

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

September 12, 2016

Those present at 6:00 p.m.:

Presiding:	Mayor Polly Sierer District 1, Mark Morehead District 2, Todd Ruckle District 3, Jen Wallace District 4, Margrit Hadden District 5, Luke Chapman District 6, A. Stuart Markham
Staff Members:	City Manager Carol Houck City Secretary Renee Bensley City Solicitor Bruce Herron Communications Manager Kelly Bachman Deputy Chief Kevin Feeney Finance Director David Del Grande IT Manager Joshua Brechbuehl Planning & Development Director Maureen Feeney Roser Public Works & Water Resources Director Tom Coleman

1. Ms. Sierer called the meeting to order at 6:06 p.m.

2. **01:10**

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: TO ADD ITEM A, POTENTIAL VOTE REGARDING DIRECTION TO SPECIAL COUNSEL AND STAFF CONCERNING NEGOTIATIONS FOR ACQUISITION OF 103 HILLSIDE ROAD AND/OR ADJOINING PROPERTY, ITEM B, POTENTIAL VOTE REGARDING WAIVER OF ATTORNEY-CLIENT PRIVILEGE AND DISCLOSURE OF CITY SOLICITOR MEMO TO COUNCIL, TO THE AGENDA AND REMOVE ITEM 11-A, APPROVAL OF COUNCIL MINUTES – AUGUST 22, 2016.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

EXECUTIVE SESSION

- A. Executive Session pursuant to 29 *Del. C.* §10004 (b)(2) for the purpose of preliminary discussions on site acquisitions for publicly funded capital improvements.
- B. Executive Session pursuant to 29 *Del. C.* §10004 (b)(6) for the purpose of discussion of the content of documents (Solicitor memo to Council), excluded from the definition of “public record” in 29 *Del. C.* §10002 where such discussion may disclose the contents of such documents.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT COUNCIL ENTER INTO EXECUTIVE SESSION FOR THE PURPOSE OF THE PRELIMINARY DISCUSSIONS ON SITE ACQUISITIONS FOR PUBLICLY FUNDED CAPITAL IMPROVEMENTS AND FOR THE PURPOSE OF DISCUSSION OF THE CONTENT OF DOCUMENTS EXCLUDED FROM THE DEFINITION OF “PUBLIC RECORD” IN 29 *DEL C.* §10002 WHERE SUCH DISCUSSION MAY DISCLOSE THE CONTENTS OF SUCH DOCUMENTS.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

RETURN TO PUBLIC SESSION

- A. POTENTIAL VOTE REGARDING DIRECTION TO SPECIAL COUNSEL AND STAFF CONCERNING NEGOTIATIONS FOR ACQUISITION OF 103 HILLSIDE ROAD AND/OR ADJOINING PROPERTY.
(Secretary’s Note: There was no action taken by Council on this agenda item.)

B. POTENTIAL VOTE REGARDING WAIVER OF ATTORNEY-CLIENT PRIVILEGE AND DISCLOSURE OF CITY SOLICITOR MEMO TO COUNCIL.

MOTION BY MS. WALLACE, SECONDED BY MR. MOREHEAD: THAT COUNCIL WAIVE ATTORNEY-CLIENT PRIVILEGE AS TO THE CITY SOLICITOR'S AUGUST 30 MEMORANDUM TO COUNCIL REGARDING THE FOIA REQUEST FOR THE PARKING GARAGE RFP PROPOSALS.

Mr. Morehead noted that major points of this memo were already public information through comments in the newspaper and the communication from the City Solicitor to Mr. Porach. He asked Council to consider that this document was already profoundly in the public eye, although not this very piece of paper.

Ms. Wallace thought that the memo could help the public understand the reasons why the City was redacting the proposals and thought that was their problem with the situation.

MOTION FAILED. VOTE: 3 to 4.

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

3. The regular Council meeting began at 7:10 p.m. with a moment of silent meditation and the Pledge of Allegiance.

4. 1. PUBLIC PRESENTATIONS: None

5. 2. ITEMS NOT ON PUBLISHED AGENDA
A. Public

05:54

Al Porach, District 2, called in a police report on a property in his neighborhood about two weeks ago. The police officer arrived and quieted the property. Now this particular property had been a pernicious problem over the years, so the following Monday morning he went into the Police Department to see if he could have a meeting with an official to discuss the problems with this particular property. They could find no record of his call, but they did send a very cooperative patrol officer to talk to him about this and he explained the problem to him. He gave several examples of times where there had been large gatherings at the property that dispersed before the police arrived at the scene. He asked how they would know to come out and tell these people to disperse from this party. The police officer told him that in all probability it was a coincidence. He asked Council to ask the Solicitor if there was some procedure, either formal or informal, in the Police Department that would notify a complainant about a noisy situation so that they might do something before the police arrived. Mr. Porach suggested a workshop to discuss these issues.

Helga Huntley, District 1, wanted to discuss item 11-C on the Consent Agenda, Approval of UNICITY Bus Service for State Fiscal Year 2016-2017. She noticed that contrary to what was decided at a recent Council meeting, it did not include the extension of the N-3 service. She was going to encourage Council to consider inserting that into that agreement that correctly stated with a footnote that there was the possibility of an extension with mutual agreement. She thought the City may want to firm that up. Ms. Huntley also encouraged extending the UNICITY Bus Agreement to institute a more formal review process periodically. She looked forward to there being some review of how the service was working and how it could be improved. She asked if there was a timeline as to when results could be expected from that review task force about the public transit system in Newark. Ms. Houck reported she just inquired today about the starting date and did not have an answer. Ms. Huntley also noted that a friend received a notification from the City about the Patriot Day ceremony and wished the announcement was sent before the event so he would have been able to attend.

John Morgan, District 1, said in light of the heightened appreciation of the standards of ethics, conflicts of interest and recusals, it would be a good idea to make some progress on that issue in the next several weeks. In particular, there was a memo written in 1996 by a former City Solicitor to Council which was withheld when he tried to get a copy of it, although it had been mentioned in the public record a few years ago at a Planning Commission meeting. He hoped that at their next meeting Council would be voting to release it so, citizens of Newark, including members of the Board of Ethics, knew what the City Solicitor's opinion was in 1996 on standards for conflicts of interest and recusals.

With regard to the Rodney site he read the contract for the environmental assessment, which was focused primarily on interior contamination like PCB's in the mechanical room or asbestos. There was not very much about doing a thorough survey of soil and ground water issues on the rest of the site, which he understood was a swamp before the University of Delaware built the dormitories there. It also was a swamp adjacent to a railroad line and he was told that during the past century or so, railroads were not very careful about the stuff they dumped by the side of the railroad. They would often just spray all kinds of poisonous chemicals just to keep the weeds down adjacent to a railroad line. He thought there should be a very thorough survey of that site carried out by a licensed professional engineer with an appropriate degree in environmental engineering from a properly accredited university.

Rob Gifford, District 3, said last Friday he participated in one of the bike rides around town. He decided to ride around a little bit more this weekend and rode the Route 4 connector, which goes from the intersection of South College and Route 4 to the Acme. He was not sure who owned the responsibility for the path. He said the middle of the path was in the best condition, so there was an open field across from Bloom and it was mowed, but at either end, there were either fences that were falling down or lots of brush that it would not be easy for a volunteer to take care of because of the volume. He wondered if the City could get that cleaned up, because he wanted to try out the new crosswalks going across Elkton Road, which did work, very slowly, but they did work. He thought that would help some students that actually wanted to go that way. He thought once someone took that way once, they were pretty much done with it unless they were a little bit more robust and wanted to ride in the road which was not very safe, especially with the bridge where there was the separated wall where there was not much room and there was a lot of debris. If someone could look into that and maybe make that a little smoother or cleaner. Mr. Markham asked if that was UD property. Mr. Gifford said it was on the other side of the street. There was a path about four feet wide almost the whole way down which was quite nice, but always littered with debris. It might be another alternate path for someone looking to get to a football game or the Bob.

6. 2-B. ELECTED OFFICIALS WHO REPRESENT CITY OF NEWARK RESIDENTS OR UTILITY CUSTOMERS

16:50

State Representative John Kowalko spoke on what he thought was flawed logic on the advice of the City Solicitor regarding the redacted proposals. He recited the definition of public record and noted that there were exemptions and cited number 2, "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature" as the one Mr. Herron referenced.

He noted the intent of this law was not to make information in giving an RFP to secure a bid to use public money in any way, shape or form to accomplish a project to allow that to be declared proprietary and privileged. It was a matter of public record and should be disclosed to the public. He felt a FOIA exemption did not apply to that. In fact, the privilege was waived when they submitted a response to an RFP, which was publicly solicited for use of public funds. He felt that was bothersome, and thought Council should reconsider whether or not they were going to be in violation of open government laws.

He felt they could not afford to ignore the fact that the public did not have confidence in elected officials if they kept things from them until the last minute. Representative Kowalko thought Mr. Herron's reasoning of attorney-client privilege, when he was the attorney of record for a public body, was an error also. He hoped Mr. Herron would reconsider that. He thought Council was not hostage to an attorney who seemed to be representing the interests of one of the bidders who was demanding some kind of a confidentiality. That was certainly not the purpose of open government to exempt and determine exemption to deny public access. There would be no point to a public RFP if one bidder could demand confidentiality at the expense of the entire process. The sealed bidding process would lose its proprietorial value once the bid was past a certain date then they were public record. That was not the way government worked.

Representative Kowalko considered this a mistake in judgement and not a deliberate mistake. He admired decisions made by Mr. Herron in the past and thought his advice was well worth taking in most cases, but this was not one of them. He asked Council to take a step back, understanding they could contact the Attorney General's office, explain to them they issued a public RFP and were told that they could not disclose information. He presumed he would come back with a ruling that if one of the bidders did not want to disclose in a publicly solicited RFP, then that bidder should be disqualified.

