Mr. Afflerbach was saying fiber could not go above 50 MB. Mr. Afflerbach said the fiber could go as fast as they wanted it to. The issue with this was they were trying to reduce the number of hops. Mr. Morehead was asking about the first one that was connected to the fiber right there – there were no hops involved, right. Mr. Afflerbach said then it was the (inaudible) effect.

Mr. Morehead noticed on the map that they went out West Main Street about a half to three quarters of a mile – he was surprised they were trying to take the wireless out that far. That would be the first place he would look for ways to trim the system.

Mr. Morehead noted there was no discussion of the STAR Campus in the documentation. He thought unless they expected UD to do all of that themselves, he would have expected a comment in the report. Mr. Afflerbach said it came up at one of the meetings – that was an area of interest, but it was not one that they persisted with in the report.

Mr. Morehead asked if it was surprising the business community did not embrace this opportunity. Mr. Afflerbach said there was a lot of clustering of the businesses relatively close to rail and

main corridors, and a number of providers had already built fiber in those areas, so it was not particularly surprising. Companies like that tend to have a standardized approach and lock in with a contract.

Mr. Morehead said he joined some of the comments already made by other Council members that given the fact that there was no demand as stated in the report on page 52, he could not see a reason to expand the fiber beyond the City's immediate needs for its own services. He believed the SCADA system was essential for reliable services for the City's distant operations such as the water tower and electrical substations and therefore supported fiber for that purpose.

Ms. Hadden said at this point in time because the University was in a holding pattern with the new administration coming in and because DeIDOT may be interested in this in the future, perhaps it could be revisited at a later date. She agreed to pursue this at this time was not feasible.

Mr. Ruckle noted the City was trying to find alternatives to help with the parking and identify open parking spaces. He asked what was needed technology-wise at a bare minimum to be able to read sensors saying how many parking spots were open. Mr. Afflerbach said it partly depended on how clustered the parking was – looking Citywide, there probably was enough bandwidth on the Wi-Fi to go with just the parking. This would not include things like cameras, but with some sort of sensor that goes with, for example, a parking meter that said it could see a car was there or not there, they would be able to get away with it. If it was an approach that required a camera (some of them did) and video monitoring, more bandwidth may be needed and it was a question of how to target capacity to those particular areas. In some cases, the cellular route might be the way to go. A trade-off analysis would be done, did they want to build or did they want to lease. With the cellular route, the lease was the way to go. Mr. Afflerbach said that could be done extremely cost effectively (couple hundred thousand range) since there was already a lot of fiber in that area. Mr. Ruckle said a lot of folks had requested this and maybe the City should look into that minimum option to help with parking and have some forms of communication down Main Street.

Mr. Markham felt it was unfortunate that the cost was so high – there was a lot more competition in the City now. He felt the money was way too high for what they would get for what they were providing. The City was not flush with lots of funds to do public service items. Ms. Sierer agreed with Mr. Markham.

The Chair opened the discussion to the public.

John Morgan, District 1, said when he heard the figure \$700,000 for the annual maintenance cost he was reminded that was almost equal to the amount being talked about for a stormwater utility. He thought everyone would agree that addressing stormwater issues was a much higher immediate priority. He endorsed the concept of using the City's existing fiber network or expanding it a little for helping out-of-town visitors find available parking spaces. He thought that made a lot of sense. He thought for the parking lots, sensors were not needed in all of those. The City must have at least 600 parking spaces in parking lots and all that was needed for those was something on the outside that tells customers whether the lot was full that would direct drivers towards parking lots which had vacancies. When people are a ten minute drive away they wanted them to know there was available parking in Newark and not have them driving down Main Street looking at a smartphone trying to figure out where a parking space was.

Len Schwartz, District 3, spoke about this subject for over two years. He found the report from CTC surprising because one important aspect was ignored by the report. Various Council members said the City could not spend money of this magnitude. The CTC report showed no source of revenue. There was obvious source of revenue. It was to provide Internet access to the citizens of Newark at lower than market rates. It was entirely possible to pursue the middle-mile solution. The City would connect all the access points with fiber. At that point they went wireless, and it was possible to go wireless to all or almost all of the residences in town. Wireless did not mean free. He was sure the citizens of Newark would rather pay \$40/month for high speed Internet in their homes rather than pay Verizon or Comcast something like \$100/month. He believed not only could that be done but there would be money left over and the City could make a profit on it exactly the same way the City makes a profit on selling electricity. He found Mr. Afflerbach's comment that this would only provide group Wi-Fi out in the street surprising. All they had to do was have a very small antenna attached to the outside of a residence and this would be wired into the router within the residence and provide perfectly good reception. Mr. Schwartz reported on a Wall Street Journal article where Google was pursuing the last 500 feet using wireless because it was cheaper than running fiber to the premises. He believed that was a future here. If they believed what Mr. Afflerbach said, it did not make any sense – why should the City spend \$1 million a year without an obvious return. He did not think this should be a closed subject because he believed the technology existed.

Jeff Lawrence, District 3, agreed with some of Council's comments that this should not be pursued and was upset about the \$70,000 expenditure for the report especially considering Mr. Afflerbach's

statement that this was not a viable option. Mr. Lawrence was at the community meeting when this was presented and did not get the sense that was the feeling then. He wondered how many Council members would have voted to spend \$70,000 for a study when the people conducting it had a strong feeling that it would come back unfavorably. He suggested trying to be a little smarter moving forward.

Mr. Morehead responded to Mr. Lawrence that he brought forward the fact that at that town hall meeting Mr. Afflerbach said that it was unlikely this was a viable option. This man was recognized as one of the experts in the field, and he thought the City had gotten their money's worth and if that was what it took to prevent the City from spending \$30 million, he thought that was a good investment.

Helga Huntley, District 1, referred to Table 11 (Estimated Cost for Middle-Mile and Lateral Fiber Construction, page 51). She could not follow how the numbers were added up – in the Cost Component column there were two entries for \$1.9 million, Standalone General OSP Construction followed by the General OSP Construction Cost. She did not understand the difference between those two lines. Mr. Afflerbach replied that the Standalone General OSP Construction row should not be in the table, it was a duplicate. The General OSP Construction Cost was a rounding of the Standalone line, so the Standalone line should not be in the table at all and was an error. Mr. Afflerbach confirmed that the other values should all add up. Ms. Huntley remarked that when Mr. Afflerbach discussed the connection to the University, he said they were in a holding pattern. She said they were always in a holding pattern with turnover in the higher administration, but that they were interested in connecting their off-campus students to their on-campus network. Because a lot of the off-campus student housing was surrounding the downtown area, she wondered if it was possible to tap into that interest from the University to be able to leverage that interest to work with them on expanding Wi-Fi that might be accessible to their students and to others in that area.

Mr. Afflerbach thought that was a wise approach. In addition, between their fiber and wireless infrastructure, a lot of the cost and issues were basically management of both those things. If the City could find a way to scale what they were doing as far as both of those things, their log-ins, credentialing and all that sort of thing could be used and pushed out into the neighborhoods.

Mr. Morehead referenced the fiber that was in place now that the City owned or used and asked how many strands. Mr. Afflerbach said there was anywhere from 24 to 96 depending on the location. Mr. Morehead assumed that would not be fully utilized. Mr. Afflerbach responded far from it, there was plenty of excess capacity. Mr. Morehead asked if the City owned, leased or borrowed. Mr. Afflerbach said it was a mixture, but there was quite a bit that was outright City owned.

Mr. Morehead asked if Mr. Afflerbach could remain for the discussion of RFP No. 16-04 – Fiber Installation Services for Connecting City Owned Assets for Information Technology and asked if he was involved as the technical expert in giving advice on this proposal coming before Council. Mr. Afflerbach responded he was not directly involved.

Mr. Chapman asked since Council was probably not going to move forward, if that was clear direction. Ms. Sierer noted that the consensus was not to move any further on this project.

**17. 2-B. ELECTED OFFICIALS WHO REPRESENT CITY OF NEWARK RESIDENTS OR UTILITY CUSTOMERS**

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**1:47:04**

State Representative Paul Baumbach provided the following comments:

- Recognized the City for their role in the Battle of the Bars which was a great fundraiser for the Newark Police Department K-9 program.
- A meet and greet with the public was scheduled for Wednesday, September 7, from 7:30-9:00 a.m. at Caffé Gelato.
- Regarding the proposed development at 1101 and 1107 Barksdale Road, the stormwater in that area was challenging and he felt adding any extra there was an action that could be regrettable. He asked Council to tread carefully. He reported that DeIDOT scoped that out and found the stormwater pipes were not working well, so it was not flowing well. Saw Mill and Barksdale flooded from the big storms three years ago. He believed there had to be a really good reason for a rezoning. Under the comprehensive plan a lot of land was already zoned for some higher densities. He did not know in the earlier review of that project there was something where the limit was 20% and they were 23%. He did not see where there was a specific decision by Council on whether that was acceptable.
- Regarding the proposed annexation of 0 Valley Road and 308, 309, 310 and 311 Mason Drive, he thought there should be an overwhelming reason to increase densities.

18. 6-D. **RECOMMENDATION TO AWARD RFP NO. 16-04 - FIBER INSTALLATION SERVICES FOR CONNECTING CITY OWNED ASSETS FOR INFORMATION TECHNOLOGY**

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**01:51:18**

Mr. Brechbuehl reviewed a PowerPoint presentation for RFP 16-04 for insourcing municipal IT fiber services. There were a couple of mentions from Council this evening about the desire to have some fiber assets in the City to connect some City-related assets, cameras, SCADA network and perhaps parking equipment down the road. He believed it would be addressed in this presentation.

**What is Fiber?** It was a much higher capacity bandwidth, resulting in the ability to carry more data and faster speeds. Unlike metal, it did not conduct electricity, so it was resistant to EMI and RFI disturbances. Unlike, metal it did not corrode. It carried digital signals, unlike copper telephone cable, which was analog and had extremely low attenuation and crosstalk between the fibers so a lot of different networks could be on the same cable.

**Municipal IT Fiber** (not a technical name but used to avoid confusion) was critical for essential City services like police surveillance camera network, water SCADA and electric SCADA in order to connect City buildings and other assets to this network.

This was not available for resident and visitor use at this time. The City was not looking to sell Internet or have residents connect to this network for Internet services. This was a limited network only where it was currently needed, without looking to cover the entire City. This just connected assets that already existed. There was no revenue generation. They were not looking to connect private businesses to this at this point. This was required today. This was something that the City was long overdue for. A lot of cities already implemented fiber cables like this. This was not competing with FIOS and Xfinity.

Mr. Brechbuehl noted this could be leveraged in the future if an initiative were to come in front of City Council to provide some level of broadband internet capabilities for residents. It would not be wasted if they were to go down that road in the future. They would build this in such a way that extra capacity would be built in at minimal extra cost in order to be future proofed against something like that.

Regarding current operations, Mr. Afflerbach mentioned that the City had fiber. Mr. Brechbuehl clarified that the City had a zero dollar lease gifted from Gore. That lease was signed the day before Gore sold that to a company called PEG. PEG was not a local company and the City had very little to no interaction with them. They were reselling that fiber to other businesses. They were in the market to make money. They got in right before the lease was signed. It was good for ten years, and after that time he doubted it would be another zero dollar lease. All City cameras and Electric Department SCADA utilized this existing fiber today. Cameras used a combination of aerial wireless radios and fiber to backhaul the video over that fiber network. Most of the City's Smart utility meter platforms were backhauled via fiber.

Mr. Morehead asked earlier about the points to the north and to the south – that was this network that Mr. Brechbuehl referred to now. There was no opportunity for expansion of this network. What was there today was as far as they could take it. Additional resources could not be added to it, they could not splice off of it and connect other things. As it stood today was what they were allowed to do with it.

He mentioned that due to staffing and vehicle constraints within the IT Department, the support maintenance of all of these connective assets was contracted out to third party vendors. He mentioned this because the City was at the mercy of those third party vendors. For instance, the vendor used today had one truck, and when something breaks and they were already on a site doing something else, they waited until that truck was available to roll out. They did leverage the Electric Department as much as possible, but often they were already assigned to jobs. So when situations occurred within the City, whether it was fiber or whether it was cameras or any other equipment that was aerial, they waited. That was the issue they had in the past. Currently on that Gore PEG line if the fiber did break, PEG was supporting it from a break/fix standpoint only with no additions to it.

Regarding the short run of fiber to the northwest, there was a northwest one that was implemented for the Smart Meter Project, and they did own that line which was a 24 pair line. That was available for use and was taken into account in this design. They currently did not maintain this fiber. It existed as it was today, and if it were to break they would have to hire some third party company to help fix it. They did not do anything proactively with it, it was just aerial.

A point-to-point fiber was also leased to the parking office downtown. The company was FiberTech (now known as Light Tower), and it was relatively expensive. They managed and monitored it, and if it broke, they came out and fixed it. That was something the City put in place so they could put a

redundant data center offsite of this building, so if something happened, all the data would be secured at a second data server.