7. 2-C. UNIVERSITY
(1) Administration

22:36

Rick Deadwyler, UD Government Relations, said the University and the community was pleased to welcome back close to 4,000 freshman students during move-in weekend on August 27 in addition to

over 18,000 students, undergraduates, graduates and continuing education students who were making their way back to the Newark campus. He acknowledged City staff and administration, the University and City Police Departments, Code Enforcement staff and the Office of Student Affairs for supporting a smooth move-in weekend as well as working closely together to ensure minimal impact to the community. Last Monday evening, the freshmen students participated in a candlelight induction ceremony, a new event on campus, where the University administration and the faculty welcomed students to the campus. This past Thursday, the University participated in the ongoing rivalry with Delaware State University in a football game. The Blue Hens were victorious in that game. October 8 (Parents and Family Weekend) the Blue Hens played the Maine Black Bears at 3:30. This was a big weekend for the businesses in the community as well.

In response to Ms. Wallace's request, the new real estate director would attend a Council meeting to introduce himself and talk about his plans in this new office. Ms. Wallace said a couple of residents reached out to her about move-in congestion at Wyoming and Chapel on Saturday morning. Mr. Deadwyler said in spite of the City and University working hard to move people through, there were certain pinch points that were tough to avoid. Ms. Hadden said this intersection was in her district and asked to be kept in the loop of any conversation going on.

8. 2-C-2. STUDENT BODY REPRESENTATIVE: None

9. 2-D. LOBBYIST:

29:25

Rick Armitage reported that the next DEFAC meeting would be held on September 19. He would be attending and would send a briefing once they announced their prediction for the future.

10. 2-E. CITY MANAGER:

29:45

Ms. Houck reported that staff was continuing to work on the budget for the October 3 Financial Workshop, which would be a public meeting at 5:30 p.m. in the Council Chamber. She would have an update for Council regarding questions about the Bicycle Committee by the next Council meeting. She also thanked member Bill Sullivan and the Downtown Newark Partnership for their efforts with the celebration of Marilyn Minster's many years of volunteer service on the DNP.

11. 2-F. COUNCIL MEMBERS:

30:45

Mr. Ruckle

- Attended the City's Patriot Day commemoration at City Hall which was attended by Mrs. Ruth Fangman, her son Steve and other family members. Robert "Bobby" Fangman was a flight attendant who lost his life on 9/11 on the plane that hit the second tower. Mr. Ruckle thanked everyone who attended this very moving ceremony.
- Attended the Newark Police K-9 fundraiser in Suburban Plaza supporting the police dogs. It was a wonderful event.
- Attended the Blue Hens home opener and met the University's new President, Dennis Assanis.
- Received a call from a business owner who asked why the movie theater was required to put up signs about video monitoring when every business owner has the right to do monitoring.

Mr. Morehead

- Announced a Planning Commission public workshop was scheduled on September 19 at 7 p.m. in the Council Chamber to discuss zoning mandated parking requirements, what the current law required for the various uses and a parking waiver study at the same time. He encouraged everybody to come.

Ms. Hadden

- Thanked the Communications office and Ms. Houck for putting together a memorable Patriot's Day ceremony. It was last minute, and she sent the notice out to her constituents. She thought it was well-attended. It was very touching that Robert Fangman's family was there. She said this event was a long time in coming and she was pleased this event would be held every year moving forward.

Mr. Markham:

- Noted Community Day was Sunday followed by the Taste of Newark next Sunday which were both always fun events.
- At the annexation discussion about billing for sewer charges, it came back that those who had water bills from other places get billed that way. His concern was the wells. They were basically billed at a single rate, so that customers were either overpaying or underpaying. He thought there were sewer-

measuring meters and felt the time to do that was when a property was annexed in and add it to their connection. That way it was an accurate billing for them and for the City and should also cut down on some of the manual work.

- Mr. Porach referred to problem properties in his neighborhood with noise and disorderly gatherings. One of the things on Mr. Markham's list was nuisance properties where the police had to go back repeatedly to respond to resident complaints. He knew Wilmington had a nuisance property law and wanted to explore options for Newark that would encourage better behavior.

Ms. Wallace:

- Apologized to Ms. Hadden that she did not let her know about the traffic issue in her district and acknowledged the oversight.
- Adding on to Mr. Markham's sewer question, she wanted to see if there was an update on the sewer billing issue for some City residents. She knew there had been a problem with billing for those who were sewer-only customers, especially for the Twin Lakes development. She knew there was something potentially happening there to fix that problem.
- Saw that the Cleveland Avenue Committee now had a website section. She requested that the DelDOT presentation from August be added to that.

Mr. Chapman: No comments.

Ms. Sierer

- Had a great turnout of about 30 people at the first Friday of the month bike ride. For now it was meeting at the Newark Shopping Center.
- The City's Safe Routes to School grant was approved. This program brought to the table Federal money to make ways to school safer and more appealing. This would provide \$150,000 over three years to help improve infrastructure and safety for bicycles and pedestrians on all the sections of Casho Mill Road between Nottingham Road and Barksdale Road which bordered John R. Downes Elementary. Earlier this spring, representatives from Downes Elementary, WILMAPCO, Newark Bike Committee and Newark Police performed safety audits along Casho Mill Road from Barksdale to Nottingham, ideas for protected bike lanes and crosswalks were submitted for proposal, and DelDOT was now proceeding with the design work. This was another opportunity where staff applied for a grant, received some funding and had many partners that worked to make this happen including volunteer organizations, City staff, and state organizations. It was a great partnership and they looked forward to the work beginning.

12. 3. ITEMS NOT FINISHED AT PREVIOUS MEETING:

- A.** Additional Information Requested in Relation to the Recommendation to Award RFP No. 16-04 - Fiber Installation Services for Connecting City Owned Assets for Information Technology (*Postponed by Council at the August 22, 2016 Council meeting*)

40:07

Mr. Brechbuehl presented additional information regarding the previous request to approve the recommendation to award RFP 16-04, Fiber Installation Services for Connecting City-owned Assets for Information Technology. At the August 22 meeting, Council requested additional information that might provide greater detail into the associated costs with approving RFP 16-04. The memo to Mayor and Council dated September 2, 2016, was a result of their effort to provide this detail. In the memo, they highlighted that approving this RFP would result in the City insourcing all installation and ongoing maintenance of a new fiber network, including installation and maintenance of surveillance cameras, water and electric SCADA equipment and connectivity between City-owned buildings and other assets.

Over the course of the ten years, the cost to insource vs. outsource this work was marginal. However, at the end of the first ten years, the cost savings began to increase. This was due to fiber being 100% owned at the conclusion of the lease-to-own period. While the costs for the first ten years were similar, staff was able to provide 21 additional safety cameras around the City while also providing same-day response to outages to ensure cameras were available to help the Police Department when they were most needed. It should also be noted that with the approval from Mayor and Council this evening, a bucket truck or van in this case and a single, full-time employee would also be required to make this project a success. These costs were already figured into the tables and charts provided to Council this evening. The funds were available today to begin this project with funds being available in both the City's Capital Improvement Program and Operating Budget in the amount of \$369,204. It was therefore recommended that Mayor and Council approve the following:

- 1) The concept of insourcing municipal fiber and camera operations as detailed in the memo.
- 2) Awarding RFP-16-04, fiber installation services connecting City-owned assets for IT under a lease-to-own option for a total cost of \$501,356 to the Tri-M Group.

- 3) The understanding that equipment, a vehicle, and a staff member would also be required to implement the in-sourcing of municipal fiber as outlined.

Mr. Brechbuehl mentioned that a one-page brief summary was sent out as requested by a Council member during the last meeting. Hopefully that information was satisfactory.

Ms. Hadden referenced the tables about the current available funding. At the last meeting, it was mentioned that the Police Department was giving a funding gift to IT, but she did not see that. Mr. Brechbuehl said it was broken down line by line, because there was some confusion there. It was not necessarily a gift so much as it was money that was available for IT services that were a savings this year in IT and was already in an IT category. Ms. Hadden understood it was a reallocation of funds that were dedicated to IT that they did not spend. Mr. Brechbuehl confirmed that was correct.

Ms. Wallace said it seemed with the insourcing the City would hire one full-time person. She had trouble understanding how that person would be on call 24 hours a day. In the second memo from September 2, the salary of \$70,000 plus benefits was given for a period of ten years and asked if that meant there would not be any salary increases. Mr. Brechbuehl responded that currently the City had one network administrator on staff who was qualified to work on switches and cameras. He was the one helping City vendors now. When they came out with a truck and needed an experienced set of hands on-site to troubleshoot networking issues, that person was doing that already. A second person would allow the City to not roll the vendor and allow them to rely on the truck and the person in the air while someone was on the ground doing the rest of the work. He believed that one person was sufficient. IT was on-call now; they chose this career and understand they could be called up at any moment to come in and fix things. IT staff all had cell phones and all responded to those requests. It was understood that if something would happen off hours, weekends, nights, that they needed to get things back up and running, that they would all be called back out to do the work. It was not anticipated that extra staffing was necessary.

Ms. Wallace asked if it was a requirement to have more than one person when someone was working in a bucket truck. Mr. Brechbuehl said that was not necessary in the communications space. This person would not be touching electrical, they would be lower on the utility pole. They would only be working on networking equipment, such as fiber optics and the associated switching around that went along with that, so it was only required to have one person, very much like the local Comcast or Verizon technicians who had a single-person vehicle.

Mr. Brechbuehl reported the salary would start at approximately \$70,000 plus benefits and included a 2% annual increase through the course of 20 years to get these predictions.

Mr. Morehead went back and looked at the CIP line item, I16-04, and it was for \$100,000 for one year and thus incurring a \$78,000 recurring operating expense. He did not see those numbers here. Mr. Brechbuehl said they had it showing here for \$81,205. The reason for that was because they had to outsource some work this year due to the City not having a contract in place. He said they had been charging costs to maintain the existing infrastructure to this line.

Mr. Morehead noted this was a Capital project and asked the situation as far as going through the Planning Commission for this. Mr. Brechbuehl did not know the answer to that question. Mr. Morehead said because what was listed here as I16-04 of City-owned fiber was described as City-leased fiber in the actual I16-04. Mr. Brechbuehl said correct. He did not have an answer to that question. That was something they had to look at. Ms. Houck said staff could show up at an upcoming Planning Commission or make them aware of it by memo.

Mr. Morehead guessed the sub-question here was, was there a rush to get this approved by Council before it went through the Planning Commission and on to the CIP because it was only in the CIP for \$100,000 for the current CIP up until 2020. Mr. Brechbuehl replied there was an internal rush as there were projects that were building up right now and camera installation that had not yet occurred because they were looking at these numbers and trying to do it the smarter way. There were projects that were built up and ready to go at the drop of a hat if approval was given by Council tonight.

Mr. Morehead's point was that he would like to see that enter the CIP process in a timely way and carry through. He would like to see some planning there. He would like to see the proper degrees of approvals along the way rather than, "Okay I want to do this tomorrow." Mr. Haines addressed the point. It was a capital project last year when staff came forward. It was talked about as a ten year lease, so the \$100,000 was represented in capital for if it was approved. From a planning process it was talked about as a capital project if it was approved. Upon approval it becomes an operating expense because it would have been a ten year lease. That was the homework that Mr. Brechbuehl did with Mr. Vitelli this year on

“can the number be better?” Last year's budget had it. What they did not do this year was trigger the lease for the ten years, which was ten years at \$100,000. That was where they were and that was what staff did the pause on, that the IT Department with the Electric Department did the whole assessment, and then they did to be able to show the math of why staff was recommending it was better to do the lease to own, than just the ten year lease and have nothing at ten.

Mr. Morehead's question was it looked to him like the Planning Commission approved \$100,000 once. Mr. Haines believed on that project it would become an operating expense because then it became an annual one. Mr. Morehead said the operating expense was carried through as \$78,000 for the person. Mr. Haines said he meant for the capital item in last year it would have showed the recurring expense of \$100,000. Mr. Morehead said it did not, it was for the external service cost was the \$78,000. Mr. Brechbuehl said what they had done was they planned \$91,000 each year in operating expense for the on-going lease. \$100,000 upfront in CIP was to buy the equipment that would be used in the installation of the lease for the fiber. Mr. Morehead said that was not what it said. It said \$78,000 on-going and \$100,000 once. Mr. Brechbuehl would double check that.

Mr. Markham understood that Mr. Brechbuehl reached a point where he had to take one path or another and was asking Council to tell him which path to take. Mr. Brechbuehl said that was correct.

There was no public comment.

MOTION BY MR. MOREHEAD, SECONDED BY MS. WALLACE: THAT COUNCIL SEND RFP 16-04 TO THE PLANNING COMMISSION FOR THEIR APPROVAL.

MOTION FAILED: VOTE: 2 to 5.

Aye – Morehead, Wallace.

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

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: TO APPROVE RFP 16-04, FIBER INSTALLATION SERVICES FOR CONNECTING CITY-OWNED ASSETS FOR INFORMATION TECHNOLOGY.

AMENDMENT BY MS. HADDEN, SECONDED BY MR. RUCKLE: THAT RFP 16-04, FIBER INSTALLATION SERVICES FOR CONNECTING CITY-OWNED ASSETS FOR INFORMATION TECHNOLOGY, INCLUDE THE FOLLOWING: #1, THE CONCEPT OF INSOURCING MUNICIPAL FIBER AND CAMERA OPERATIONS AS OUTLINED. #2, INCLUDING RFP 16-04 FIBER INSTALLATION SERVICES FOR CONNECTING CITY-OWNED ASSETS FOR INFORMATION TECHNOLOGY UNDER A LEASE-TO-OWN OPTION FOR THE TOTAL COST OF \$501,356 TO THE TRI-M GROUP, LLC, AND #3 WITH THE UNDERSTANDING THAT THE EQUIPMENT, A VEHICLE AND STAFF MEMBER WILL ALSO BE REQUIRED TO IMPLEMENT THE INSOURCING OF MUNICIPAL FIBER AS OUTLINED.

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

Question on the Motion as Amended was called.

MOTION AS AMENDED PASSED. VOTE: 6 to 1.

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

Nay – Wallace.

13. 3-B. RECOMMENDATION TO WAIVE THE BID PROCESS IN ACCORDANCE WITH CITY CODE FOR THE PURCHASE OF DEMO 2015 SPRINTER 3500 UTILITY VAN WITH VERSALIFT BUCKET (CONTINGENT ON CITY COUNCIL APPROVAL OF RFP 16-04)

56:54

Mr. Brechbuehl reported this related to RFP 16-04, and was a recommendation to waive the bid process in accordance with City Code for the purchase of a 2015 Sprinter 3500 utility van with Versalift bucket. This unit was a used vehicle solely for demo purposes. It had exceptionally low miles and a full factory warranty. This vehicle would be used to support the fiber network and camera operations throughout the City. It was identified as a low cost option compared to the considerably more expensive truck and trailer combo unit. The Sprinter van had a long track record of high reliability and the Versalift

aerial lift was made by the same company that provided lifts for the rest of the City of Newark fleet. After discussions with Mr. Vispi, the City's senior mechanic, staff felt comfortable that this vehicle would be relatively easy to service and would provide excellent reliability and a long service life for the City.

Due to the nature of purchasing a used vehicle, it was difficult to do a formal bid process. In fact in the time between the previous Council meeting and tonight, the City lost out on two used bucket vans that were sold very quickly after having been identified as potential service vehicles for Newark. Funding was available in the 2016 IT Capital Improvement Project I16-04 in the amount of \$75,000. It was therefore recommended that Council waive the bid requirement and authorize the City Manager to purchase the fiber and camera 2015 Sprinter 3500 van with Versalift for \$74,221 from Versalift's Utility Truck Trader.

Ms. Hadden said Mr. Brechbuehl's memo in paragraph 2 stated that he performed much research and talked directly to dealers to determine the market rate for the truck. She asked what dealers he reached out to. Mr. Brechbuehl said they had to contact companies that actually built the lifts. They bought the vans directly from the manufacturer and then put the lifts on them, so there was a wide array of vehicle types that could be purchased. They originally looked at an all-inclusive truck/box which was a combo truck. Those prices were well over \$120,000 - \$125,000 brand new. They also looked at a standard bucket truck/trailer combo at around \$100,000. They looked at van prices to do typical van lift truck. The issue there was that the Ford series Econoline was no longer built, so all that was available now was used equipment with upwards of 200,000 miles on it. They did a comparison across the new trucks, new trucks with trailers and used vans as they realized costs were too expensive for the City. They had a contact they worked with regularly to service and provide vehicles for the fleet who had a contact in Texas that had one of these vans relatively new sitting on a lot ready to go today. He was holding it for the City pending the decision this evening. It was considered a demo unit. It had miles and use on it but was within the dealer's inventory this entire time.

Mr. Morehead said the last time Mr. Brechbuehl was here he proposed that the truck/trailer combination for \$44,000 would be the most useful. Mr. Brechbuehl said they were absolutely wrong. It could be, but from a cost perspective, they thought that it was not the best decision to use funds for. Once they found that the Sprinter 3500 was available they found a taller van vehicle, a van that someone could stand up inside of and also provide that service as far as the lift was concerned. The concern they had with the trailer unit was parking downtown. They thought that parking a full-size F350 along with a 12-foot trailer behind it was going to be challenging in most of their locations. They could fit this van into a single parking space vs. having to wait for two parking spaces to clear or shutting down a lane.

Mr. Morehead's understanding of the trailer at the last meeting was that was where the splicing would be done in a clean site. He asked how this truck suited the needs for that. Mr. Brechbuehl replied that this van had the same type of back end to it. It was a little narrower than the trailer but it was taller so everything could be enclosed with heating and air conditioning for use in summer and winter. The maintenance division was working out a solution to getting the fiber pulled into the vehicle the same way it would with the trailer. It basically worked out to be a much cheaper version than the truck previously recommended to Council. Mr. Morehead thought the \$74,000 would be significantly increased with all the extra retrofitting. Mr. Brechbuehl felt it would be relatively minimal – a few hundred dollars to simply cut a box and put a drop down flap gate with a lock on it. The garage did not consider that to be an expensive modification. Mr. Morehead asked if a clean room was being built in the back of the truck. Mr. Brechbuehl said there would not be a clean room, it would have a workbench area with heat, electricity, and A/C. It was a comfortable spot to work in case someone had to work for 12 hours at a time. Mr. Morehead asked if the splicing had to be done in a clean environment. Mr. Brechbuehl said it did not.

There were no public comments.

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: TO WAIVE THE BID PROCESS IN ACCORDANCE WITH CITY CODE FOR THE PURCHASE OF A DEMO 2015 SPRINTER 3500 UTILITY VAN WITH VERSALIFT BUCKET FOR \$74,221.00 FROM VERSALIFT'S UTILITY TRUCK TRADER.

MOTION PASSED. VOTE: 6 to 1.

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

Nay – Wallace.

13. 4. APPOINTMENT TO BOARDS, COMMITTEES AND COMMISSIONS

- A.** Reappointment of Bob Cronin to the Planning Commission for a Three-Year At-Large Term to Expire September 15, 2019

1:03:51

Ms. Sierer presented the reappointment of Bob Cronin to the Planning Commission for a three year at-large term. Mr. Cronin was a resident of Newark for 60 years and served on the Planning Commission since 2012. He received the orientation and training provided by the City. He believed that his length of residency, his BA in Economics from the University of Delaware and his 25 years' experience as a local realtor in addition to his service since 2012 on the Planning Commission would allow him to continue to enhance the Planning Commission. He was in the US Army Reserve 28+ years. He was the past chairman of the New Castle County Board of Realtors, past board member of the Newark Historical Society and currently the at-large member on the commission.