Mr. Brechbuehl referred to a map of the existing fiber infrastructure. The far left (dark purple) was the City-owned fiber that was part of the 2013 Smart Meter Project, and there was also a little sliver in the middle of downtown. That was installed earlier this year to help with the parking lot automation project. When that was installed, staff thought ahead forward enough to consider any future builds to run through there, so that was a large bulk of cable that could be tapped into from both sides and continue to string across. It would be re-utilized in the proposed plan. The orange gold color was the City leased fiber from Gore (now PEG). That was most of what they had running through downtown, along Delaware Avenue and then along Paper Mill up to the Reservoir and then further north as mentioned earlier.

### ***Current Challenges***

- No extension of the current fiber, the City did not own it. This referred specifically to the PEG fiber. Limited connectivity options due to the ownership of the fiber.
- Inability to respond quickly to service outages, by relying on third party vendors to do that.
- Many of cameras rely on 10 year old, point-to-point radios, which were failing often as of late.
- Foliage impacts seemed to get worse every year because trees were growing more.
- Severe weather impacted them causing connectivity issues.
- Lack of staffing to support the fiber network. Right now it was shared by the team.
- A very high cost for the ongoing contract and maintenance from the third party vendors.

Mr. Morehead asked how staff got up north where the fiber connected APs were. Mr. Brechbuehl reported the last fiber connection was on Paper Mill and those were multiple hops that went up there, and there was one last one up there that was connected that the City did not manage. That was the last one before it went into Gore. Mr. Morehead noted on Mr. Afflerbach's map, there were APs connected to fiber at the extreme edges of the City, and the fiber here did not go anywhere near those areas. He was curious about that difference. Mr. Brechbuehl replied this was not concerned about the wireless infrastructure for Newark; this was where there were City assets beyond the Smart Meter mesh.

Mr. Morehead said Mr. Afflerbach's map showed the AP's directly connected to fiber. Mr. Morehead asked that question specifically, and Mr. Afflerbach answered specifically. Mr. Morehead was asking where the fiber was. Mr. Brechbuehl responded that the fiber went right up Paper Mill Road further than this. Mr. Morehead asked whose fiber it was. Mr. Brechbuehl responded it was PEG's fiber. Mr. Brechbuehl asked why it was not gold. Mr. Brechbuehl said he was not thinking of it from the perspective of connecting all the City's Smart Meter assets to it because that was not something they currently used. They used only what was in the gold sections there.

### ***Planning for the Future***

Currently there were 71 cameras deployed throughout Newark, and 30 additional parking cameras were coming online within the next three years with CIP projects. There were 33 street cameras set to be replaced over the next four years. They had 26 existing street cameras that would be re-purposed to City-owned buildings for a total of a 134 cameras by 2019, and 11 additional cameras were proposed in the 2017 CIP for the Reservoir and Water Plant.

SCADA was the communications platform on which Water and Electric monitored and controlled their devices around the City. That functionality needed to be expanded now. Again, a lot of this was running over the PEG fiber which they may or may not lose access to in the future, so they were looking heavily at putting fiber network at the locations needing the SCADA network in the future.

Proposed connections to City buildings in Phase 1 included the maintenance yard, parking office, water plant, reservoir and electric substations. If approved, later phases would include the George Wilson Center, South Well Field and other locations as necessary.

### ***To Meet Future Needs***

The fiber network must be expanded to connect more City assets. They must increase the network bandwidth. What he meant by that was only having a couple of "pipes" going to different parts of the network. They had a lot of cameras sharing one pipe back, and that was becoming a problem because they were unable to transmit a full HD picture over that one line. With approximately 15 cameras connected to one fiber cable, they got degraded service from those cameras and had to downgrade the quality of them to be able to make them work efficiently. They also must improve City response times to fiber networking camera outages. Again, they currently outsourced camera and fiber network support.

### ***Proposed Fiber Phase 1 (2016)***

Mr. Brechbuehl noted they were ready to go now. What was shown was 26 cameras being connected to the fiber network, City Hall, parking office, 30 parking lot cameras scheduled to be installed this year, a water treatment plant, the reservoir, and four electric substations. They were all pretty much centered in the middle of town as well as on South Main and a few in the center of town.

#### ***Projected Fiber – Phase 2 (Future)***

The next phase was just an idea at this point. This is where he showed the fiber going up Paper Mill to start expansion to other locations as necessary. If they were to do this, an option would be to connect two license plate readers, ten future cameras and 35 Smart Meter wireless nodes.

#### ***Projected Fiber – Phase 3 (Future)***

They could potentially add one additional license plate reader, connect to the George Wilson Center, the South Well Field and 30 additional Smart Meter wireless nodes.

#### ***Projected Fiber – Phase 4 (Future)***

They could add an additional 45 Smart Meter wireless nodes. The idea was that they "could" do this, not suggesting that they need to do this.

#### ***Option 1 – Outsource***

This is what they planned on doing already, and that was why the money was available this year. They were looking at outsourcing all of this work and moving all City assets to a leased fiber line. They would not own any of the fiber assets across the entire City beyond the one to the northwest. They would contract network and camera installation and support to third-party vendors. After ten years they would renew the fiber lease at future rates. The estimated ten year cost was \$1.9 million dollars.

There were some benefits. 1) There was no fiber maintenance costs with guaranteed uptime. 2) Existing staff did not need training or require certifications or anything else. They would put that all back on the vendor. 3) Expansion of network was as simple as making a phone call.

Mr. Brechbuehl referred to the visual for Option 1 which he included because it was complex between Kratos (camera installation), Lighttower (leased fiber), PEG (Gore) and City IT. They would be relying on City Electric for their bucket trucks. In an emergency outage, electricians would have to be pulled off their current jobs and asked to go fix the cameras or network. They have their software provider and their two SCADA providers, ACS and Digital Logic. The recommended option was proposed to simplify and in-house this work to have City IT responsible for maintaining all of this equipment in the field.

#### ***Option 2 - Insource***

This proposal was for lease-to-own City-wide fiber. There would be a private installer via this RFP for the installation. All the City assets would be moved over to the City-owned fiber. The City would own the fiber assets and would hire a staff member to perform network and camera installation and support, something that was currently outsourced. A bucket truck would be purchased for staff use, and used equipment was being considered. The estimated ten year cost was \$1.9 million, a savings of approximately \$65,000. At the end of this, the City would own it all. For ten years, instead of leasing it and then having to re-up on that lease for another \$2 million, the City would own the assets. Those assets could be expanded, cameras could be installed where needed and SCADA systems could be added where needed.

Unlike third-party vendors today, there would be trained staff that could respond to the outages immediately, thereby reducing network and camera outage time. If something broke at 6 a.m. or 2 p.m., they would roll a truck. It was more cost-effective than leasing. Mr. Brechbuehl looked at this as a 20-year plan. In 20 years approximately \$2 million would be spent plus the additional cost of the operating expenses for the next ten years, but they were not spending \$4 million on fiber alone.

#### ***Planned 10-Year Funding Sources***

A lot of this was proposed based on Council's future approval 2017 and beyond, but these were the things either already approved or on the operating expenses list. There were a couple of CIP projects, one for fiber lease implementation that was supposed to happen this year. The parking camera installation was going on. That was paying a third-party company to do the install. The project to rewire the Police facility with new Cat6 ethernet cable was proposed for 2017. Again, that could be done in-house. Then they had street camera replacement that was scheduled for 2017 through 2019 if approved by Council.

There were multiple operation OpEx lines here. Some money was saved by projects coming in under budget. That was the \$135,000 in the middle. A ten year lease fiber contract with Lighttower was approved in the OpEx this year. That was not yet initiated due to holding on for this. They had a few Comcast connections currently being used in lieu of fiber – Lot 3, Parking Office, Water Plant and the Yard.

They also had a big number which was the third-party vendor camera support over the next ten years which was approximately \$720,000. That number would likely go up as cameras were added, but that was the number as it was extrapolated out for 2016. The above sources could be used to fund Option 2 over the same ten year period.

Getting just in to 2016, as currently budgeted they had approximately \$372,000 ready to go to make this project happen. For proposed changes within the existing budget, they would be moving some funds into different areas – instead of spending CIP on City-leased fiber, they would do City lease-to-own fiber. The total cost in 2016 was below what was available to spend on these same resources this year.

Mr. Ruckle asked how a lease-to-own worked with the fiber – what kind of payback was there instead of just buying it upfront. Mr. Brechbuehl said they could do that if Council wanted to go that way and the funds were available. It was not currently budgeted so it would have to be a budget amendment to purchase it outright and have it installed. Staff was looking at something that was a little bit easier to eat over the course of the next ten years which was why they chose to put it back in the OpEx. They chose a ten year lease-to-own option. That could be changed. They knew the cost to deploy immediately. There was also a five year option, but Mr. Brechbuehl felt the ten year option was the best in making things pretty constant for what the City expected to pay this year.

Mr. Morehead commented that Mr. Brechbuehl said they had 15 cameras on one cable and asked if that was on one strand. Mr. Brechbuehl responded yes, they looped. He did not know the technical term for it. The network came into a device, linked to a camera off that and then from there it converted back to fiber and continued to the next one.

Mr. Morehead asked if there was a difference when talking about fiber between the bundle versus the individual. Mr. Afflerbach's company was talking about 288 individuals in a bundle. He asked what the profit terms were for that. Mr. Brechbuehl said he knew the individual glass fiber was a strand and that they bundled them in packs of 12. There were sleeves within that bundle of cable. Mr. Morehead asked how many strands were put in for the short piece downtown. Mr. Brechbuehl responded there were 288.

Mr. Brechbuehl said this would include one additional person in the CWA Union at grade 19 which was comparable to similar positions within Verizon, AT&T and other fiber contractors. They would be looking for an electrical or networking background who would be trained in fiber splicing techniques. They would receive training for a week and be certified in splicing fiber. They would be responsible for installing new and maintaining existing cameras which was outsourced now. They would respond to fiber breaks due to accidents, severe weather or critters. They would be responsible for all ethernet cable installations within City Hall and other locations. This building was recently done with new ethernet a few years ago by a third-party. That would be brought back in-house.

They would also manage the camera server network to ensure end-to-end ownership of the solution and would be responsible for using the aerial lift truck on streets. Mr. Brechbuehl noted that while fiber was set to run in City electric space, this technician would not be working in that space. A loop of fiber would come down the pole at a place like a camera or some other device that would be there, be coiled up, and if that line needed to be serviced, it would be pulled down into a truck, worked on and coiled back up. They were looking at a small truck, not a larger truck (referred to visuals). Option 1 was a truck or a van only. The ideal solution was the truck which was built for fiber splicing. It was a stand up truck which had equipment inside of it and allowed the technician to pull fiber cable into the truck and operate that way.

Option 2 was a stand-alone truck that could be used for multiple jobs as well as a pull-behind trailer. It was dedicated just to the fiber splicing.

The all-in-one truck recommended option for fiber camera installation (a used vehicle) was \$55,000. The technician would be able to stand up, work around and move freely within the vehicle. It also offered more storage for parts and equipment. The all-in-one van was a much cheaper option at \$25,000 (used equipment.) The technician must bend over, move and sit to work, had sufficient storage, and was a cheaper option. The bottom option which might be the perfect combination for the price was the truck and trailer combo. The truck could be used separately. The only issue was that it had a larger footprint so if it needed to work on City streets, it would require multiple spaces to work vs. a single space to work. It made getting out of the traffic lane a lot more difficult and may result in more road closures.

Additional uses for the IT Division – they would have it for camera maintenance installation, would use it for fiber splicing and pole attachment and for network cabling that could be inside or around buildings, installation of cameras around buildings, etc.

Parks and Recreation and Public Works could use it for hanging banners. It could be used for occasional tree-trimming, for traffic signs – if Public Works had the ability to get aerial in the lane of traffic, they could do signs above the roadway as opposed to just along the shoulder. For facilities it could be used for building maintenance, window washing and light bulb replacement in parking lots. Communications could use it for photography and videography at certain events to get an aerial view of what would be going on such as downtown events, for marketing purposes.

Mr. Brechbuehl recommended Option 2 where the City would own and operate its own fiber network throughout Newark. The City would train and equip staff to install new equipment and to service outages. The cost to the city over a ten year period would be about the same as leasing fiber from a vendor. After ten years the City would own the fiber, so the cost to operate the fiber network would decrease substantially. City staff was asking for Council to approve and move forward with the in-sourcing of municipal fiber and requisition the necessary equipment.

Mr. Ruckle asked the shelf-life of fiber. Mr. Brechbuehl replied it was 100 years. Fiber was being used today that was put in during the 50's and 60's. Mr. Ruckle said so leasing it for ten years could mean we would own it outright for 90 years, so it would be okay. Mr. Brechbuehl said there was the ongoing maintenance of storms and things like that, but, the fiber itself would be there for a long time.

Mr. Chapman asked about the cost difference between the ten-year lease-to-own vs. the City financing that in-house. He previously asked Mr. Vitola to make sure that was included in whatever proposal came forward. Mr. Brechbuehl said those were all options. He thought at the time the City was talking about just the lease option, not the lease-to-own when Mr. Chapman asked whether it made sense for the City to lease to own it and whether staff could come back with different funding mechanisms that may be more beneficial than leasing through a third-party company. Mr. Chapman said now he wanted to know, did the City do a calculation to further find efficiencies and skip the lease-to-own altogether. Mr. Brechbuehl replied that he did not. He looked at the interest rate they were charging the City which he believed was 3.15%. That was a good number that he and Mr. Vitola were looking at, and they did not think they could do much better than that on their own. Mr. Chapman noted that rate was not in the presentation. Mr. Brechbuehl said correct. Mr. Chapman stated that changed things for him, he would probably not have even have asked the question, he should have asked what the rate was first. Mr. Brechbuehl clarified the rate was 3.13%.

Mr. Markham thought the project was a good idea. He thought the challenge would be finding and keeping personnel. Mr. Brechbuehl understood it was difficult for the City to compete, but they had good success finding qualified people who came out of the private sector looking for job stability. He felt confident that a few qualified individuals would apply for this job. It was understood that there was potential for high turnover, so funding would be built in for additional training each year. Also, when that person got more training, he thought the team itself would become more trained in how this operated in splicing fiber techniques and things like that, then staff could start to in-house even more and have some redundancy in coverage in that regard.

Mr. Markham pointed out the position was doing more than just fiber – Mr. Brechbuehl listed quite a few other responsibilities. The City could not compete with big companies, so while he supported the idea, he suggested coming up with plans for professionals within IT and maybe Electric that gave people incentive to stay. It was not always the money – it had to be the challenge. A lot of IT people wanted to see what the next thing they could crack was. He wanted Mr. Brechbuehl to think about retention because it was really key to this project.

Ms. Wallace said Mr. Brechbuehl mentioned PEG and that he thought it was unlikely that they would renew that lease for the City. Her first question was had they asked and why was the City doing this now, when they had a lease for another ten years. Mr. Brechbuehl said to her first question yes, they talked to PEG. They never worked with them, and the day after the lease was signed a squirrel chewed through fiber on Delaware Avenue. They got to become very familiar with PEG the next day. They did not know who the City was and that they even had the fiber. They had people working here for an entire day. They did have a conversation with them at that time stating that they were a City government and needed this system up for multiple purposes but at that point in time it was more clearly the surveillance cameras. They were surprised there was a zero dollar lease given to the City by any company. That was why they could not find it on their books. It was not considered a revenue generator. The feeling staff got was that the reason this was done by Gore right before PEG bought it was because PEG was not going to do it again.

Mr. Brechbuehl - The second question was why they were doing it now. They had some issues with the network today. They needed to add additional things to it. They were looking to do parking cameras in some City lots to provide enhanced security there. They had to replace some equipment. They

were going to need to be able to start cutting that fiber, and due to the zero dollar lease with PEG they could not do that with the existing fiber cables that were leased. They needed to pull fiber in order to start branching off and expanding the network. The SCADA network, for example, could not be done with what they had today. It was either just lease or lease to own. They had to do one or the other which was why it was budgeted this year.

Ms. Wallace felt somewhat confused why the work was needed now and why this was not fit into the larger budget presentation. This was a discussion to change something mid-year. She understood there were immediate concerns but they were really close to budget season.

Mr. Brechbuehl replied there was money available to do this. They needed to do something, either lease to lease which had been the plan going into this until it became feasible to do a lease-to-own which was less costly with the ten year window. That was the reason for doing it now.

Mr. Morehead saw a recommendation that Mayor and Council award an RFP to a specific company. He did not see a dollar amount and asked for how much. Ms. Hadden pointed out it stated project cost includes \$75,000 in utility pole and electric make-ready work in year one along with monthly payment for lease-to-own fiber. Mr. Brechbuehl said on page 4 of the recommendation funding for \$92,000 one time in 2016 and then the additional \$49,800 annual cost.

Mr. Chapman stated the RFP in front of Council was a very small portion of the entire project and Option 2 that was proposed. If he understood correctly, Mr. Morehead was thinking that those numbers seemed too low to accomplish what was in the presentation and did not match up with the \$300,000 budgeted for 2016.

Mr. Brechbuehl said they went back and forth about this. There was a light-duty pick-up truck in there as well as a full-time employee. That was included in the full cost but that was not included in the RFP, so they focused strictly on just the fiber installation cost in the RFP. They did mention those additional costs on page 2 of the RFP but that was not part of the RFP to be approved. On page 4 under Funding they were asking for \$75,000 for utility pole and electric make-ready work, \$92,000 (inaudible) and \$49,850 for 2016. Mr. Morehead confirmed all three of those summed plus the person plus the truck, the equipment plus everything else he listed. Mr. Chapman confirmed Mr. Brechbuehl was not asking Council to approve that tonight. Mr. Brechbuehl said correct, he was just asking for the fiber tonight. Mr. Brechbuehl further clarified that he was asking Council to commit to either leasing it for ten years (and not knowing what happens after that) or leasing to own and having a City-owned fiber network after a ten year period. By saying yes to this, Council was saying yes to Option 2. Mr. Brechbuehl also confirmed that was for Phase 1 only.

Mr. Morehead thought the City would have fiber in place with no ability to use it. They would just be leasing it and then own it. Mr. Brechbuehl said they would lease it and would have full rights to add, subtract, multiply and divide it at the end of which they would own whatever they had built. If they got three years in and needed to add an additional camera, they could do that. It would be City fiber to change.

Mr. Ruckle reiterated that for ten years the City would pay a lease rate of 3.13%. Mr. Brechbuehl confirmed that was the correct lease rate.

The Chair opened the discussion to the public.

Jeff Lawrence, District 3, asked if a full-time person was needed to splice wires eight hours every day. Mr. Brechbuehl did not think there was a full-time need for fiber splicing. However, additional work they would be doing was managing and servicing the cameras, doing preventative maintenance on the cameras (not done today), cleaning lenses and domes and verifying there was no water intrusion into the equipment (a problem today), making sure seals were valid, installing additional cameras (something they did not have anybody doing today) and when not busy out in the field or working on the camera server itself, they would be pulling cables within the building, which they contract out or pull Electric Department employees off the trucks to do now. Mr. Brechbuehl said about ten different vendors were doing that work. They talked to them daily about things they were doing somewhere for the City. Additionally, they saw the need for proactive maintenance on this equipment, something not being done today at all.

John Morgan, District 1, asked if the savings was \$100,000 over 10 years or per year. Mr. Brechbuehl replied that was just for 2016. That was currently budgeted and the anticipated expenditure to accomplish what he was asking to do. Dr. Morgan asked if going forward there would be savings of \$100,000 per year. Mr. Brechbuehl said no, over the course of 10 years, the City would save approximately \$65,000 from what was being budgeted this year moving forward. It was not a large savings over the

course of ten years, but at the end of it, the City owned it. Then the cost dropped significantly after that. Dr. Morgan asked if it was really worth it to own this fiber 10 years from now or would it become obsolete. Mr. Brechbuehl thought fiber would be in use for at least the next 50 years as it was still the fastest form of communication.

Helga Huntley, District 1, was confused about the numbers. In looking at 2016 Available Funds and Anticipated Costs (slide 24), she did not understand why the cost of parking cameras dropped to about a third. Mr. Brechbuehl explained the \$65,000 under "As currently budgeted" was the cost for the installation and the equipment. Under "Proposed changes within existing budget", they just factored in the cost of the equipment. Under Network Administrator 1 FTE, the \$90,000 on the third line on the right, took out that installation cost.

Ms. Huntley questioned the line item "Gifted from NPD". Mr. Brechbuehl said the Newark Police Department had a project that went under budget and they saw the value in improving the surveillance camera network, so they offered to provide that OpEx number to use for this project. Ms. Huntley stated it was not really correct to cite that as a cost of how it was currently budgeted. Mr. Brechbuehl replied that \$53,000 was currently available. It was now being used. Ms. Houck added it was funding available. Ms. Huntley thought the \$53,000 should be subtracted from the left side total to see what it would cost to proceed as they were. Mr. Brechbuehl said no, they were just looking at available funds on the left hand side. Ms. Huntley asked if he had an estimate of what it would cost if they were not going to go with the option and just proceed as was originally planned during the budget time last year. Mr. Brechbuehl said over the course of 10 years it ended up being about the same. He did not have those numbers readily available as far as what would be spent this year on leasing and third-party vendors.

Ms. Huntley was confused. She thought that was the comparison that would be the basis for her judgement. She would want to know how much they are asking her to spend vs. how much she would be spending with the other option. Mr. Brechbuehl said in theory, it would be the first three numbers on the left hand side. Ms. Huntley said it would be about \$237,000, so he was asking the City to spend about a \$150,000 more this year.

Mr. Chapman asked why the gifted amount from the NPD would not be included since that line item was to purchase additional cameras. Mr. Brechbuehl said no, that was actually a separate project that they completed this year \$53,000 under budget.

Mr. Morehead pointed out that was a couple hundred thousand dollars in overages tonight that was talked about. Mr. Brechbuehl said correct, it was \$53,000 plus \$82,000. Mr. Morehead added plus Mr. Coleman's \$40,000 plus. Mr. Morehead said they had a lot of extra money in the budget.

Ms. Huntley was confused about the City-leased fiber cost vs. the City lease-to-own fiber cost. She thought they had a zero-dollar lease currently for 10 years that they were one or two years into. She assumed if it was a zero-dollar lease they did not spend money on that. Mr. Brechbuehl explained this was not for that. The intent for 2016 was to lease City-wide fiber to do what staff was asking to do with connecting our cameras. It was always the intention to deploy fiber in some way to connect assets so when they came before Council last year, it got into the budget for this year. That was money they were going to spend on expanding the network as it is, and now instead of doing a lease to not own, they were doing a lease to own option instead. Ms. Huntley said the main difference was that IT would do the maintenance and the installation vs. hiring somebody. Mr. Brechbuehl concurred.

Mr. Chapman said financially speaking, instead of spending \$2 million every 10 years or more, we would spend it once at a much lower maintenance cost to have the fiber that was now installed that was estimated to last for a very long period of time. Mr. Brechbuehl said that was correct. The idea was that the City would pay a certain amount per year for the next ten years for the rights to then own it after which, if they did not expand it at all, assuming everything stayed exactly the same as when this was installed, ten years from now they would own it free and clear and all they had to do was maintain it with a full-time employee and bucket truck.

Mr. Morehead was uncomfortable with the presentation at this point, and there were a number of questions that were not clear. The map of the current system was incomplete, for example. He understood the concept, but would like to have better information to make this kind of a decision. It struck him that this was an opportunistic request because they were talking about fiber anyway that was somewhat poorly prepared. He supported the concept but wanted Mr. Brechbuehl to know the total dollar number and be able to tell Council why. That was the type of information he expected. Mr. Brechbuehl was the specialist in the field and was the expert for the City. He wanted Mr. Brechbuehl to come back and do the presentation a little more carefully.

Mr. Chapman asked if there was any reason timing-wise Council should approve this tonight rather than looking at it again in several weeks. Mr. Brechbuehl replied significantly, no, he would have to go back to the financing company and get a requote, but he did not expect it would change significantly from the 3.13%. Mr. Chapman said presentation-wise, he understood what was being said and was presented, liked it, and his decision to move forward would not change. He did not have an interest in watching the presentation again. If that were to occur, maybe just a one-sheeter.

Mr. Markham asked Mr. Brechbuehl to come back and restate quite clearly "here's the number, this is what it would do" and not go too far out into the future since things ended up being muddled together sometimes. Mr. Chapman said since this was going in the direction of postponing, he was uncomfortable with only going short-term. He asked Mr. Markham if he was referring to projections of funding or did not like the idea of Council looking out at spending money over 10 years to save it for the following 50. Mr. Markham wanted to be shown clearly what was being authorized today and then they had a lot of future possible plans. If Mr. Brechbuehl wanted to talk about after 10 years they started saving money, that was fine, but there were a lot of options, first future options, second future options, something along those lines.

Mr. Brechbuehl said it was an oversight on his part by focusing just on the RFP. He did not include the truck or any additional associated costs necessary to provide the service, and that might be what caused some of the confusion. He said that could be done relatively quickly if not approved tonight.

MOTION BY MS. HADDEN, SECONDED BY MR. RUCKLE: TO POSTPONE TO THE SEPTEMBER 12 COUNCIL MEETING THE RECOMMENDATION TO AWARD RFP NO. 16-04, FIBER INSTALLATION SERVICES FOR CONNECTING CITY-OWNED ASSETS FOR INFORMATION TECHNOLOGY.

MOTION PASSED. VOTE: 6 to 1.

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

Nay – Wallace.

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

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

A. **Bill 16-20** – An Ordinance Annexing and Zoning to RH (Single Family Detached Residential – One Half Acre) a 0.89 Acre Parcel Located at 1 Georgian Circle

**02:48:24**

Ms. Bensley read Bill 16-20 by title only.

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 16-20.

Ms. Feeney Roser presented the annexation and rezoning of the property relocated at 1 Georgian Circle in Christine Manor. The property was adjacent to the City and the applicants were requesting annexation to make sanitary sewer service available to the existing home on the site. The property was approximately 0.89 acres in size and was zoned NC21 in New Castle County. The applicant requested RH zoning which was half-acre residential zoning and comparable to the existing zoning in New Castle County.

The annexation and zoning met the City's adjacent land use plan, which was part of the Comprehensive Development Plan, which called for low density residential uses at the site, and received a positive recommendation from the Planning Commission.