Mr. Morehead would be recusing himself from the vote due to a prior business relationship with Mr. Cronin.

Ms. Wallace was surprised not to see a resume with the application and would have liked to have seen that.

The Chair opened the discussion to the public.

Helga Huntley, District 1, did not have any specific comments about Bob Cronin's candidacy for the Planning Commission, but asked if Council members made progress in determining what criteria they used for Planning Commission appointments. Ms. Huntley felt it was important for this agenda item because Council members needed to know what criteria they were applying before making their decision. Ms. Huntley asked what those qualifications were that he had to meet. Ms. Sierer believed the Boards and Commissions Review Committee was in the middle of taking a look at that. Ms. Bensley confirmed they were still working on their Planning Commission recommendation. Ms. Huntley asked whether Council was postponing any decisions on whether somebody met the qualifications until the Review Committee listed those qualifications. She did not understand how Council could make a decision whether somebody met qualifications without knowing what those necessary qualifications were. She asked whether those qualifications could be specified against which Council was assessing the candidate.

Mr. Markham expected the question was the recusal question. Ms. Huntley said the question was general. She brought this up previously but was hoping that Council would work on identifying what these criteria were so that potential candidates would know what they were going to be asked to bring to the table. Mr. Markham pointed out that the general requirements were in Code, and the Boards and Commissions would be reviewing the Planning Commission plus they would be reviewing the Ethics Board and he believed the recusal process as well. Ms. Huntley said what was in the Code was not what was applied at the last appointment. The reasons for which the last appointment was turned down were none of the reasons stated in Code. Council was free to have other criteria against which to judge candidates. She requested that those criteria be shared with the public so that they understand what the decisions were based on. Mr. Markham said back to the recusal, he did not think Mr. Cronin had the recusal issue unless he had somebody come before him who he has done business for or if there is real estate that he is trying to do a project for. That would be something he would look for, and that was the reason why he asked that question last time.

John Morgan, District 1, read for the record the statement in Code which said, "Members of the Planning Commission shall be qualified by reason of education, experience, and familiarity with the city and each member shall be a resident of the number district for which he was appointed." He thought it was clear from the record that Mr. Cronin was eminently well-qualified in this regard. The issue of recusals could be very complex. Certainly the State's Code of Conduct was complex and hard to understand. He thought the simple rule was that if one was doing business with someone who brought a project before the Planning Commission, or if one was an employee of an organization that had something before the Planning Commission, they should recuse themselves. Those covered most of the circumstances. If there was any question, then they should think about it and maybe go to the Board of Ethics for an opinion. He did not really think that should be a problem.

Joe Charma, District 1, said that Mr. Cronin served as a Planning Commissioner successfully, so his credentials and experience spoke for themselves. If any Council member was not happy with his past performance, he would say that should be discussed. Other than that, Mr. Charma thought he was well-qualified. Also in the issue of a recusal, Mr. Charma did not think there was anybody on Council or in any form of any government, unless they stayed in their houses all day and did not work and did not do anything, they were going to be conflicted somewhere. He thought the important thing was transparency and getting that out if they believed there was a conflict.

The Chair closed the floor to public comment and brought the discussion back to the table.

Mr. Ruckle knew Bob Cronin as a realtor and had the utmost respect for him, his intelligence, and his integrity. He was bound by an ethical code that was higher than any standard in any industry. He would highly recommend him to continue being on the commission.

MOTION BY MS. SIERER, SECONDED BY MR. CHAPMAN: TO REAPPOINT BOB CRONIN TO THE AT-LARGE POSITION ON THE PLANNING COMMISSION FOR A THREE-YEAR TERM TO EXPIRE SEPTEMBER 15, 2019.

MOTION PASSED. VOTE: 6 to 0.

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

Nay – 0.

Recuse – Morehead.

14. 5. SPECIAL DEPARTMENTAL REPORTS:

A. Special Reports from Manager & Staff:

1. Policy Discussion on Possible Amendments to the Zoning Code: Alcohol Production and Sales – Planning & Development Director

1:12:32

Ms. Feeney Roser spoke on behalf of the Planning and Development Department to seek direction on the City's policies concerning alcohol production and sales. Recently with the rise in popularity of craft beers, the Planning and Development Department had been approached by several different potential business owners who would like to open microbreweries in the City with varied accessory uses based on their business plans such as tasting rooms, tap rooms, beer gardens, some with food and some without food. City Code as it was currently written did not permit those uses. The production of alcohol as a primary use was not permitted, nor were the accessory uses requested which would involve the sale of alcohol being manufactured on premise. Considering the volume of requests received and because it appeared there may be some positive economic impact by allowing microbreweries and distilleries on a small scale, particularly in some parts of the community, the department thought that it might be something that Council would like to consider.

She continued that the City had a very long history of trying to control and limit alcohol sales and consumption, as well as the negative impacts of overconsumption and the impact it had on the community. That was done through restrictions in the Zoning Code. The department's workload was already considerable, so she thought it would be best to have a discussion with Council about the possibility of amending the Code to allow the small scale production of beer, wine, and spirits along with associated alcohol sales in certain zoning districts before staff took any action. For example, the department could envision amending the Code to allow for some of the requested uses as conditional uses which would require special use permits and be subject to the Newark Police Department protocol for special use permits in the BC (general business) zoning category. The reason they selected that was because they believed it would stimulate some economic growth outside the downtown area, which for the most part was zoned BB and particularly because it might help some of the local shopping centers which had seen some difficult times. Of course they would need to do extensive research to glean the best practices from other communities which permitted such uses and which actually regulated alcohol sales themselves, as they did, because most communities in Delaware and several of the cities that had been pointing at it to the department as models for places micro-breweries had really prospered, did not control alcohol themselves and they left it all to the state.

Ms. Feeney Roser reported they would do the necessary research, develop recommendations and then present the potential amendments to the Planning Commission for their review and consideration and ultimately to Council for consideration, but only if they were interested in doing that. So, simply, what they were looking for was policy direction. She was not asking Council tonight to decide whether they would eventually support any amendments to the Code to allow it, but simply to determine if Council believed it would be a good use of limited staff time to consider crafting amendments for their consideration. In other words if Council would like to consider options related to alcohol production and sales in the community, they could begin work on that. On the other hand if they knew now that they could not or would not support small scale production of alcohol or its delivery and methods different than what Code allowed now which were package stores and full service restaurants only, then they would direct future inquiries to outside the City limits. They were really here just looking for policy direction.

Ms. Wallace asked Ms. Feeney Roser to give her an idea of what BC was. Ms. Feeney Roser replied that BC was the most general and intensive commercial zoning. It was outside the downtown limits for the most part, although there were parts far from downtown, like the Shoppes at Louviers that was zoned, BB, but it would take into account the Park and Shop, the area down Rt. 896 and Fairfield shopping center

were zoned BC, so was more intensive, general type commercial uses that could go in there. It was not as limited as our other commercial uses.

Ms. Wallace asked what was meant by small-scale. Ms. Feeney Roser said from what she looked at (and she only started the research), there was a gallon limit to how much alcohol could be produced and she knew there were folks that signed up to speak that could probably provide a better feel for what they were looking for. She could not remember how many thousand gallons it was.

Ms. Wallace had some concern about making sure the impact was adequately addressed as far as water use, environmental waste, by-product waste and could a special use permit be used to control the manufacture and the beer garden aspect, both of those so every time someone wanted to open one of these would have to come before Council. Ms. Feeney Roser responded that could be done and have, already looked at the distances from residential districts that might have to be considered and should the waste be enclosed and things of that sort. Staff would come back with amendments that would have conditions in them that Council would be able to consider.

Mr. Markham asked what she would say was different today that would make this smooth and permissible because there was a trend in Council for many years to deal with a lot of issues that were wrapped around alcohol. She thought it was the experience, there were so many and they were opening rapidly, the micro production of alcohol and tasting rooms and things of that sort have taken off in other areas. She herself engaged in going to one or two of them, and they were often family-related things, so it was kind of a different animal than the City ever considered for alcohol sales. She thought when they looked back over the years most of them were targeted to students and how to stop over-consumption by regulating how many places or how that alcohol could be obtained. She thought the mood of Council was a little bit different about alcohol in general which was why she felt comfortable coming to them instead of just saying, "No, we were not interested."

Mr. Markham asked what was different in Newark in terms of process. It was not just the whole microbrewery he was talking about within Newark that helped control this or make it so they did not end up with another problem. Ms. Feeney Roser said it was the special use permit which was a good tool and would be a better tool now that they had the protocols for how to revoke one and the fact that over the years the City became a destination for restaurants and for places for people to be entertained through activity on the street. She thought the difference now was downtown was pretty healthy and staff was asked to look around at what could help other areas of town. She thought this might be something that could stimulate new tenancies in shopping centers as long as they developed a list of conditions to make sure they were well run and the City was monitoring them.

Mr. Markham pointed out that the special use permit went with the land. Ms. Feeney Roser said it did unless the use was abandoned for more than a year. Mr. Markham thought in some of these cases it was almost like if they ceased business, the special use permit should be pulled back in some of these special cases. Mr. Morehead stated that Council had done that in the past. Ms. Feeney Roser added that we have pulled special use permits. Mr. Morehead said we pulled it when we gave the special use permit, we made it contingent on if this person ever gave up this business at this location. Ms. Feeney Roser said they had done that for an in-home hair salon, so she thought Council could place that as a condition of a special use permit if they wanted to. Mr. Herron would look into that.

Mr. Ruckle said he had numerous calls from folks all over the state that wanted to open one of these in Newark. He was all for it because over 50% of the City was non-students and they wanted other things to do. This was something District 2 had been screaming for, they wanted to be able to participate. They had the parking issues, they could not walk down to Main Street and having other areas where they could drive and patronize and socialize with their neighbors was a great idea. This was not catering to students, these brews were probably \$5 - \$8 a glass, where the students were looking for beer at fifty cents a can. It was not the same type of clientele, and he did not see that they were going to be running here. He thought the issue was going to be food, they had to serve some type of food, so people were not over-consuming alcohol. There was no issue with these at all, there was one in Wilmington now, and they were breaking out all over the country so Newark just had to get with the times.

Ms. Hadden asked Ms. Feeney Roser to explain BB zoning. Ms. Feeney Roser explained BB was downtown zoning, it was central business district, but there were areas outside of downtown that were zoned BB. Ms. Hadden asked what the industrial parks would be down Elkton Road. Ms. Feeney Roser reported industrial parks were MI, MOR and even ML and may be appropriate for larger scale production of alcohol and then distribution and sometimes a tasting room. She had not gotten as far as that, other than to think that it could be good for the BC zoning district. Ms. Hadden remarked that she had been reached out to by a couple of people who wanted to bring a micro-brewery with a tasting room and a

type of food venue to town, but it got very complicated. Ms. Feeney Roser said it was complicated and was going to take some time. Ms. Hadden thought this was a conversation that was okay to have.

Mr. Morehead felt this was a timely conversation from the folks in District 1 that would like to do exactly what you said. On the weekend he attended the opening of the new meadery, Liquid Alchemy, in the county, just off Route 4 up towards Wilmington. He had a couple of concerns. They seemed to fall through the cracks because it was not a wine, beer or spirit. They spoke of how the State ABC had real trouble, so he asked staff to consider all types of alcohol in their thinking – go ahead and split them up, maybe control them differently, but have a catch-all category. They did not seem to be well trained as far as they were offering a flight, which was one of everything they made, and that was too much alcohol for him as it was between 10-12% alcohol content. They did not know the answer and he was shocked because they were serving. The other thing was they were not required to serve food. Another curious thing was the area required to manufacture in their case was about the size of his kitchen which was not particularly large. The tasting room was significantly larger, but this was a very small, it could fit into this room easily five, six times over. He did not have an issue with this, he did not know if Iron Hill actually manufactured or all that was for show. Ms. Feeney Roser explained in Iron Hill's case, the manufacture of beer was accessory to the restaurant, so that would be permitted and someone could do that in downtown now. Smyrna had a distillery, the Painted Stave, but they did not regulate their own alcohol.

Mr. Morehead would like to see the City tie up all the loose ends, coordinate with the state, things they did not do, retain the control for the City. He thought it was a good idea. He knew folks were interested in having these specialty businesses, it made good sense. It did not necessarily take a lot of size. He would not want them anywhere near a residential district, and that was his only real concern. He would like to have a discussion about food and how much food and when to shut them off. He did not know why the folks at Liquid Alchemy did not seem to be well trained, and he was concerned about that. It may have just been opening day jitters. If there was a gap in that because it was not a beer, a wine or a spirit, he would like staff to close that gap.

Mr. Ruckle thought the concern was that there would be a tavern that opened up that served only alcohol. As long as they produced their own alcohol, that would be part of the special use. Ms. Feeney Roser replied she was not, at this point, although it could come up in the discussion of amendments certainly, looking for a simple taproom that did not have the added feature of production. Mr. Ruckle thought that had to be in there to avoid future issues.

The Chair opened the discussion to the public.

State Representative Mike Ramone was in attendance more as a liaison because some of these issues were being discussed in Dover right now, even with the different types of alcohol. He thanked Council for the 9/11 tribute, and in particular Ms. Hadden and Mr. Ruckle for being there and for their comments. The ceremony and the Fangman family comments were very touching, so that was important that we did not forget 15 years later.

He asked Council to consider Ms. Feeney Roser's request that the topic of Code amendment for planning and eventual Council vote to the craft code for micro-winereries, breweries and distilleries be placed on an upcoming Council agenda for discussion. As he mentioned, this was something they were talking about in Dover. Many entrepreneurs came forward with wonderful ideas on how they could enhance jobs, create a safe environment for the opportunity of people tasting different types of alcohol, but in an environment that did not condone, he thought, the indulging issues that in the past were in some of the younger college communities.

There was a way to handle it, he thought the uniqueness here was the discussion that the City would go through, would help to enhance a path forward that he thought was safe and healthy for the community that would not be somebody come in and buy a dollar mug of beer, but somebody who was really coming to appreciate different types of brews and alcohol. He understood the concerns of the City and the college, and he trusted the steps used to go through this would help ensure that what came out in the end was something that was important.

He believed the discussion would address the concerns and afford the opportunities to entrepreneurs to be able to build businesses, bring more jobs, enhance the tax base and most important, to service the customer base not being satisfied by much of the businesses currently operating in Newark. He hoped the City would go forward with the dialogue to help find a way to do this right to help people.

Kent Steeves, District 1, said he and his wife had been residents for more than 25 years. They wanted to open a micro-brewery in Newark with their partners. Micro-breweries typically fell into three

main business models. One was just a production brewery: they were producing beer and it was just for packaging and selling. They might have a tasting room for no charge. There were micro-breweries that also had a taproom, but there was absolutely no food involved. They were all over the country because they did not know how to run a restaurant and did not want a business to go out of business because they were forced to be a restaurant. The third, and it was an avenue they were pursuing was a micro-brewery with a taproom, a beer garden and actually two elements of food.

They wanted to offer what they called light fare because they could do that and not be a restaurant and rely on food trucks. Food trucks were growing tremendously and Newark already had great experience with that. Three new breweries already opened up nearby. They explored a lot of areas in the City limits but stopped because they could not open here, so they were looking in the County, but it was not what they wanted to do, so they were hoping to get Council's support that the Planning Department could move forward.

There were two key considerations for Council to think about: 1) Micro-breweries were a proven, strong business solution to bring more to the periphery areas of cities. These micro-breweries were opening up typically in the periphery or in redevelopment areas or industrial areas that just needed life. This was happening all over the country, big cities and small. Micro-breweries were destination establishments, people were going there to taste craft beer that was made there and to have a good, enjoyable time. This would support Main Street businesses because it was bringing more people into Newark and was also getting residents out of Main Street and to the peripheries of the City. As everyone knew, there was a lot more to the City than Main Street. 2) The second big consideration was why micro-breweries did some of these things he talked about with the alcohol challenge. Micro-breweries, beer in particular, was made there on site, so people were going there for local craft beer that was made on site, a lot of different variations, but people were also going there to hang out. They looked at it as Newark's community room, it was another place to be, a concept that they introduced to some, it was called a third place which was in their concept, but it was not work, it was not home, it was that third place. Kennett Beer Garden was the best example locally to go see what a beer garden was all about, full of families all over. Mr. Steeves hoped that Council would consider allowing this to go forward.

Ms. Wallace asked Mr. Steeves to define small scale. Mr. Steeves said micro-breweries would be anywhere from what was called a nano-brewery up to micro-brewery scale. A nano-brewery would be about a one and a half to maybe three barrels. One barrel was 31 gallons of beer and a keg was 15 1/2 gallons, or a half barrel. They were targeting a 10 barrel brewery, there were others that were interested in around a five barrel brewery and the most recent up in Bellefonte, he thought they were a one and a half barrel, to give an idea of size. Mr. Morehead asked for what period. Mr. Steeves responded that was per brew, so Iron Hill on Main Street was probably producing about 600-700 barrels a year would be his estimate. Dogfish Head was producing 250,000 barrels a year. In their business plan they were targeting about 450 barrels in the first year.

Joe Jasper, District 1, was a resident of the City of Newark for over a year, was actively involved in the brewing industry for over a decade and also had an interest also in opening a micro-brewery within the City limits. He was here to support potential change to the Newark zoning laws that would allow for breweries to open but was primarily focused on the production of small batch craft beer. This change would provide a new opportunity to put Newark on the map. Craft breweries which focused on beer and community were increasingly common across the United States and were being promoted as a way to build up local economic capacity and bring the community together.

Having been a professional brewer for the last ten years or so, he saw this approach work very well for producers and consumers alike. It could be a very positive and integral part of the local economy and it could bring those consumers and producers together from across industry and from within the community. He saw first-hand the successes at small scale breweries, mostly in the State of Oregon. Oregon had a robust network of craft wine, beer and spirit producers, harnessed these creative ideas in that place and contributed to the local economy as well as the tourist industry and to building community, even in university towns such as Eugene, Oregon, home to the University of Oregon. Craft breweries in Eugene were able to create spaces where people who were not attending the University could enjoy beer and meet up with friends in town away from the party crowd. As already said, it was an opportunity to give community residents a choice that was not on Main Street. He saw the most similarity between Newark and Eugene because both were college towns with the combination of both students and locals seeking out interesting food, drinks and entertainment.

A micro-brewery was a craft production facility that was focused on making a high quality product, quality being the key for him. Micro-breweries were always focusing on creating full flavored products, usually at high price points and atmospheres that encourage drinking in moderation, with an interest in

community support. Most of the time these were very family friendly, even dog friendly. These places usually offered free tours of the facilities where they were focused on engaging and educating people on what craft beer and micro-breweries were all about. Again, micro-breweries were a place where the focus was the beer. The locals and tourists were interested in learning about the beer and the beer-making process. These customers often inquired why certain ingredients were chosen, where they came from, how they were used to create that particular beverage. Even the Delaware tourism office listed the Delaware Beer, Wine, and Spirits Trail as one of the top trails not to miss when visiting the state.