If annexed, because the City did not supply electric service to the existing home, some City services would not be provided, including refuse and leaf collection, as well as snow removal. These limited service agreements were typical for annexations of properties in the area in the past for sewer service, and were acceptable to the applicants. The applicants, Mr. and Mrs. Richard Czerner, lived in Tennessee, and were unable to attend tonight's meeting, but a family representative, Mr. Richard Tither, was present to answer questions.

Mr. Morehead commented this was adjacent to District 1, so it would be added to District 1. He commented that the City was gradually growing in that direction towards the state line. He asked if there was any reason why they would not do this that she could imagine. Ms. Feeney Roser said none, and it would allow for sanitary sewer service as well as septic. Right now, they were using septic and well. It would provide City services out that direction and would also ease police service, so it was a good thing to do. It was done as the septic systems were failing in that area, so eventually we would get them all.

Mr. Morehead asked if it was unlikely that in the future those customers would become electric customers. Ms. Feeney Roser said that was unlikely because they would have to pay Delmarva Power not only the change of service, but future revenues that Delmarva power loses. She understood it was very expensive to do so. Mr. Morehead said they would probably never provide those services, they would not start plowing the roads or doing leaf collection in that area. Ms. Feeney Roser said probably not because electric service was really what funded a lot of those services.

Mr. Markham said there was a suggested condition that they include a stipulation that said no leaf collection, no snow removal, refuse, etc. He asked if the applicant was comfortable with that position. Ms. Feeney Roser said they were well aware of it and indicated no concern to her. Mr. Tither, the family representative, agreed they did not have a problem with it.

Mr. Markham asked how sewer-only customers were measured for billing. Mr. Del Grande was not positive as to how that situation was handled but would look into it. Mr. Markham noted there were meters that could go on the sewer lines and that way there would be an accurate bill.

There were no public comments.

AMENDMENT BY MR. MARKHAM, SECONDED BY MS. HADDEN: TO STIPULATE THAT THE RECORDABLE ANNEXATION AGREEMENT BE APPENDED TO THE PROPERTY DEED THAT WOULD STIPULATE THAT THE CITY'S LEAF COLLECTION, SNOW REMOVAL, AND REFUSE COLLECTION WOULD NOT BE PROVIDED AT THIS TIME AND THAT IF CITY ELECTRIC WAS PROVIDED IT WOULD BE AT THE SOLE EXPENSE OF THE OWNER AND PROVISION OF SERVICES WOULD BE AT THE SOLE DISCRETION OF THE CITY.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

MOTION BY MR. MOREHEAD, SECONDED BY MR. RUCKLE: THAT COUNCIL APPROVE THE ANNEXATION AND THE ZONING TO RH OF THE 0.89 ACRE PARCEL LOCATED AT 1 GEORGIAN CIRCLE AS AMENDED.

Mr. Morehead planned to support this as he believed this would increase property values in the area by minimizing the pollution potential from septic systems going bad.

Mr. Ruckle would support this – with the failing septic systems in the area, he thought any time public water and public sewer could be put in it was a great idea.

Mr. Chapman planned to support this for all the reasons previously stated.

Ms. Wallace would support this for the reasons stated as well.

Mr. Markham would support this because it did not conflict with the purposes of the Newark adjacent area land use recommendations of the Comprehensive Plan IV and because the continuation of single family zoning at this site would not have a negative impact on adjoining properties.

Ms. Hadden would support the annexation because of all the reasons stated by Council.

Ms. Sierer would also support it for the reasons stated by Mr. Markham.

MOTION AS AMENDED PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

**(ORDINANCE NO. 16-25)**

- 21. 9-B. REQUEST OF MAIN STREET MOVIES 5, LLC FOR A SPECIAL USE PERMIT FOR AN INDOOR THEATER WITH THE SALE OF ALCOHOLIC BEVERAGES AT THE PROPERTY LOCATED AT 230 EAST MAIN STREET, UNIT 401**
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**02:58:53**

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: THAT THIS BE THE PUBLIC HEARING FOR THIS SPECIAL USE PERMIT APPLICATION

Ms. Feeney Roser presented the request of Main Street Movies 5 for a Special Use Permit for the sale of alcoholic beverages at their proposed five screen movie theater in the Newark Shopping Center. She noted that City Code was amended to align with State Code allowing the sale of alcoholic beverages in movie theaters as a conditional use in BB and BC zoning districts, thereby requiring a Special Use Permit.

The application for the sale of alcoholic beverages was reviewed by the City operating departments using the evaluation criteria of the Special Use Permit and determined that with State regulations and the newly developed Special Use Permit review and point system protocol of which the applicant was informed and in agreement with and based on the positive response to the Police Department's outreach to the Middletown Police Department where the applicant operates Westtown Movies with alcohol sales, it was recommended that Council approve the Special Use Permit for Main Street Movies 5. The applicant, Mr. Rick Roman was here as was Mr. Mark Arena, a representative of the Newark Shopping Center, to answer any questions.

Ms. Hadden asked how the applicant would keep track of what people were drinking and how this was going to work. Mr. Roman stated they had to follow State regulations which were very restrictive for a movie theater. They were only allowed to sell two drinks, one at a time, and whenever someone wanted a drink, their driver's license was checked and they got a tag on them which signified they already had one drink. He said the reality was nobody bought two drinks at a movie theater. He was the manager of Westtown for the investors and once people got into the theater and the movie started, 98% of them never came back out to the theater.

Ms. Wallace did not think Mr. Roman answered the question about how they would enforce the two drink limit. She asked how the wristband would work. Mr. Roman said when they got the first drink they got the wristband, so if they came back with a wristband they already had one drink. Mr. Morehead asked what kept them from cutting it off. Mr. Roman said nothing would stop them. He said Westtown Movies were the ones that petitioned the state to get the law changed so movie theaters could sell alcohol and that question came up on the Senate floor. The reality was there was nothing to stop someone from cutting their wristband. They did not sell that much anyway and the same person was working the shift, so he felt they could be relied on to identify the customers.

Mr. Chapman asked if Mr. Roman would agree to checking the driver's license every time a drink was sold and recording the customer's name on a list. Mr. Roman said although that was not a requirement, he did not think that would be a problem. However, the real issue was they were competing with all other entertainment forms and just wanted a level playing field. Mr. Chapman thought there were unique concerns probably that could be argued with the movie theater. He asked Mr. Herron if he thought the City was setting itself up for a losing battle if this were to be challenged in requiring the policy to be instituted by the applicant. Mr. Herron did not believe so because Council could place conditions on the grant of a Special Use Permit.

Ms. Wallace knew a condition of the state law required video surveillance in the theater. She asked if there would be signage to that effect or was it on the tickets. She thought a lot of movie patrons would not know about the surveillance and there was an expectation of privacy in a darkened movie theater that people had. She thought it made sense. Mr. Roman said they could post signage to that effect.

Mr. Ruckle asked what type of alcohol would be available. Mr. Roman said they only wanted to serve beer and wine. Under State law, beer was limited to 16 ounces. Mr. Ruckle did not have an issue with the surveillance – any private company could do what they wanted. He felt the theater should cover themselves so they would not be liable if a patron purchased more than the two drink limit. Mr. Roman reported that all the restrictions being implemented by the State were done at their suggestion.

The Chair opened the discussion to the public.

Robyn Harland asked what about the children who came into the theater and the alcohol. Mr. Chapman said there were not many restaurant options where alcohol was not served. He thought it was an individual parent's decision.

John Morgan, District 1, was skeptical about the Zoning Code change to permit the sale of alcohol in movie theaters. He noted that the Newark Police Department contacted the Middletown Police Department to ask whether there had been any problems. He pointed out that the population in Middletown and Newark were very different with 16,000 undergraduates. In response to Dr. Morgan's

question, Ms. Feeney Roser said the Police Department did not contact other university towns about their experience because they were more interested in hearing from a jurisdiction that had the same operator doing business in their community. Based on his concerns about the student population, Dr. Morgan suggested a limit of one drink per patron as a condition for the Special Use Permit, and that drink should be purchased before the patron enters the theater itself.

Jean White, District 1, looked forward to again having a movie theater in town. However, she did not think Newark should allow alcohol to be sold and consumed while watching a movie. She spoke against the City changing its Code at the March 1 Planning Commission meeting and at the April 25 Council meeting. She felt all patrons should feel comfortable going to the theater. Some religions did not allow or approve drinking of alcohol, and their members might not want to be sitting next to or near others drinking alcohol while watching a movie or exposing their families to such. Others may not want their children or teenagers to be in an environment where others were drinking alcohol, especially if the teenagers went by themselves. She added that the change of the State Code did not necessitate the City of Newark to change its Code.

Ms. White asked the applicant what time the applicant planned to start selling alcohol. Mr. Roman replied at their other theater they started at noon. Ms. White asked Council to seriously consider adding a condition to the Special Use Permit that alcohol only be sold after 6:30 p.m. so those with families could come in the afternoon and not be surrounded by people having drinks. She was also concerned about the possibility of alcohol being passed to minors in a darkened theater. She supported Dr. Morgan's suggestion of a one drink limit.

Ms. Wallace planned on supporting the Special Use Permit. She understood how the enforcement worked. She did not see this being different than going to a restaurant or the bowling alley and thought it would be unfair to a business owner to limit the use based on the particular type of entertainment. Her concern was that people may not understand that they were under surveillance when they had an expectation of privacy in the dark. She thought it would be a courtesy to patrons to let them know that it was State law. She would like to add a condition to the Special Use Permit that there be signage about the video surveillance.

Mr. Ruckle felt if the surveillance was required in every movie theater, there did not have to be signage. He felt they kept making Newark different than other place by putting on special requirements that would stop people from coming to the City. Patrons might be alarmed about being videotaped and not realize that every movie theater was doing this. It was pointing out the obvious. He said it was up to the applicant if they wanted to do it, but he did not want to put that on the Special Use Permit.

Mr. Roman preferred that they have the same rules as all of the other theaters in the area. Any restrictions put on them that made it harder to compete was not good for Main Street Movies 5. He added that they were looking forward to bringing 200,000 to 250,000 people downtown. If Council required signage about the surveillance, he preferred doing it with an overall sign rather than trying to put it on the tickets. They had rules posted so it would just be added to the rules.

Mr. Morehead asked Mr. Roman about his comment that he went to the state to get this law changed. Mr. Roman responded that in 2014 there was no law in Delaware that would allow movie theaters to have liquor. Mr. Morehead asked if Mr. Roman would come back to Council when his competition started selling mixed drinks for permission to be able to sell them as well. Mr. Roman assumed the Special Use Permit let them sell whatever alcohol they wanted although they currently planned to sell beer and wine only. Mr. Roman explained that they did not have a bar or seating. There was a place for patrons to walk up to buy a drink and go into the movie. Mr. Roman would like to have the option in the future if that made sense. They currently sold mixed drinks in a can and were looking at continuing to sell those products.

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: THAT THE SPECIAL USE PERMIT BE APPROVED FOR THE SALE OF ALCOHOLIC BEVERAGES FOR MAIN STREET MOVIES 5 INDOOR THEATER AT 401 NEWARK SHOPPING CENTER.

AMENDMENT BY MS. WALLACE, SECONDED BY MS. HADDEN: TO MAKE IT A CONDITION OF THE SPECIAL USE PERMIT THAT SIGNAGE BE POSTED IN THE LOBBY SAYING "STATE LAW, PREMISES UNDER VIDEO SURVEILLANCE."

In response to several comments by Council members, Ms. Bensley pointed out that there was a motion and a second and there should be a vote at this point. There could be discussion on the

amendment at this time, and then there would be a vote on the amendment itself. After that, there could be further discussion on the amended motion, and then a final vote on the amended motion as a whole.

AMENDMENT PASSED. VOTE: 5 to 2.

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

AMENDMENT BY MR. MOREHEAD: THAT AS PART OF THE SPECIAL USE PERMIT THE SALE OF ALCOHOL BE LIMITED TO ONE DRINK PER PATRON, AND THE OWNER IMPLEMENTS A PLAN TO ENFORCE THAT.

AMENDMENT FAILED FOR LACK OF A SECOND.

Question on the amended motion was called.

Mr. Markham would vote for this because it did not conflict with the land use guidelines of Comprehensive Development Plan IV or V, because the proposed use was compatible with the Zoning Code Special Use Permit criteria and because the relevant City departments had no objection to it.

Ms. Hadden would also support this for all the reasons stated by Mr. Markham.

Mr. Morehead believed this had the opportunity of adversely affecting the health or safety of persons residing or working within the City of Newark boundaries and had the potential to be detrimental to the public welfare, so he would not be supporting this.

Mr. Ruckle would support the Special Use Permit. He thought it would bring a new clientele of folks to Newark just like the Brazilian steakhouse and more adult entertainment.

Mr. Chapman would support the Special Use Permit for reasons stated by Mr. Markham.

Ms. Wallace would support the Special Use Permit for the reasons stated by Mr. Markham

Ms. Sierer would vote yes on this for the reasons stated by Mr. Markham.

MOTION AS AMENDED PASSED. VOTE: 6 to 1.

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

**22. 8-B. BILL 16-21 – AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN BY CHANGING THE DESIGNATION OF PROPERTY LOCATED AT 1101 AND 1107 BARKSDALE ROAD (SEE 8-C AND 9-A)**

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**03:33:18**

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

Ms. Bensley read Bill 16-21 by title only.

MOTION BY MS. HADDEN, SECONDED BY MR. MOREHEAD: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 16-21.

Alan Hill, Hillcrest Associates, introduced property owner Dan Kandra, Rick Longo, the owner of Hillcrest and Tom Schreyer, landscape architect and planner of Hillcrest Associates. Mr. Hill referred to visuals that showed the two existing parcels of 1.4 acres located east of the intersection of Barksdale Road and Casho Mill Road. The site was located right across the street from the Norma B. Handloff Park, south was the Cherry Hill Manor subdivision and to the west was the Casho Mill Station subdivision. Leroy C. Hill Park and ball field was nearby.

The existing buildings on the site were two homes and a large outbuilding. They had current rental permits, but the structures were in need of repair and were unoccupied. Fencing extended around the property and there was a six-foot high wooden privacy fence separating from the Casho Mill Station subdivision and to the rear of the property was a six-foot high chain link fence covered with vegetation. Along the single-family home property line there was a four-foot high chain link fence.

In the Comprehensive Plan IV, the site was low density residential with one to three dwelling units per acre. The applicant was proposing a Comp Plan amendment which was consistent with the adjacent parcels to the south and to the west and proposed a medium density of four to ten dwellings per unit.

The proposed plan has a dwelling density of 10.14 units per acre, which was less than the adjacent development of Cherry Hill Manor which was 10.36 units per acre. It was more than the density at Casho Mill Station which was 6.96 units per acre but was less than both Blair Village at 11.26 units per acre and Sutton Place at 10.34 units per acre. The Planning Commission did not recommend approval of the Comp Plan amendment at their June 7 meeting. He believed this was due to an issue centered on a discussion of the fractional rounding, which he believed most of the Council members were aware of the discussion. Some of the Planning Commission members felt that the density being over 10 units per acre clustered as high density and not medium density that was requested.

Since that meeting, the City Solicitor opined regarding the issue of rounding fractional units and the long-standing Planning and Development Department practice of using standard rounding should apply to this project. But the practice should be codified going forward. As a result, the proposed project met the single family medium density land use designation requested.

Comprehensive Plan V was not yet adopted and was going through the process. The plan actually complied with the Comprehensive Plan V proposal which allowed low density residential districts units up to 11 units per acre. If the plan had been adopted at this point, there would be no need to ask for the Comp Plan amendment.

Additionally, the applicant was requesting the property be rezoned from RS to RR. This would make it consistent with the adjoining subdivisions of Casho Mill Station and Cherry Hill Manor which surrounded the property. Sutton Place and Castlebury were also RR, therefore, spot zoning was not being proposed, just consistency with adjoining neighborhoods.

Mr. Hill stated the project complied with all the requirements of the RR zoning with the exception there was twice the required frontage from the building setback, and there was more than three times the required rear setback and over 52% open area when only 40% of open area was required. No relief was being requested for the height of the buildings which were 35 feet which it would be without the rezoning.

Mr. Rick Longo, registered engineer and architect noted that Mr. Kandra tried to create premium lots and houses, and end units for townhouses were always a premium. He looked at the land planning and at the things that will make a quality community. These did not have basements because there was a high water table there and basements would not be a good idea in this type of soil. They did build this with the garages under. They were two-car garages, but were bigger than the average two-car garage, so there was plenty of room for storage besides the two-car garage.

On the second floor, nine-foot ceilings were provided which allowed upgrades to crown molding, chair rails and much nicer details. There were nine-foot ceilings on the first floor, over-sized windows, and also freestanding trusses so they would have minimum bearing walls that could be changed in the event of a future sale of these townhouses.

Mr. Hill said as part of the site plan approval process, they must comply with the minimum LEED certification for homes. They exceed the 45 points required. Currently they proposed 47 points, but these points may increase when the final selections were made by Mr. Kandra with regard to insulation of the buildings, the window performance standards and HVAC systems. They did not count any points right now for those items in the LEED certification. Those numbers would go up over the installation of them.

One of the things discovered when they went to the Planning Commission was a concern about how close the proposed townhomes were to the existing homes along Ethan Allen Court in Cherry Hill Manor. There were 71 feet from the back of that proposed unit to the back of the units in Cherry Hill Manor. That comes from having 41 feet from the property line approximately where the fence was to the back of the building. There was another 30 feet to the back of the existing buildings in Cherry Hill Manor.

The same thing was going on with the Casho Mill Station homes. There were 49 feet between the units (indicated on the visuals) which were the closest units. There was 27 feet on Mr. Kandra's property (25 was required). The Casho Mill Station homes had a variance to reduce their setback at that point from 30 feet down to 22 feet. Those homes were actually closer as a choice of the original builder than what would be required by the original Code when those were subdivided.

Mr. Hill referred to the alleyway behind the lots on Ethan Allen in Cherry Hill Manor and the chain link fence on the property of Barksdale Green, which ran down there and was fully overgrown with vines and other invasive species. In a meeting with Parks and Recreation they did not feel that there was any vegetation or trees worth saving on the property. Originally the developer proposed to save some of the trees that were there, but they did not want them and would like those to be replaced with trees and shrubs more of their liking and less susceptible to disease.

Mr. Hill next referred to a visual of the privacy fence behind the houses on Saw Mill Court in Casho Mill Station. This fence was on the Casho Mill Station property, so they could not do anything with it. No landscaping was proposed down this line at this time. However, Mr. Kandra was proposing to work with the Parks and Recreation Department on a landscape plan for it although he was not required to do so.

The second reason for showing this slide was that it was brought to their attention (and they knew there were some drainage issues on the property), but this was the location where there was ponding behind these units. You could not really tell from the photographs, but this was a low area. There were reasons for the area not draining. It was not a big drainage area that came down to here, but the soils were so poor, they were very clay, very dense and beneath the surface they had a high water table, so that led to problems for the neighboring houses.

Mr. Hill referred to a visual to show the drainage area that came down to this property and the low point. The white arrows showed how the water was flowing across the land. Coming down to the houses on Ethan Allen Court, they were actually flowing onto the property here or down the road and then on to the property down in this lower corner here. There was nowhere on this site was it impacting the houses in Cherry Hill Manor. In fact, the plan was actually taking their drainage away on here. Right now there were almost three acres that came down to this low point in here. The yellow lines were contour lines, and when reading the contour lines it was going to this location. It had no escape point. It should not have been built that way. There should have been some sort of drainage relief as part of this subdivision that brought the water either side, but it was not there.

For this proposal, the developer would put that swale into the property. Mr. Hill referred to a visual that showed all that was left of that low point on the other side of the fence on Casho Mill Station. There was a tenth of an acre left they could not touch in that low point. They took half of that 1.9 acres, less the tenth, put it into the swale and ran it past that low point and into another point, that discharged into the existing swale and drainage facility that ran out on to Casho Mill Road. It did not go into the drainage facilities in Casho Mill Station in any way. By doing that it should alleviate a lot of the drainage problems for those homes in Casho Mill Station.

One of the other things they were doing with the storm water design here was using amended soils to improve the soils on the site to allow them to absorb some of the water. They also had a system in place where the water was moved off the site and through the drainage systems on the neighboring properties before the peak storms arrived. This would actually lower flooding at the peak storms because they moved the water off the site and away from the problem areas.

The next visual was to show what was being done to protect the neighbors from the water. This was a Saw Mill Court site, Casho Mill Station. Mr. Hill referred to a little dashed line where all the water was flowing into. By having a swale right at the property line on the uphill side, that water was taken away. They also intercepted with the road and the drainage structures, intercepted the water coming across. On the other side there was another swale that stopped the water from reaching the Casho Mill Station, Saw Mill Road houses. Everything was being done to reduce the run-off going to those houses. If the City's Public Works Department did not believe they were doing a good job of meeting all the Code regulations and not impacting the drainage adversely, Mr. Hill said they would not make it to the Planning Commission or to Council and would stall at that point. They had to be doing a better job than what was there currently.

The next visual showed the construction of the swales that would run and how they would look when they were done. They looked like a lawn area with a depression. These had the amended soils that came in through here, and as part of the design there was an under-drain as well. It looked like a French drain, took some of the water out of the system, and put it away and moved it around the site and away.

The only deviation as far as zoning for the site plan approval on the RR zoning was the 23.5% lot coverage, where 20% was permitted, but they proposed 52% open area when they were only required to propose 40%. They had twice the front yard setback, three times the rear yard setback and were helping with an existing drainage issue and making that better.

Ms. Hadden referred to the way the swales were designed in order for the water to run the way it was shown in the diagram, and asked if they had to be built up in the back of the lot. Mr. Hill replied just a small amount, most of it was actually cut down into it to create the swale. Ms. Hadden said so it was possible that water that was not captured by the swale would create a problem somewhere. They were capturing what fell in the swale and on the Barksdale Green property. Mr. Hill said to the low point, there was 2.9 acres of drainage that came down to that low point right now. The whole area that looked a little bit whiter, that was all draining down to that low spot right now. The proposed swales were in the blue lines and they were taking all but one-tenth of an acre of that 2.9 and moving it away from the site and the low spot. The only part they could not touch was the part that was not on their property.

Mr. Wallace referred to the slide showing how far the property line was from the house on the other side. Mr. Hill said it was 27 feet from the property line – 25 was required as part of the setback. That building could be 12 feet away which would give them almost 40 feet. There had not been any concern from that neighbor. It was currently rented, and Mr. Kandra had conversations with the owner of that lot and the next lot next as well. They had no concerns about the proposed project. In fact, they would like to have done it, but they could not work out a deal.

Mr. Morehead asked Ms. Feeney Roser if Code allowed decks to be built into the side setback and also into a storm water easement. Ms. Feeney Roser replied yes. He questioned note 30 on the plan that mentioned the possibility of third floor decks. He asked if the mention of that in the plan and nowhere else allowed for that possibility legally. Ms. Feeney Roser said they would be allowed to have a third-floor deck whether it was on the plan or not if it met Building Code. Mr. Morehead asked whether the fact that all the renditions did not show it to Council would be a significant change. Ms. Feeney Roser had not considered that. She did not believe decks were normally considered a substantial change, but the department would have to look at what was submitted and then back to the rendering and if they thought it was a substantial change, they would bring it back.

Mr. Markham asked about the target audience – they were still renters but were not students. Mr. Hill said they were not students. At Sutton Place the typical renters there were professors, grad students and young professionals. There were some single parents that have rented in there, but no students. Barksdale Green would be restricted to two unrelated tenants as well.

Mr. Markham referred to comment #5 on page 10 from Public Works about stormwater which stated additional topographic information would be required on the overall drainage as part of the final sediment and stormwater management design during the CIP. He noted this was a concept and not the final approved version. Mr. Hill explained this was a very developed concept, much more than what they did in previous years for site plan approval. They put a lot more time and effort and back-and-forth with the Public Works Department on getting these to a level that they were comfortable was not going to change. They made it very plain that they did not want the developer coming back and changing the concept of the stormwater management after it had been through Council. Mr. Markham said that sounded good but they had a caveat in their comments.

Mr. Markham asked Mr. Herron if he could inquire about the status of the inspections of the current properties and if they were in good standing. Mr. Herron believed he was allowed to ask. Mr. Markham asked Ms. Feeney Roser about the status of this company. Ms. Feeney Roser replied that for property maintenance and rental inspections, there were no issues brought to her attention.

Mr. Chapman had a follow-up question to Mr. Morehead's about third floor balconies. He believed the first floors were not livable space and the garages were being counted as the first floor, so second floor living space on the rendering was really third floor of the structure. There would be a second-story balcony from what Council was seeing. Mr. Hill showed the typical floor layout so the ground floor would be garage and storage, the second floor would be a great room, kitchen, morning room, and on the third floor would be bedrooms and bathrooms. There was no fourth floor. They were not proposing decks off the third floor, only off the main living level. Mr. Chapman asked if that clarified anything, or was it just the fact that there was not a third floor deck pictured off the one where they could see the back. Mr. Morehead said he was asking about the difference between the plan and the renderings because the plan allowed for the option. He was curious if the option was effectively making it a legal difference or not.

Mr. Ruckle was contacted by one constituent concerned about the trees and privacy being taken away. He was not sure if that was depicted or why there was no tree line between this section. Mr. Hill explained that along the property line with Casho Mill Station they were not required to provide screening in addition to the privacy fence. Mr. Kandra intended to work with Parks and Recreation to develop a plan for additional screening along there which would not be part of the approved plan and would not have to have the same inspections and bonding. His intention was to screen that like the other property lines.

Mr. Markham referred to Public Works comment #4 on page 9 about getting an executed easement agreement from the owners of 1 Saw Mill Court, and a letter from them said they were not getting it. He asked how this would be reconciled. Mr. Hill said they were under the impression they had an agreement with the owner of 1 Saw Mill Court. They actually allowed for not being able to get that agreement when it was unclear if they were getting an agreement. They could make the stormwater work without the easement – it was a small easement and in return there was some landscaping they were going to do for them and reconstruct the swale that was on their property as well. Mr. Hill said they could make the stormwater work very much in the same way as what was designed now. They had to tighten up a swale. It meant they had to put a retaining wall in, but they could make the drainage work and solve the problems of the people along Saw Mill Court with the ponding.