Rob Gifford, District 3, related an experience he had this summer in Wolfeboro, New Hampshire, which prided itself on its downtown area. They were very restrictive of what they allowed downtown, there were no chain restaurants, and the only Dunkin' Donuts did not have a sign and was not even on the main street. However, there were two new restaurants downtown that were similar to this concept. There was a small one called the Lone Wolf. He thought they brewed their own beer in a very small setting, and had two tables and it was right downtown on Main Street. For a town that was fairly restrictive of their rules, it was a nice addition because there were only two or three restaurants downtown. It allowed people to walk to more destinations. Mr. Gifford supported at least bringing this forward to the Planning Commission and looking at the Code and bringing it back for Council consideration.

The discussion was brought back to the table.

Ms. Sierer reiterated the Planning Department's recommendation that Council consider amendments to the Code to address the production of alcohol in micro-format as a primary use and regulating uses accessory to that production which may involve on premise consumption and/or limited retail sales before embarking on the considerable research necessary. Council members expressed consensus that they would like the Planning and Development Department to pursue further research on this issue and bring it back to Council in the future.

15. 6. RECOMMENDATIONS ON CONTRACTS & BIDS: None

16. 7. FINANCIAL STATEMENT: (Ending June 30, 2016 and Ending July 31, 2016)

1:43:08

Mr. Del Grande presented the unaudited financial statements ending June 30, 2016 and July 31, 2016. Since the July statement encompassed the June statement information as well, his presentation focused on the July statement.

Overall, the July year-to-date operating surplus was \$119,000 ahead of the year-to-date budget, which represented a decrease of \$373,000 from June. This reduction was primarily due to a \$383,000 decline in year-to-date revenue estimates within the enterprise funds which he would discuss momentarily.

Beginning with the governmental funds, revenue variances improved over June by \$72,000. The expense surplus declined by \$52,000, resulting in a net positive variance of \$21,000 vs. June.

The revenue shortfall was due primarily to the realty transfer taxes and property taxes. Realty transfer taxes through July slightly trended under the budget estimate of \$1.6 million this year. Through August 31, the City realized \$955,000. Staff was hoping to see real estate activity pick up in September to get the City back on track for the year. Real estate activity was difficult to predict, so it was possible the City may fall short of budget at the end of the year.

They were, estimating property tax revenue to be \$50,000 over budget at year-end, to help potentially with the lag in RTT. They had budgeted \$6.17 million for the year and hoped to see at least \$6.2 million by December 31.

Permit revenue generated through July was \$947,000, which was \$162,000 ahead of the same period last fiscal year. E.I. DuPont Nemours and Newark Shopping Center projects in June and July helped add \$31,000 collectively. The current budget for the year was \$2 million and was tracking slowly under budget through July.

In the enterprise funds, the overall operating surplus was \$184,000 below the budgeted surplus of \$13.1 million. Revenues were tracking the year-to-date budget by \$821,000, but expenses were minimizing the shortfall by falling \$638,000 under budget.

The enterprise revenue margins of \$821,000 under the year-to-date were primarily due to electric sales. Year-to-date electric sales were down 2.5% or \$2.8 million compared to budget, and \$1.8 million

compared to July of last fiscal year. Electric purchases which offset electric sales revenue met the estimate for July but were 4.3% behind July 2015 year-to-date purchases.

Overall, electric prices were \$2.1 million below projections for the year-to-date. Staff anticipated this would change shortly due to the August record-setting heat. While mild temperatures early in the year negatively impacted electric sales, August electric sales out-performed estimates by 11%. Once final figures in August were available, staff would update Council on that status.

Year-to-date water sales were down 6.4% compared to July 2015 and had trailed 2015 throughout the year. Staff was hoping to see water sales improve once August data became available. The cause of this issue was in part because residents were continuing to practice conservation and utilizing data available to them on smart meters. Water sales were meeting the year-to-date budget estimate and being further assisted by a \$323,000 seasonal savings in sewer purchases for July. Just as a reminder, as the sewer flow declined, so did the quarterly bill the City paid to New Castle County. That was where they were seeing the \$320,000 savings.

Parking revenue was tracking slightly behind budget by \$36,000, but it was \$58,000 ahead of July 2015. Staff was estimating that overall parking revenue should come close to the annual budget of \$2.9 million by year end.

Overall enterprise expenses, which included electric, water, sewer, and parking, were offsetting declined revenue with an estimated \$638,000 in seasonalized surplus through July. Savings generated were due to personnel services of \$322,000, materials and supplies of \$130,000, and contractual services of \$181,000.

The electric regulatory asset, which was an under-collection, declined from \$461,000 in June to just \$40,000 in July, due to above average temperatures during the month of July. With the continuation of the warm summer days, staff was estimating the regulatory asset would become a liability at some point in August. Any under- or over-collection fees would need to be considered in the 2017 rate stabilization adjustment. As of now, it was too soon to project where the City would be at the end of the year, due to the many components that fell under the RSA.

Insurance and maintenance funds were performing well and offset some of the negative variances. Shortfall for these funds was \$228,000 lower than the year-to-date budgeted deficit, primarily as a result of lower maintenance expenses of \$150,000, and contractual services of \$53,000 in the internal services fund and \$31,000 in the self-insurance fund.

The cash balance as of July 31, was \$25.7 million, which included \$21.6 million in cash reserves and \$4.1 million in operating cash. Staff was currently working with Morgan Stanley to transfer the reserve account over to US Bank so it could be actively managed by PFM. Once those funds were successfully transferred, Mr. Del Grande would update Council.

Mr. Ruckle noted the City was going to see a huge decrease in July and August real estate transfer taxes. He said that as a realtor, it was the worst summer they had since 1976 due to weather and vacations. He felt like there would be a huge shift in the fall as they were getting slammed now, but there was going to be a two-month period where they were not going to see that.

Mr. Markham wanted to confirm sewer expenditures were 100% related to the water reduction and the county was not going to send the City a make-up bill sometime in the future. Mr. Del Grande indicated that was not the case and it was definitely related to the lower flows going to the county as a result of lower sewer activity.

Mr. Markham asked about the Green Energy Fund and if the Newark United Methodist Church had received its payment. Mr. Del Grande indicated that DEMEC mailed the check to the United Methodist Church on September 1 for \$30,000. Mr. Markham asked if that meant there was almost nothing in the coffers, which Mr. Del Grande confirmed, but thought the City would probably see another \$10,000 or \$12,000 coming in August, which would take the balance up to \$37,000, \$38,000 and then the \$30,000 coming out. They would have a little bit of money there. Mr. Markham indicated this would now start the newer formula for the Green Energy Fund reimbursement that was approved and presented by CAC back in December.

Mr. Markham indicated that his last comment was more for the budgetary process. His concern was on the electricity rates and seeing the chart where the City stacked up these days. He thought the City looked out of proportion at this point in time, in terms of being one of the highest around. Typically,

Newark was in the middle of the pack and this was a competitive issue. Mr. Del Grande agreed they needed to keep an eye on that. Mr. Markham said they needed to research that and think about where the City was going to fall and certainly did not want to hurt the residents or the businesses but needed to be competitive. Ms. Houck stated that the City's summer rates typically put them towards the middle or higher. Mr. Markham said the chart he had seen recently put Newark at the highest and assumed that Delmarva probably was lower due to their buyout agreement. Ms. Houck pointed out the City's ability to reduce rates was in direct relationship to the margin transfer. Mr. Markham understood that was a major challenge. Ms. Houck agreed she would like Newark's rates to be in the middle as well.

Mr. Morehead stated that the component of the RSA that paid back the over-collection was set in the beginning part of the year based on the extra was over-collected last year, and then how much electricity they planned to sell. He noted if the City sold more electricity than that and that was going to turn into a liability for the City soon, they would have paid back more than was in that over-collection. His question was should the City be capping that when they paid back the over-collection and say that was the amount of money and they were done for this year for that component. Mr. Del Grande said that was something that could be considered. Mr. Morehead thought they should do that as there was another component in there for margin and one was working against the other if sales to budgeted sales were not exactly matched. It did not make sense to him. Mr. Del Grande said that could be looked into.

The Chair opened the discussion to the public.

Jeff Lawrence, District 3, commented that often things were approved by Council based on it being presented as having a positive return on investment sometime down the line, such as the earlier fiber discussion, the smart electric meters and new parking meters. He felt once it was approved the public never heard anything about it again. He urged that anytime something was approved based on some kind of projected positive cost savings, the City ought to be proud to share how the actuals were tracking. He was not trying to create more work and thought simple metrics to evaluate that should be established at the time a project was approved so that with one or two numbers that could be tracked month-to-month it was possible to follow the progress of how they were doing against what was projected to Council. He thought everyone on Council was sensitive about how money was spent. He noted it was easy to save money tomorrow, but harder when it was promised money could be saved over a longer time period. He thought metrics of costs versus revenues were two simple numbers that could be tracked monthly or quarterly as a requirement for every cost savings measure that was approved. He also urged the City to look at previous measures to try to figure out a way they could be tracked, especially the parking meters.

Mr. Chapman stated that the City on July 21 this year released the Smart City Initiatives Update. It specifically spoke to McKees Solar Park, smart utility meters, Big Belly solar powered compactors, credit enabled parking meters, and LED street lights. He thought all the specific information Mr. Lawrence requested was in there. It satisfied all the questions that had been raised by current and former Council members. He believed that there were still unanswered questions and there were some additional details that were requested once that was released. He agreed with Mr. Lawrence and noted they were doing it and the document was on the website under Press Releases listed under Smart City Initiatives. Mr. Morehead stated that the one thing that was notably missing was a return on investment for the parking meters. There was commentary about how they were convenient and how people liked them, but the actual ROI for that one item was not in that document like it was for everything else in that document. Mr. Chapman thought Council brought that up and asked Ms. Houck to have that added. Mr. Lawrence thought any project with a positive ROI could be tracked with one or two numbers and felt additional "fluffing" was not necessary. He asked if the report could be forwarded by Ms. Wallace to his attention and if it was a one-time report or would be done periodically. Mr. Chapman thought that was something they would be discussing. Mr. Lawrence reiterated he did not want to create a burden of extra work.