Mr. Markham asked Ms. Feeney Roser if the City had a report from Public Works that said that was acceptable and would work. Ms. Feeney Roser said what they had was based on the stormwater management plan that was presented, the requirement for the easement, if in fact they could meet the same criteria and meet the Code for drainage stormwater management without that, then staff would evaluate that and determine whether it was a substantial change to the plan and come back. Mr. Markham asked whether it had been reviewed at this point in time. Ms. Feeney Roser said not to her knowledge, the second option that they had in their back pocket.

The Chair opened the discussion to public comment.

Linda Davis, Blair Village, discussed the alleyway that was parallel to the railroad track that goes all the way down from Cherry Hill Manor, down of Blair Village, flooded terribly during the summer when there were torrential rains. It actually turned into a raging river and the walkway that the state paid \$2 million to build became impassible. A police officer came to her door one time and asked if she had seen a child being swept away in that raging river. She believed this 14 townhouse complex on an asphalt pad would exacerbate the raging river situation. In terms of height and number, she felt it was not in concert with everything else there now. She asked the developer and Council to be fair, respectful and reasonable in deciding what to do and remember they invested in and were committed to the City.

Robyn Harland, President of Cherry Hill Manor Maintenance Association, reported issues the community had with drainage coming down from the nursery school. It was her understanding there was a holding pond back there, and every time there was a significant rain storm, water was knee deep in the roadway of Cherry Hill Manor. She also commented this complex would butt up against two houses where it was only 70 feet from the fence. It would be three stories in height, and the bedrooms were on the third floor. As a result, residents in the townhouses along the back alley were concerned about the lack of privacy in their homes. She felt this was not a project needed in that community, and stressed that the area could not handle additional water problems. She did not think the proposed swale would change anything. She also cited problems with flooding basements in the homes along Barksdale Road.

Katie Thompson, District 4, said she and her husband purchased their home at Saw Mill Court in February 2015. Before they invested in their first home they noticed the vacant Barksdale Road properties, so her husband did research and found they were zoned for low density housing. That put their concerns about the potential for any major development at ease. If they were aware of this proposed development of 14 townhomes and a change to the zoning, they would have never made an offer on their home. The lack of privacy, lost green space and removal of so many trees would have been a deal-breaker for them. Mrs. Thompson was concerned about the plan to make these homes a rental-only complex, which if consistent with Sutton Place would be very obvious by the large sign on the street advertising upscale rental town homes. After speaking to Mr. Kandra to express their concerns about the devaluing of their property, he suggested that the property values would increase because he anticipated his properties being valued at \$300,000. However, she noted that if the properties were only rented and not sold, they would not be listed as comps for the area, would have no public real estate value and would not increase property values. Mr. Kandra suggested that he looked to sell someday, but this did not ease their concerns. Sutton Place was constructed eight years ago and none of the units had sold. Mrs. Thompson expressed concern about seeing a wall of townhouses and the second or third floor decks that would be so close to their privacy fence and overlooking their backyard and directly into their living room, kitchen and master bedroom. She hoped that Council would ask for an alternative proposal that was less invasive to neighboring communities and was consistent with the look and feel of the current homes in the area.

James Thompson, Saw Mill Court, moved there with his wife last February. They loved Newark and where they were located relative to Main Street. They liked the lower density feel around them and that was why they chose this location. Mr. Thompson's biggest concern other than the privacy were the drainage issues behind their house. In the handout he provided there was standing water. This was taken after a pretty minor rain event. There was also standing water on the other side of the fence. Photograph

B which he included also had the same sort of swale system with the drainage, and was not adequate. They had standing water regardless. They also all had a basement and their sump pump ran pretty often, especially during rain events. Mr. Thompson stated that he worked in environmental consulting and had eight years' experience, so he was familiar with stormwater drainage issues, soil types, things like that. It was clear this soil was poorly draining and had a lot of clay in it. The water did not infiltrate into the ground, and he was worried that covering about a quarter of the land surface there would dramatically increase the amount of runoff, especially with how close they were located to their homes. He could see the water building up and going beyond that. Mr. Thompson referred to an aerial photo showing the extent of erosion that was occurring. A large section of brown there was all exposed soil that was being eroded away. He witnessed it occurring over the past year and thought the amount of water coming through there would be substantially increased and would increase the erosion issues. This was one of the main reasons they would not agree to the easement because he did not feel the concerns involving the stormwater were adequately addressed by the plan. He was concerned they could end up with a flooded basement and would have little recourse to make sure the situation was remedied.

Jim Green, District 4, was a resident of Cherry Hill Manor near Handloff Park. He was upset about the size of the plan. The developer's engineer said they had a reasonable engineering plan for draining water off their low land into the area's drainage system. It was also the drainage system that drained Handloff Park. He was particularly concerned about adding yet more drainage load into the local ditch system. Extra houses, extra driveways on those two plots added water runoff no matter how good the engineering plan. There must be some ground seepage now, just not as much as they hoped for, which meant pushing the extra water towards the Leroy Hill baseball field, toward the ditch next to Barksdale Estates and then down towards the Pilgrim Baptist site. He suspected that it would also affect Handloff Park. The park's water drainage system was already stressed during heavy rain. He believed this new proposal was too dense and would stress the system more, since they used the same drainage ultimately. He also wondered why the combined plots, just over 1.3 acres were being proposed for 14 units rather than say six or four. Yes, the City Solicitor told the Planning Commission that the allowable units could be rounded up – he said that such rounding may be legal, but it did not allow enough open area in the proposed development. As an example, Cherry Hill Manor had two open recreation fields that he did not think were considered in that percentage of space and a traffic island that gave lots of open space. They were told that such open space was mandated or strongly required by the City when Cherry Hill Manor was built in 1971. They were aware that a prior development proposal on Barksdale Road was suggesting that they could use Handloff Park in their planning and was turned down. He thought reducing the unit's plan for the two plots from 14 to four or six would ease the space crowding toward Cherry Hill Manor and would come closer to satisfying an open space requirement. There should be an open space requirement for residential areas. The house plans were too close. They said it was just about 40 feet from 1033, that was only 39 feet if you did the addition. He thought it was too big, too tall, and too much for this area.

Pam Green, District 4, would speak on the topics of rezoning and the site plan for Barksdale Green. She agreed with all the points raised by Mr. Green and Representative Paul Baumbach. She was going to present more detailed information about the drainage. According to topographical maps, most of Newark had an elevation of 3,000 to 4,500 feet and were surrounded by areas with higher elevation such as Fair Hill in Maryland and north from Newark on the banks of White Clay Creek. Barksdale Green was offering the civil engineering design of a swale, to remediate flooding on the property. It was interesting that they were not building basements because the water table was too high and the basements would flood. She agreed that swale was a good design. Another good design for low-lying area was the implementation of a rain garden. The University of Delaware implemented this design in several low-lying locations where water was pooling. The City constructed a rain garden in Norma Handloff Park across the street from 1101 Barksdale Road. According to the signage a rain garden was designed to absorb stormwater and prevent pools of muddy, over-saturated areas from forming in parks and lawns, and these were built in low level areas, so she thought the City, by building this rain garden, acknowledged that this entire area was lying low. The problem with the swale was that it only worked if there was enough grassy area or other permeable surface through which the water can drain; in other words, green space. There was very little green space through which the water could drain. Mrs. Green referred to picture A which showed that the rain garden could not keep up after a very light rain. Nearby areas that flooded after a heavy rain included the pedestrian tunnel, the baseball fields in Norma Handloff Park and Casho Mill. The buildings of Barksdale Green would exacerbate an already serious drainage problem by dumping more water into an already overstressed system. She was opposed to the zoning change and the current site plan.

John Bodo, Sutton Way, lived in the complex mentioned previously for three years. When he first looked for housing, he found it difficult to find a residence of this caliber in the area. The style and the quality of the homes were exceptional, as was the builder. He had a brief statement from a neighbor, Dennis Kerwin, 102 Sutton Way, who could not be present tonight.

"Dear Madam Mayor and Honorable City Council Members. This is in regard to the project to build upscale condos near the Barksdale Road and Casho Mill Road intersection. We have some experience with the developer, Dan Kandra, which may be of some assistance to you in your deliberations. We moved in Newark in the summer of 1999 when I joined the University of Delaware faculty. Our first residence was at Chippenham Drive. Three years ago, we decided it was time to downsize, so we looked around for a place within walking/biking distance of the University. We were appalled at the lack of housing suitable for our needs. No options were available to our liking. We looked at a permanent residence called Washington House. Fortunately, we did not execute the option to buy this. All the rentals are all designed for a student clientele, and frankly, most units are poor quality. At the last minute, we found a suitable rental at Sutton Place (which is where he's living now). We have been happy here. The units are spacious, quiet, well-designed, and maintained. Above all, management is exceptional and responsive. The residents here are professionals or semi-retired, like us. My sense is they are all frustrated with the lack of housing for folks like us. Mr. Kandra's project addresses this need, a location at the end of the block. This will provide affordable upscale housing for professionals across the state, etc. We are 82 years old, and have rented and owned residents in five states. Sutton Place is the best rental we have ever occupied, and Mr. Kandra is the best project manager we ever dealt with. Approval for this project's certainly is in the best interest of Newark. Respectfully signed, Dan Kerwin."

Adam Grein, District 4, said he and his wife relocated to Newark from Ohio two years ago when he took a job here. For several months, they searched for a place to live in Newark and the surrounding area. They looked at probably a dozen places. When they found Sutton Place they immediately filled out an application, and that was the only place they applied to. Sutton Place was exactly what they were looking for. They wanted someplace upscale, someplace safe, and someplace in Newark. Recently he extended his lease for an additional 12 months and would continue to live there for as long as he was employed in Newark. He believed this type of unit filled a need.

Darlene Brigance, Sutton Way, moved there in 2011 with her children and lived there for 5 years. They recently moved so her daughter could apply to the Charter School of Wilmington in the Red Clay School District. They moved into a Ryan Home community in Hockessin which was a great disappointment with extremely poor construction. She was here to assert that Dan Kandra was a quality builder, landlord and man. Her 13 year old daughter spoke at the Planning Commission and wrote the following:

"Dear Newark City Council. Hi, my name is Alexis, and I'm 13 years old. I lived at Sutton Place with my mom and my brother. I feel obligated and honored to speak on his behalf for his new project. As I went to the last meeting where the project was discussed, I heard the many problems, but then I heard all of the solutions to them as well. Many people are concerned with their excess water happening if their houses were built, if these houses were built, but there was a solution for it: Swales. My point is, if there's an issue, I'm sure that Mr. Dan and his team will come up with some solution to any problem.

With that being said, it was just three of us living in the townhouse, and we always needed help. When I first moved, I had three frogs. Whenever we'd be away on vacation, Mr. Dan would always take care of them, because he cared. He didn't have to take care of them, he could have said, no, and Mr. Dan cares about what's good for everyone. He makes sure that everyone is in great hands. Another event was when we had a Christmas tree on top of our car. The Christmas tree could have completely fallen on the three of us, having us temporarily hurt by the sharp pines. Anyway, Mr. Dan saw a struggle and offered to help us, and of course, he did this for three Christmas seasons. Mr. Dan is always doing the right things when it comes to people's needs, and Mr. Dan is trying to build a property that makes sense in many ways. Why shouldn't he? If more families can get a beautiful, taken-care-of house with a great, kind landlord, then I urge you to think hard about all the great qualities for this project. For other single families and young couples, this property has tons of possibilities for an amazing lifestyle. This is just my opinion, and I hope you take it under consideration. Love, Alexis."

Bob Evans, Ethan Allen Court in Cherry Hill Manor, was sure Mr. Kandra was a great landlord and a good builder, but he did not build theirs, and he would not be their landlord. Once this development was built, they could not tear it back down. If the rain was still a problem, or it became worse, there would not be any remedy. If the trees did not remedy the privacy problem, what was their recourse? When Mr. Kandra sold the houses to another landlord or to 14 separate people, who would be responsible for those trees or the continuing problem with the water. Mr. Evans did not think this should be built. Tonight, Council approved two things because they did not affect the people around the proposal. This did affect them, and he thought it should be denied for the same reason.

Janet Cibik, District 4, resided with her husband at Sutton Way. Her husband worked for QVC for over 30 years, and she worked for Bank of America over 20 years. They moved from the Fair Hill area two and a half years ago to Sutton Place when they were becoming empty nesters. If one was to say, would

they be extending their lease as opposed to her retiring early in Sarasota, she would say, "absolutely not." The main reason they extended their lease was because of Mr. Kandra. As many others said not only professionally, personally, all around, he cares about everything with that property and she was a very particular person. If there was a tree that has three branches down, he would take care of it. She read a letter of recommendation from a tenant who was away on vacation.

"Dear Mayor and Council Members, we write to you in support of Barksdale Green, a new townhouse development in Newark, Delaware, proposed by Dan Kandra. As current residents of Sutton Place, one of Dan Kandra's existing communities, we can attest to the upscale construction and excellent management that he provides. Additionally, as University of Delaware employees, we stress the need for quality, non-student residential housing in Newark, Delaware. On our first house-hunting visit to northern Delaware more than two years ago, we were disappointed by the lack of quality housing options for new faculty. Regardless of the type of position, tenure track, or continuing track, most new faculty at UD start with a series of three two-year contracts. Thus, at least for the first six years of employment, many faculty are hesitant to invest in purchasing property, but instead, search for rentals. While there are a few quality apartment complexes in the area, many are more than 30 minutes away from UD, and none, at least that we have found, compared to the quality of construction at Sutton Place. Further, as UD employees living in a neighborhood that is comprised mostly of undergraduate students, poses a conflict of interest for us. We were delighted to find an opening at Sutton Place this summer, and we jumped on the opportunity right away. As far as we know, Sutton Place is the only relatively new, upscale, non-student, rental townhome community near downtown Newark. In the past few years, we have both served on search committees for new faculty positions, and we have learned that attracting new faculty can be difficult. The interview visit is as much an interview for the University as it is for the job candidate. One of the primary questions asked by candidates is, 'Where do faculty live?' It is common for Universities to provide a driving tour of the surrounding area during interview visits. Without quality housing options to show job candidates, it is difficult to make the case for Newark, Delaware as a place to settle in, and thus, difficult to attract talent to our community. We suspect that other large employers in the area face the same dilemma. Quality rentals, such as Sutton Place and the proposed Barksdale Green, provide prospective young professionals with a vision of how they could live, raise families, and work in Newark, Delaware.

Finally, as environmental economists, we stress the importance of rental options for young professionals, retirees, and undergraduate students in the town of Newark. Other UD employees we know live in Bear, Smyrna, Wilmington, and even Pennsylvania. Properties such as Barksdale Green encourage people to live in Newark, rather than the outskirts, cutting down our workday commuting traffic, and fostering environmental initiatives. To conclude, we strongly support the proposed Barksdale Green property. Please feel free to contact us.

Sincerely, Juliana Butler, Ph.D, Sutton Place resident, Assistant Professor, UD  
Jens Schubert, Ph.D, Sutton Place resident, Assistant Professor, UD."

Tom Schrier read a letter on behalf of Ji Kyung Park, Assistant Professor at University of Delaware, who resided Sutton Place.

"I am writing this letter to support the project of developing a quiet and well-maintained rental community that Dan Kandra is proposing. I know many new faculty, visiting scholars and graduate students with children who have a hard time finding a place to rent for their families, and I strongly believe that Newark needs more venues like this. I've rented my house from Mr. Kandra for more than three years, and he has been a very responsible, trustworthy, and reliable person. Moreover, Mr. Kandra has put forth great effort to provide an exceptional living environment, and I strongly believe that he will continue to show such dedication in a new rental community."

Becky Evans, owner of 82 Ethan Allen Court in Cherry Hill Manor, had 41 signatures from concerned residents in Cherry Hill Manor and Saw Mill Court. She pointed out that the petition circulated was for a reconfiguration option because they thought Council did not have the option to say no to Barksdale Green because of the Planning Commission's vote along with news conveyed in the Newark Post. The design was short-sighted for these two properties. Many people would not want to buy the housing currently located in the area if it was backing up to something this large with no regard to height restriction so closely built against their properties, and having decks at a second-story height to their two-story homes. Currently backyard privacy did not pose a problem because all the neighborhoods in this area were the same height. While trees could be planted she did not feel it would offer adequate screening. They would still be able to view the back walls of these buildings, and potentially, their second-story decks. In turn, they would have a potential second and third-floor view of trash cans, backyards, and alleyway. Ethan Allen Court in Cherry Hill Manor was where most homeowners chose to live over the years because of quiet, privacy, and pleasing views, especially from their backyards. This project would

deprived the residents of a lot of this. Someone mentioned at the Planning Commission meeting that it was too bad they were ever built. She said Cherry Hill Manor was a neighborhood struggling to look better because owners cared enough to help refurbish the area to make it more appealing. The new back alleyways were a major improvement to the neighborhood, and cost thousands of dollars. The homes were built of a much sturdier construction with cinderblock firewalls in place making them conducive to renovation and a second life. At one point, Cherry Hill Manor was considered as nice for the City as the proposed Barksdale Green would be, but over time, the landlord-owned units were not well cared for. On the other hand, owner-occupants did care for their units and looked to buy certain homes because of pleasing surroundings. There were many homeowners living along Ethan Allan Court, and she felt Barksdale Green would compromise the value of the development because fewer owner-occupants would choose to buy along Ethan Allan. By reducing the desire of people to own and live in this neighborhood, it would reduce the number of people in the area with a vested interest in caring for the neighborhood keeping them up and keeping them safe. With the school down the road known for excellence, this was a wonderful area for families to consider buying and raising young children. Cherry Hill Manor offered an area that caters to families and children with its common areas which provide a safe environment to play for children living here. Barksdale Green did not allow for similar space for children with its configuration. There was also no open space for children to play in at Sutton Place, and they would have to cross a busy street to play in Barksdale Park. Ms. Evans felt the proposed plan would not lead to an overall increase in value for the area but would have the opposite impact. A Sutton Place in this location was very different from the area where it was currently located.

Ms. Sierer read an email from Kimberly Bryan, Sutton Way: "I'm here today on behalf of Dan Kandra and the proposed community of Barksdale Green. I am currently a resident of Sutton Place. I have been a resident there for three years and just renewed my lease for a fourth. Sutton Place does not feel like a typical rental community, it feels like a home. At first I came from a single-family home in which my family and I lived for 15 years. We decided we wanted to move to Newark and began our search. We knew we wanted a maintenance-free lifestyle, and even though we wanted to downsize, we did not want to downsize to the degree of what the large apartment complexes offered. Much to our disdain, when our search began all we could find were large apartment complexes which were too small for our needs, and did not offer the lifestyle we were looking for. They were also plenty rentals for college students but nothing for families, empty nesters, or retirees. There are so many people just like me searching for quality-built homes with maintenance free living and the size to accommodate those who do not want to sacrifice too much space.

Finally we found Sutton Place that fit our needs. It offers quality construction, maintenance-free living and the amenities we are used to and wanted. Barksdale Green will meet the demand that still exists in the community of Newark. Barksdale Green will also positively impact the community as Sutton Place has. Mr. Kandra builds beautiful communities and maintains them to the highest standards which will only increase the value of those properties that surround them. I cannot say enough about how happy I have been living in my community."

Jean White, Radcliffe Drive, lived close to the area and was aware of it. She thought it was too bad that the developer was not building townhouses of the same height and general style as those in Casho Mill Station because that would solve some concerns of the Saw Mill Court and Cherry Hill Manor residents. Regarding the drainage, her friend Dorothy Miller implored her to read legal notices in the newspapers. In July 2000 she saw a legal notice that dealt with the proposed Casho Mill Station (which was now built). In the materials she realized there were a lot of errors because she had walked through the grounds. This legal notice was from (inaudible) section of DNREC. The person she contacted met her at the site and went over her concerns. In October 2000 there was another legal notice that was from the Sewer and Water Conservation of DNREC, and again she put in comments and materials related to a nationwide permit for that particular thing. Possibly on the basis of her comments, she thought the drainage was revised to actually what is now in Casho Mill Station. She had several questions to ask and referred to the developer's visuals. The development of Barksdale Green planned to divert the drainage water into the culvert which was the area along the extreme left hand upper side. The water would come around and come in there. Back in 2000, she noted from her examination that there were two concrete culverts passing under Barksdale Road at 36 inch diameter while the little stream was running around and when it got to Casho Mill Road there were two corrugated metal culverts which were smaller. She did not know the implication whether that being smaller would create a problem. Her two questions were: 1) Can the drainage system across Casho Mill Station, which goes all the way across and much of it was open, handle additional water for the proposed Barksdale Green development in a high torrential rain; and 2) Does the development of the proposed Barksdale Green need to get permission from the Casho Mill Station community to have the water come across their development.

Mr. Hill replied to the question about whether the pipes could handle the runoff and whether the developer had rights to put more water through there. He said the pipes and the swales were easements, so they had the right to put the water through there. As far as the handling, they were actually moving the water through at a quicker rate than it was currently going through, so the phrase for it was "beat the peak" – they were moving the water through before the high peak of the water in a major storm came through, so they were actually reducing the peak rate runoff at that point reducing the stormwater at the peak by moving the stormwater through the site through the swales faster.

Ms. Hadden asked whether the pipe at Casho Mill had a pretty sharp bend in it. Mr. Hill said the swale entry to the pipe was a very tight corner, there was an existing condition there that was not the best design, but they were making the best of it. Ms. Hadden said as a result of that bend though, the water would not necessarily go through it at a quicker rate since it tended to hit that bend and sort of back up a little bit. Mr. Hill said it would back up a little bit, but based on their calculations they accommodated that bend to accommodate their runoff without affecting the neighbors adversely.

John Morgan, District 1, asked the developer to bring up on the visual the same thing that was on the leftmost part of the diagram. He attended the two meetings of the Planning Commission where this proposal was discussed and ultimately voted on, though not unanimously. He thought that most of the concerns of the residents in Cherry Hill Manor could be addressed if instead of having 14 townhouses on this piece of land there were 12 townhouses and the rear end here for about 100 feet being an open part. That was the sort of proposal that Ms. Evans put together where there was a cul-de-sac. He urged the developer to think seriously about that because it would provide some parkland where the young families could have their kids play without having to go across Barksdale Road. Dr. Morgan asked for an explanation about how the water from the swale would get carried away which Mr. Hill referred to on the visuals. Dr. Morgan asked if the roots from the trees referred to by the developer would start disrupting the swale when the trees got larger. Mr. Hill said the roots would not disrupt the swale and would help break down the soil there now with the organic matter and actually allow the water to absorb a little bit more than what it currently did with the clay. Dr. Morgan concluded that if members of Council were not comfortable with the plan as presented, he hoped the developer would come back with something that addressed the concerns of the people that live in the immediate vicinity.

Bob Stozek, District 1, was sure that Mr. Kandra built wonderful houses. That was not the issue here, because Sutton Place was in a totally different location than this development. We heard about the drainage and one of the issues here was even though the density met the criteria of the City, he thought for these soil conditions, the density was too high. We heard at least one alternative to lower the density, give some more parkland and some other options to make it more attractive. He thought Council should also consider that the next two parcels would probably see another development just like Barksdale Green going in with the next 5 to 10 years and how that would affect drainage in this area and everything downstream. There was already very bad drainage downstream from this site and he did not see it being significantly better with what was being done with the swales. They were just redirecting it, it was not improving it and another development next door would just make it worse.

Helga Huntley, District 1, reiterated that the City needed to adhere to the Comprehensive Development Plan as much as possible and only make changes to it when there was a very good reason to do so. If Council felt the need for this particular housing was so great that they had to change the character of this neighborhood, then go ahead and do that but she thought Council should consider that this development would change the character here. It would change it to something else than what the people who lived there were expecting it to be.

Ms. Hadden said tonight Council was considering an ordinance amending the Comprehensive Plan by changing the designation of property located at 1101 and 1107 Barksdale Road. The current approved Comprehensive Plan IV stated, the comprehensive planning process therefore while including zoning and subdivision and development regulation, encompasses much more. The community sense of its anticipated land use categories for sections of our community within the overall framework of Newark's local, fiscal, social and economic environment, recognizing that a Comprehensive Plan is a living document, our current plans also states the following; the plan, under State of Delaware law, is the legal planning document upon which our zoning code and zoning map is based, specifically the State's zoning enabling language stipulates in Title 22 Delaware Code Section 702 that the Comprehensive Plan shall be the basis for the development of zoning regulations and shall have the force of law and no development shall be permitted except as consistent with the Plan.

Ms. Hadden was compelled to make that point because amending a Comprehensive Plan cannot be based on capriciousness and must be seriously considered. The process of establishing and approving a Comprehensive Plan is a lengthy one, and it involves public workshops, public input, as well as input

from City staff, especially the Planning Department. The current plan as it was approved was designed with much forethought and a lot of cooperation opportunities for the public. To make changes to it after the fact when there is not an existing condition that requires that it must be done, she did not agree with. It was her personal opinion that Council should only amend the Comprehensive Plan if there was a proven threat to the health, safety or quality of life of those impacted by the Plan's designations and current articulated land use, or if it is obvious that the actual use is contrary to the designated use.

For example, Council changed the Plan regarding the zoning and land use of Center Street recently because that was a proven failure of an attempt to do garden district zoning. By changing the zoning of Center Street, the area was brought in line with how the land was actually being used.

A Comprehensive Plan could design for the character of a neighborhood and community. To make changes to a plan after the character is in place can be unsettling to say the least for those who moved and bought properties in the area because they liked the character. The precedent that they would be making if they voted for this change to the Comprehensive Plan, made her uneasy. She felt that in this area they should stand by the current designation of the approved Comprehensive Plan and not amend it. Although Council did have an obligation to do what they could to encourage economic growth and provide additional housing opportunities, they should not do it at the expense of those who already settled in the area and had expectations on how the future growth of that area was to proceed.