Rob Gifford, District 3, noted he found that report by accident when he was looking for the budget information. He thought there was good information in there. With the parking piece, he was still looking when he was on Council for the different zones and the results of each zone and the comparables to previous years, which they would probably be able to compare to full years of old parking data. There was some half-year data and some full-year data. It was not immediately apparent if there was a direct comparison. He noted he did not spend a lot of time with the report, but skimmed it. There was still some parking data that had to be put forward. He thought the trash information was pretty clear for the smart trash cans and recycling but did not pay much attention to the electric and water meters.

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: TO RECEIVE THE FINANCIAL STATEMENTS ENDING JUNE 30, 2016 AND JULY 31, 2016.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

17. 8. ORDINANCES FOR SECOND READING & PUBLIC HEARING

A. Bill 16-23 – An Ordinance Amending Chapter 20, Motor Vehicles, Code of the City of Newark, Delaware, By Designating Sunset Road as “No Parking Anytime” *(See 10-A-1)*

2:01:21

(Secretary’s Note: The public hearings for Items 8-A and 10-A-1 were held simultaneously.)

Ms. Bensley read Bill 16-23 and the resolution by title only and noted the advertisement of the public hearing and sending of direct mail notices.

MOTION BY MS. HADDEN, SECONDED BY MR. MOREHEAD: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 16-23.

Deputy Chief Feeny presented as Chairman of the Traffic Committee. This was brought before the Traffic Committee after a request was received from several residents in the area. In a discussion by the Traffic Committee, it was determined through section 20-215, that currently the north side from South College Avenue to Orchard Road was a no parking zone as it stood. It seemed that for whatever reason, the area from Beverly to Townsend somehow was not included in there. As the discussion went, the Committee felt it was a good idea to be consistent with the current structure of the no parking ordinance. They recommended to Council that specific area be designated a no parking area. The other part of the petition that was signed was to designate that particular area a special residential parking district once the no parking was ruled upon. The Traffic Committee agreed that was a good idea as well.

Ms. Hadden added that what had started happening was the area that was not designated no parking anytime, special residential permit required, had been discovered. People were parking their cars there over the weekend. They would show up on Fridays and leave them until Monday morning. It was distressing in particular, to some of the residents whose properties touched up against that area, because of confusion over the ownership of cars outside their homes. She thought it would bring consistency to the entire street and would improve the quality of life for the people who signed the petition.

The Chair opened the discussion to the public.

Rob Gifford, District 3, asked on streets that were totally unrestricted, were others that did not live there allowed to park there for an unlimited amount of time. Ms. Hadden and Mr. Morehead stated they were permitted to park there up to three days.

Mary Khalid, District 4, a resident of Sunset Road, said it was wonderful having no parking. It kept the integrity of the neighborhood, especially when they were so close to the University of Delaware. While there was a population of 18,000 at UD, she felt it was wonderful to know that they could keep a residential neighborhood, which was single family dwellings. There was a short time as Ms. Hadden mentioned when they had parking on the north side of Sunset Road in front of Ms. Khalid’s house. She felt it was a nightmare because there were people coming and going all the time. It was free parking, so of course anyone coming to the University would opt for that part of Sunset Road instead of parking in University parking where they had to pay. She felt there was also a safety issue as people had cars burglarized when they were parking on the street. People stayed and sometimes lingered in their parked cars and there were issues of security. She felt it was wonderful to have no parking and supported the resolution to keep all of Sunset Road that way.

MOTION BY MS. HADDEN, SECONDED BY MR. RUCKLE: THAT BILL 16-23, AN ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLES, CODE OF THE CITY OF NEWARK, DELAWARE, BY DESIGNATING SUNSET ROAD AS “NO PARKING ANYTIME”, BE APPROVED AS PRESENTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(ORDINANCE NO. 16-26)

18. 9. RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT: None

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

A. **Council Members:**

1. **Resolution 16-__:** A Resolution Designating the North Side of Sunset Road Between Beverly and Orchard Roads as a Special Residential Parking District **(See 8-A)**

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

MOTION BY MS. HADDEN, SECONDED BY MR. MOREHEAD: THAT THE RESOLUTION DESIGNATING THE NORTH SIDE OF SUNSET ROAD BETWEEN BEVERLY AND ORCHARD ROADS AS A SPECIAL RESIDENTIAL PARKING DISTRICT BE APPROVED AS PRESENTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

(RESOLUTION NO. 16-U)

20. **10-A-2. DISCUSSION AND POSSIBLE VOTE REGARDING PARKING GARAGE REQUEST FOR PROPOSAL PROCESS (COUNCIL MEMBER WALLACE)**

2:08:52

Ms. Wallace noted that she had asked for this item to be placed on the agenda because she had been hearing from residents a lot of concern and confusion about the RFP process moving forward. She thought it best to put it on the agenda and discuss it and make the public aware.

She started off by asking a question, and that was, in the RFP on page 2, it said, "The goal of this RFP was to provide Newark's Mayor, and Council and the community the opportunity to envision the potential benefit to entering into a public-private partnership for the development of this site with a garage." She was confused by how things were playing out because it seemed clear to her that there was an expectation that this process was going to be public. It did not just say mayor and council. It said mayor and council and the community. She was not sure that she understood how these RFPs would be made public. When would the public have an opportunity to see these RFPs if certain information was redacted? She knew there were discussions about having workshops. What was there to discuss at workshops if the pertinent details of the RFP could not be discussed. She asked Mr. Herron to comment about that language in the RFP and what it meant.

Mr. Herron said the issue, as he saw it, was that the RFP that went out in July referred to the potential for public presentations, but it did not specify that the information submitted would be public. Then the City had a FOIA request. That required an analysis, not only of FOIA, but also of the state statute which, in his view, did apply to municipalities in this context, which provided that information contained in the proposals shall, and he emphasized the word shall, be confidential except for information as was specified in the request for proposals. That created a situation. His recommendation was that if it was the intention of Council that the documents submitted in response to the request be made public in their entirety and that presentations to the public include full and complete disclosures, that there be a motion to direct the City Manager to notify the five firms which submitted proposals in response to the RFP that the City decided to withdraw the RFP and then to further direct that the City Manager issue a new request which specified that all information contained in the submissions shall be read publicly and shall be considered public documents. That was his recommendation.

Ms. Wallace's next question to the rest of Council – was that their expectation? Certainly it was her expectation that this process be open as much as possible.

Ms. Hadden responded that indeed was her expectation. Although she understood somebody wanting to keep something confidential, it was a public process. She was perfectly comfortable if someone wanted to make the motion that Mr. Herron just suggested to have the City Manager notify the five firms, tell them the RFP was being pulled, put it out again and make it clear to the public it was an open process.

Ms. Houck totally agreed. If anybody was paying attention to the whole process and the conversation at the two different Council meetings where this was discussed, the City's intention was that it would be fully public. Certainly the presentation before the Council that was stipulated in the RFP would suggest that would be understood. She welcomed the opportunity to tweak the wording to get it right if Council was so inclined to do so.

Mr. Morehead noted he would like to tweak the wording around the multiple-use commercial property piece in that he would like that to be an option. Council was told repeatedly that the University required this to be a multiple-use building, and there was no documentation to support that claim. He found that difficult from a number of perspectives. He did not think the City should be in a position of being a commercial landlord in what he would say was a conflict of interest to the other commercial landlords. He did not think this was the City's primary business or something we should be doing. He was willing to contemplate a parking garage. If the RFP was re-issued, he would like to see that piece corrected.

Mr. Markham said Council certainly was not doing anything with this. He had not even opened it with the fact that there was a FOIA request. He thought staff was not doing anything with it at all right now and was sure the documents were just sitting and nothing was being done with them. Ms. Houck said it was to come before Mayor and Council and they were just going to schedule a date for that to occur.

Mr. Markham asked Mr. Herron if the City would still get an Attorney General opinion on his question about the state statute. Mr. Herron responded they may or may not. If Council passed a motion such as he suggested, he believed that would render the FOIA request moot. He would have to have a discussion with the individual who made the FOIA request. If that individual would withdraw, it would be moot. If not, they would proceed. They would get an opinion, but he did not know when.

Mr. Markham was trying to think about delays. He was perfectly fine with re-issuing it, but did not want it to hang out there for another six months, or whatever. Based on Mr. Herron's experience, the FOIA decision would come last from the Attorney General's office.

Ms. Sierer asked if it would potentially be a short turn-around time if they agreed to withdraw and reissue the RFP. Ms. Houck said it just had to be re-advertised and any direction they got for tweaking it in addition to clarifying so that anybody who responded would know that it was going to be a fully public document that they submitted.

Mr. Ruckle wanted to know if they could just have a workshop and present these all at the same time. Ms. Houck said the intention was that it would be one night where all the proposals would be made. That was what it said in the RFP, that was the intent and that was the discussion leading up to it in this room many times.

Mr. Ruckle did not want to hurt businesses coming here going through this red tape. It seemed like it was a constant battle and businesses were like, "Why do we keep doing this? Why do we keep trying to come to Newark if it was always going to be such a hassle." He thought they had to come up with a policy upfront so this would not happen or now they were just going to try to fix the mistake they made right from the get-go. He had not looked at all the proposals but just briefly looked at the ones that he saw. He had not really gone into depth and did not know how many people here had. He would like to keep it the way it was and run with it, have the workshop and do it all at once. Then everyone saw it at the same time.

Ms. Sierer did not think necessarily think that they made a mistake. It had never been encountered before where somebody submit a bid that they felt was confidential and it was requested by the public. She did not think staff made a mistake on anything. She thought they were faced with something that they had not been faced with before, so now they had to figure out how they were going to resolve the current situation and make it public, and make it a public workshop where they all have to present (inaudible) motion for the rest of that.

Ms. Houck added if they did make a mistake, she thought the first mistake was calling it an RFP because they had no intention of it following the typical RFP process with criteria evaluated by staff and then presented to Mayor and Council. That was not the intention. She thought they labelled it that because they were going to be proposals and they were requesting them. She thought they would also change the title so it did not allow anybody to link it to the State's RFP process, which it certainly was not following. There was criteria. When someone submitted it, there was a ranking order. This did not have that. She thought with the abundance of caution, so that they could not have to worry about any further concerns being raised, it made sense for them to change the title, put it back out, and see what came in. Ms. Wallace thanked Ms. Houck for the explanation. This was different than the normal RFP process.

The Chair opened the discussion to the public.

Helga Huntley, District 1, was looking forward to seeing some actual information because the redacted proposal certainly did not give her any idea as to what kind of proposals or ideas were out there. Her understanding was the whole point of this RFP was in order to gather ideas of what the City could do

about the parking situation downtown also not for this to be the only possible thing they wanted to do about parking. Reading over the memo from Ms. Houck it sounded a little bit like they were marching down the road saying, "these were the five or six proposals we got, if one of them was really good we should go with it" rather than saying, "these were the proposals we got for mixed-use parking garage, but there were many other options of things we could do to address parking issues downtown." She thought the City had the responsibility to look into those as well. Whatever happened as far as making the information public, there were a couple ideas floating around tonight. Either of them in her view were reasonable ways of getting the information out to the public. She also thought it was important to keep in mind that they did need to ask for alternative ideas as well, not just for proposals for a parking garage.

Rob Gifford, District 3, appreciated the conversation Council was having with Ms. Houck. He was happy to hear that she was looking for this to be a public process. He was not aware that it was not going to go through the normal RFP process, so that really helped clarify things for him too. He thought this was a good discussion to have and agreed with Ms. Huntley that maybe there would be more than one idea and one way to approach this after all the proposals were read by mayor and council and by the public.

John Morgan, District 1 seconded the comments made by Ms. Huntley and Mr. Gifford. There were a couple of things he thought should be in the next iteration of the RFP. He did not think the City should limit itself to having a developer construct it and then for there to be some sort of lease back agreement. He did not think that should be the only possibility because if there was something like that, the City would be on the hook for making the lease payments, and if they did not get the parking revenue they hoped to get, the taxpayers would have to pick up the rest of the tab. He would like to see alternative arrangements, at least as possibilities, in the RFP where the financing could be wide open which would only encourage getting more proposals, more choices and more information. He threw out another possibility which was a land-swap with the university. They heard that the biggest problem with businesses in downtown Newark, particularly at the western end of Main Street was Lot 1 filling up with parkers from the university, students, faculty and staff who occupy parking spaces because it was cheaper than university lots. They took up spaces that could be occupied by patrons of downtown businesses. He suggested a serious conversation with the university about donating that land to the university and having the university build a parking garage in Lot No. 1 where they could do what they liked with it. If they wanted to have businesses on the ground level on Delaware Avenue, that was fine. He thought there should be short term parking for the customers of businesses on Main Street on a lower level. On the upper level, there could be discounted parking for students, faculty and staff at the university. Maybe they would want to do something on the top floor. Some nice restaurants overlooking Newark. Maybe a way to do this would be a land swap – the Rodney site for Lot No. 1. He did not know about the values of each, but thought it was at least worth thinking about.

Jeff Lawrence, District 3, liked the suggestion to retract the RFP. He would stop there. The public was kind of sold on this controversial idea on the basis that they were just trying to consider all options. He felt it was obvious they were not considering all options. The RFP that was written was so narrowly focused, it was almost as if it was written based on an idea already pitched by somebody. The most general RFP could be something like, "It was presumed that there was a parking problem. Solve it." He suggested some other options. If a garage was the solution, consider the sale of that land to someone to build a garage. That would create an instant massive infusion of money into the City that could be used to make a giant head start on stormwater problems. An even simpler suggestion was to approach the owner of College Square Shopping Center to see if they might be interested in allowing people to park there and then bus people into the City for some kind of a fee. He would retract the current RFP and if Council was genuinely interested in all solutions, he would scrap the entire RFQ and spend serious time writing a new one that actually stayed in the spirit of what the public was being told they hoped to achieve.

Albert Porach, District 2, liked Mr. Herron's idea about rejecting this RFP, sending the Attorney General that fact and letting them decide it was a moot thing. He felt the problem with the RFP was it started with the assumption that the City was going to build a parking garage. Somebody said that one of the submitters of the RFP had an inside track that practically described everything they submitted in that particular RFP that they could see. So from that very fact the conclusion was that was the one they would get when there was no sound conclusion that a parking garage was needed. In actuality, if the parking spaces were managed so that the number and use of the parking spaces could be controlled, it would eliminate any need for a parking garage. He thought Mr. Herron had the best idea and would recommend that the City apply that.

Bob McGurk, managing partner of Integrated Infrastructure LLC and one of the bidders on the 16-03 parking garage, noted that much of the hubbub this evening was in response to the FOIA request and the RFP process. Their firm had a disclosure sheet on the cover sheet of their proposal stating that it included proprietary and confidential information. Under FOIA, if a bidder had a potential for an economic

gain out of that proposal, it was proprietary and confidential. In the RFP process, it was essentially a two-step process. One, submit a proposal; and two, Mayor and Council would have the option of inviting the proposers to give a presentation. How that was set up was not specified. There was still an opportunity to describe how the City wanted to set that up. Because it was a two-step process, there was another line in the RFP stating that the City did not want collusion between bidders. He said to preserve the bid process, so that his ideas were not picked up by other bidders and vice versa, so that when the proposals and presentations were being evaluated, they were being reviewed on their merits and not reviewing proposals that were taken out from other proposals.

The Chair brought the discussion back to the table.

MOTION BY MS. WALLACE, SECONDED BY MS. HADDEN: TO DIRECT THE CITY MANAGER TO NOTIFY THE FIVE FIRMS WHICH SUBMITTED PROPOSALS IN RESPONSE TO RFP NO. 16-03 THAT THE CITY HAS DECIDED TO WITHDRAW THE RFP, AND TO FURTHER DIRECT THAT THE CITY MANAGER ISSUE A NEW REQUEST WHICH SPECIFIES THAT ALL INFORMATION CONTAINED IN THE SUBMISSIONS SHALL BE READ PUBLICLY AND SHALL BE CONSIDERED PUBLIC DOCUMENTS.

MOTION PASSED. VOTE: 6 to 1.

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

Nay – Ruckle.

21. 10-B. OTHERS: None

22. 11. APPROVAL OF CONSENT AGENDA

02:36:43

Mr. Morehead requested that Item 11-C be removed from the Consent Agenda.

Ms. Bensley read the remainder of the Consent Agenda.

- B. Receipt of Alderman’s Report – September 1, 2016
- D. Resignation of Edgar Johnson from the District 3 Planning Commission Position
- E. ***First Reading – Bill 16-26 – An Ordinance Amending Chapter 32, Zoning, Code of the City of Newark, Delaware, By Clarifying the Procedure for Making Residential Density Determinations – Second Reading – October 10, 2016***

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

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

Nay – 0.

23. 11-C. APPROVAL OF UNICITY BUS SERVICE FOR STATE FISCAL YEAR 2016-2017

2:38:17

Mr. Morehead noted that the last time Council spoke about this issue, they requested the administration work towards a holistic view of the plan for this, and specifically they included the N-3 route. He did not believe that this document did that for them, so he wanted to propose that this document be brought back to Council to a degree that it recognized those two directives. He was concerned that this was locking them into the current situation for another year.

Ms. Feeney Roser noted that these agreements were a continuation of the existing bus service. One of the things that Ms. Huntley mentioned in her comments was that it did not address the N-3 extension, but it did. That was in attachment 2, which was page 6 of the University of Delaware Agreement. There was an asterisk that said, "Temporarily to address the discontinuation of DART route 16, these hours may be extended based upon mutual agreement between the City and the University." She noted the other issue was that there were escape clauses. Staff was hopeful that they would move forward very quickly with the coordination study that may help them determine what they needed to do here, but in the meantime in order to continue bus service they needed to enter into some agreement with the State and the University.

Mr. Morehead said he understood that, but this was a contract, so to leave the "may" as more ambiguous than he thought they intended before, concerned him. Ms. Feeney Roser said they may decide

at some point during this year that it was not worth the extended hours. Their intention was to do that. At this point they were making sure that the University was following the new route and they would see how many people were riding it, was what their intention was. They had extended the route, which started last week. Mr. Morehead noted they could change any route at any time in the future, which Ms. Feeney Roser confirmed. He asked why they would not say the City would do this and leave it like any other route that they may change in the future. Ms. Feeney Roser said she did not have a problem with changing the word "may" to "will". Ms. Houck confirmed that she was fine with that change. Over the years, changes were during the year and there was just no telling how long this whole process was going to take. She wanted to make sure the City was set and had something in place. She encouraged making that change and they would see what came of everything else.

MOTION BY MR. MOREHEAD, SECONDED BY MS. WALLACE: AMEND ATTACHMENT 2 ON PAGE 6 TO READ, "TO ADDRESS THE DISCONTINUATION OF DART ROUTE 16, THESE HOURS WILL BE EXTENDED BASED UPON MUTUAL AGREEMENT BETWEEN THE CITY AND THE UNIVERSITY."

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 THE UNICITY BUS SERVICE AGREEMENT FOR STATE FISCAL YEAR 2016-2017 AS PREVIOUSLY AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

24. Meeting adjourned at 9:50 p.m.

Renee K. Bensley
Director of Legislative Services
City Secretary