To change the Comprehensive Plan because a developer, even a good developer, has a parcel that they want to develop, and their plans are outside the current Plan is not reason enough for her to change the Plan. Because she felt that approving an amendment to change the Plan was not in keeping with the character of the area, and had the potential to affect the quality of life of people living in that area, she would not be supporting the amendment change.

The current zoning of the area was low-medium density RS. It was her opinion that there was a reason the area was zoned the way this way. The land along Barksdale Road was wet and clay and did not drain well. Back in the day, the area was considered swamp by some of the local residents who were familiar with the area. It was her opinion that to encourage higher than normal density growth in this area and to cover large swaths of the pervious ground would have a harmful effect on the neighborhoods downstream from these lots. She knew people who fought water issues in this area in the past. Things like adding a playground to a daycare made a yard downstream flood, and the ballfield was recently remediated because it was too wet to play on and would flood.

She said the system was already stressed with stormwater drainage and runoff, and to allow higher density and development that would not significantly improve the situation and instead would cover ground that at this time was working somewhat by not adding more stress to the downstream system. She felt Council should stand by the current zoning designation and not amend. It should not be done at the expense of those who may be dealing with stormwater issues and who, because of those issues, realized the delicate balance there must be in that area with Mother Nature. Because of the potential to cause flooding and stormwater issues, she would not be supporting the zoning change.

Mr. Chapman felt the number of residents who spoke on behalf of Mr. Kandra was unprecedented. He asked if there was any rebate, payment or discount or whether they all really cared so much for this man. John Bodo responded that Mr. Kandra was an exceptional person. In terms of dealing with an owner or a landlord, he was caring, he took real interest in the properties and the people in a timely manner. No, he did not receive any payment.

Mr. Chapman asked Ms. Feeney Roser if the parcel was to be redeveloped in accordance with RS, more specifically a single-family residence, what would be the stormwater management requirements in mitigating what was currently, that entire parcel and the two adjacent parcels. Ms. Feeney Roser replied if it were one of the two or both parcels were to be built with single-family homes, it would be a building permit, it would not be any approvals, but there would still be a stormwater management review.

Mr. Hill reported they were not allowed to increase runoff per the DNREC State regulations but would be able to meet the regulations fairly easily on this if they were to put single family homes on here, they would have a similar design with swales and the beat the peak system, so they could redevelop with single family homes, or one single family home on each lot and they would be able to meet the stormwater regulations from the State.

Mr. Chapman said the City was familiar for years with the issues in Cherry Hill Manor and Ms. Davis' neighborhood. He did not think those would be impacted in a positive way by any development, if anything, in a negative way. The back yards of the townhomes in Casho Mill Station seemed to be getting

drainage from three or four parcels, and even a single family home sounded like it would have a similar swale type of system. Ms. Feeney Roser believed they would, but it would not have to be as extensive.

Mr. Ruckle said the issue he was seeing with this was privacy being taken away. In comparing pictures, this section was technically a bridge. There would have to be water flowing underneath of it. Mr. Hill said that was correct. Mr. Ruckle was concerned with how much water it was going to dump into that one section in the corner. It was going to one place, and if that flooded, it would trickle down and hit all those houses on that one side. He supported Dr. Morgan's idea of spacing two houses and having a circle and open space in the back. That would be feasible and profitable for the builder.

Mr. Hill said right now all this area was draining into a low point. When it filled up, it went (referred to visuals) this way and into this area here now. Mr. Ruckle said that would be lower than that. If it was going down, it was going downhill under that. Mr. Hill said all this area here drained to this one spot. When the water got enough into this low point, it overflowed and came into this swale and this culvert that runs this way. It was piped underneath the street. It actually bypassed the stormwater management system in Casho Mill Station and underneath Casho Mill Road. When the swales were added in it took away the ponding issues the neighbors here have. The same amount of water was coming down here and through that existing pipe system. The area Mr. Ruckle mentioned as a bridge was actually just a culvert that ran underneath the road, similar but much smaller to this culvert that ran across this road,

Mr. Ruckle asked if anyone on City staff studied this and felt it was going to work. Ms. Feeney Roser said the Public Works Department stormwater management expert reviewed this plan and felt that it would be acceptable and work the way it was intended to work.

Mr. Morehead understood the desire to build high-end rental properties close to town and understood the folks from Sutton Place with their satisfaction being tenants. He understood the quality of the work that Mr. Kandra did at Briar Creek in District 1 and the folks that were happy living there. He thought what was in question here was if this was appropriate for the site and his sense was there were many concerns. Council had not yet discussed the decision for site plan approval and the qualifications there. He read those:

"Site plan approval shall be based upon distinctiveness and excellence of site arrangements and design and including, but not limited to, common open space, unique treatment of parking facilities, outstanding architectural design, association with the natural environment including landscaping, relationship to neighborhood and community, and/or energy conservation as defined in LEED."

About half of those were positive and about half of them did not fit. The way it was worded, it needed to pass all of them. This design was too much, in his mind in this location. He drove District 1 when there were storm events to see how our systems are coping. This area was a constant problem, and not only that but it fed downstream to other parts of the City. He needed the developer to hold the water here, like at Briar Creek. In order to do that, a lot more space was needed on this property. That would alleviate problems downstream all the way down to Silverbrook.

Mr. Morehead believed what was going to happen was that the residents would be paying for long-term stormwater issues all the way down to help Silverbrook because there was a problem there now, let alone doing more development upstream here. He would not support this for those reasons.

MOTION BY MS. HADDEN, SECONDED BY MR. MOREHEAD: THAT COUNCIL REVISE THE EXISTING COMPREHENSIVE DEVELOPMENT PLAN IV LAND USE GUIDELINES FOR THIS LOCATION, FROM SINGLE-FAMILY RESIDENTIAL LOW-DENSITY TO SINGLE-FAMILY RESIDENTIAL MEDIUM-DENSITY, AS SHOWN ON THE PLANNING AND DEVELOPMENT EXHIBIT DATED JUNE 7, 2016.

Ms. Hadden would not vote to revise the plan because she felt that to revise it would have a detrimental effect on the surrounding communities and would set a bad precedent.

Mr. Morehead would not vote in favor to amend the Comprehensive Plan. He did not think it was necessary that Council do that. It was an opportunity, not a requirement. He believed this would have a detrimental effect to surrounding areas.

Mr. Ruckle would not support changing the Comp Plan. He would like to see this plan come back drawn differently that would help with the stormwater issue. He did not see that changing the Plan would be the right thing to do here.

Mr. Markham would not be supporting this because he believed it would have a negative impact on adjacent and nearby properties.

Ms. Wallace would not be supporting this change to the Comprehensive Development Plan because it would negatively impact adjacent and nearby properties.

Mr. Chapman would not be supporting the amendment of the Comprehensive Plan for reasons already stated.

Ms. Sierer voted no as well for reasons stated by Mr. Markham.

MOTION FAILED. VOTE: 0 to 7.

Aye – 0.

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

**23. 8-C. BILL 16-22 – AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE BY REZONING FROM RS (SINGLE FAMILY DETACHED RESIDENTIAL – 9,000 SQUARE FEET) TO RR (ROW OR TOWN HOUSES) 1.378 ACRES LOCATED AT 1101 AND 1107 BARKSDALE ROAD (SEE 8-B AND 9-A)**

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**05:34:48**

In response to Ms. Sierer's question, Mr. Herron believed Council needed to vote individually on the rezoning application.

MOTION BY MS. HADDEN, SECONDED BY MR. MOREHEAD: THAT COUNCIL APPROVE THE REZONING OF 1.378 ACRES FROM THE CURRENT RS (SINGLE-FAMILY DETACHED RESIDENTIAL) TO RR (ROW OR TOWNHOUSES) AS SHOWN ON THE PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT DATED JUNE 7, 2016 FOR THE PROPERTIES LOCATED AT 1101 AND 1107 BARKSDALE ROAD.

Ms. Hadden would not be supporting this rezoning as she felt that it would...

(At this point Mr. Longo interrupted Ms. Hadden.) Ms. Sierer said he could not interrupt in the middle of a vote. He wanted to ask for an extension to re-present this and work with this community. He thought it was a shame that they had so... Ms. Sierer restated that Council was in the middle of a vote and could not just stop.

Ms. Feeney Roser said this was probably her fault, but she believe that if Council voted down... she had to check this and maybe she should ask for a recess because she believed if Council voted it down they could not come back for two years for Council to consider a rezoning. She did not know whether Council wanted them to work with the community and come back with something else.

Ms. Bensley stated that according to City Code, if after due consideration a proposal was denied, such a proposal shall not be eligible for reconsideration for a period of two years after final action by the Council, except upon a favorable vote of three-fourths of Planning Commission or Council.

Ms. Hadden would not be supporting this because she felt it would have a detrimental effect on the surrounding communities.

Mr. Morehead would not be supporting it for reasons already stated.

Mr. Ruckle would not be supporting this because it could be detrimental to the community, but would like to see this plan come back again.

Mr. Markham would not be supporting this because it would have a negative impact on adjacent and nearby properties.

Ms. Wallace would not be supporting this for reasons stated by Mr. Markham.

As a point of order, Mr. Chapman questioned whether he could ask a question for clarification purposes. Ms. Sierer said he could. He asked if it was too late for the applicant to withdraw.

Mr. Morehead commented the developer had been having this discussion for the past 15 minutes. They understood 15 minutes ago that if they wanted to pull it, that would have been the time.

Mr. Herron did not believe they could withdraw the request at this point in the middle of a vote.

Mr. Chapman would not be supporting the rezoning for all the reasons stated by others.

Ms. Sierer would not be supporting it for reasons stated by Mr. Markham.

MOTION FAILED. VOTE: 0 to 7.

Aye – 0.

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

Ms. Bensley reporter there was a parliamentary procedure provision where if someone on the prevailing side wanted to make a motion to reconsider in the same meeting, they were able to do that, but that had to be on the existing motion. It would not be to reconsider withdrawal, it would be to reconsider the vote and to vote again. Mr. Ruckle asked, at a later time? Ms. Bensley said no, now. Mr. Morehead asked, for both votes that have already been taken? Ms. Bensley responded it could happen within the same meeting. It had to have been someone that voted on the prevailing side. Since it was a unanimous vote, any Council member could make a motion to reconsider at this point, but that would be to reconsider the existing bills that were in front of Council, not to withdraw the bills.

Mr. Ruckle asked if they could come back under the existing Comp Plan and do another plan, scrap this one and start over, correct? Or were they stuck for two years? Ms. Bensley said the Code citation that she read was in reference to amendment of Chapter 32 and the item associated with that which would be the rezoning portion.

Mr. Chapman said it was not Council’s job to put them in a scenario where they could come back. He was just trying to answer a question due to the circumstances of the applicant's representation interrupting after there was a motion and second.

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

- A. Request of Daniel F. Kandra for the Major Subdivision and Site Plan Approval of 1.378 Acres Located at 1101 and 1107 Barksdale Road In Order to Demolish the Existing Buildings on the Site and Construct Fourteen Condominium Townhomes to be Known as Barksdale Green **(See 8-B and 8-C)**

*(Secretary’s Note: As Items 8-B and 8-C both failed, there was no need for a vote to be taken on Item 9-A.)*

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

- A. **Council Members:** None

**26. 10-B. OTHERS:** None

**27. MOTION BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT COUNCIL FINISH TONIGHT’S MEETING AGENDA SINCE IT WAS PAST 11 P.M.**

MOTION PASSED. VOTE: 6 to 1.

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

Nay – Chapman.

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

**05:42:32**

Mr. Morehead asked to remove item 11-A from the agenda.

Ms. Bensley read the Consent Agenda as amended.

- B. Receipt of Alderman’s Report – August 18, 2016
- C. Receipt of Planning Commission Minutes – July 5, 2016
- D. **First Reading – Bill 16-24 – An Ordinance Amending the Comprehensive Development Plan by Changing the Designation of Property Located at 6 Annabelle Street – Second Reading – September 26, 2016**
- E. **First Reading – Bill 16-25 – An Ordinance Annexing and Zoning to RS (Single Family Detached Residential – 9,000 Square Feet) 16.374 Acres Located at 0**

Valley Road and 308, 309, 310 and 311 Mason Drive – *Second Reading* –  
**September 26, 2016**

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT THE CONSENT AGENDA BE APPROVED AS READ BY MS. BENSLEY WITH ITEM 11-A REMOVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**28. 11-A. APPROVAL OF COUNCIL MEETING MINUTES – AUGUST 8, 2016**

Mr. Morehead referred to page 5, third paragraph, where he quoted former Council member David Athey and misquoted him. What Mr. Morehead said was, "In the interest of extreme caution." What Mr. Athey always used to say was, "With AN abundance of caution." He would like that quote corrected.

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: THAT THE WORDS, "IN THE INTEREST OF EXTREME CAUTION" BE REPLACED WITH, "WITH AN ABUNDANCE OF CAUTION".

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: TO APPROVE ITEM 11-A AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

**29. Meeting adjourned at 12:51 a.m.**

Renee K. Bensley  
Director of Legislative Services  
City Secretary