

**CITY OF NEWARK
DELAWARE
BOARDS AND COMMISSIONS REVIEW COMMITTEE
MEETING AGENDA**

**October 25, 2016 – 7:00 PM
Council Chamber**

- 1. Call to Order**
- 2. Approval of the Minutes of the August 23, 2016 Boards and Commissions Review Committee Meeting (Postponed from the September 27, 2016 Meeting)**
- 3. Approval of the Minutes of the September 27, 2016 Boards and Commissions Review Committee Meeting**
- 4. Updated Information Presentation, Discussion and Potential Action Regarding the Committee Review of the Board of Business License Review**
- 5. Personnel Review Committee Presentation**
- 6. Discussion and Potential Action Regarding the Committee Review of the Personnel Review Committee**
- 7. Request of John Morgan for Discussion and Potential Action Regarding the Request for Release of a 1996 City Solicitor Opinion by Mayor and Council**
- 8. Public Comment**
- 9. Introduction of New Business**
- 10. Next Meeting Date – January 24, 2017**
- 11. Adjournment**

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

Agenda Posted – October 18, 2016

Attest:

Sworn by:

City Secretary

Notary Public

(Seal)

**CITY OF NEWARK
DELAWARE
BOARDS AND COMMISSIONS REVIEW COMMITTEE
MINUTES
AUGUST 23, 2016**

Those present at 7:03 p.m.:

Members: Chair Rebecca Powers, At-Large
John Morgan, District 1
Jo Anne Barnes, District 2
Christopher Laird, District 3
Roberta Sullivan, District 4
Maria Aristigueta, District 5
M. Howland Redding, District 6

Guests: Catherine Ciferni, District 2
Robert Stozek, Planning Commission, District 1
Kevin Hudson, Board of Adjustment
Jim McKelvey, Board of Adjustment
Dave Levandoski, Board of Adjustment

Staff: Renee Bensley, City Secretary
Bruce Herron, City Solicitor
Michael Fortner, Development Manager

1. **MEETING CALLED TO ORDER BY CHAIR REBECCA POWERS AT 7:03 P.M.**
2. **APPROVAL OF THE MINUTES OF THE JUNE 28, 2016 BOARDS AND COMMISSIONS REVIEW COMMITTEE MEETING**

MOTION BY DR. MORGAN, SECONDED BY MS. BARNES: TO APPROVE THE MINUTES AS AMENDED (minor typographical changes)

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.
AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, POWERS, REDDING, SULLIVAN
3. **APPROVAL OF THE MAY 31 AND JUNE 28, 2016 EVALUATION OF THE PLANNING COMMISSION BY THE BOARDS AND REVIEW COMMITTEE**

Several typos were noted and will be corrected. On page 4, item 1A, add "cross reference with City Ethics Code and State Code of Conduct." As discussion, it was agreed to add Page 5, add item E. to read, "22 Del. Code §703 – Council should consider adding through ordinance establishing the powers and duties of the Planning Commission in a new section aligned with Section 703 of Title 22 of the Delaware Code." Ms. Bensley suggested combining this with the rest of the City Code amendments.

MOTION BY DR. MORGAN, SECONDED BY MR. LAIRD: TO ADD ITEM 1E TO COMBINE WITH CITY

CODE AMENDMENTS.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, POWERS, REDDING, SULLIVAN

Dr. Morgan stated most of City's boards and commissions provide an opportunity for comment by members of the public which are not on the agenda. He believes the Boards & Commissions Review Committee should recommend the Planning Commission provide a similar opportunity. Ms. Barnes asked Dr. Morgan if he requested this to be a separate recommendation or should be updated under City Code. He stated he believed this suggested change to be a procedural issue. Therefore, the following should read:

5. Recommendation Regarding Procedures should read:

- A. We recommend the Planning Commission develop and adopt a procedures manual that would capture all the relevant rules and procedures outlined in City Code, as well as detail the responsibilities and roles of the officers (chairman, vice-chairman and secretary) and members of the body.
- B. Add open public comment to the agenda

MOTION BY DR. MORGAN, SECONDED BY MS. SULLIVAN: TO ADD OPEN PUBLIC COMMENT TO THE AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, POWERS, REDDING, SULLIVAN

- C. Add Introduction of New Business to the agenda

MOTION BY DR. MORGAN, SECONDED BY MS. BARNES: TO ADD INTRODUCTION OF NEW BUSINESS TO THE AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, POWERS, REDDING, SULLIVAN

6. Encourage racial diversity on the board and in meeting participation.

MOTION BY MS. POWERS, SECONDED BY MS. ARISTIGUETA: TO ADD ENCOURAGE RACIAL DIVERSITY.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, POWERS, REDDING, SULLIVAN

Dr. Morgan noted that in his reading of State Code, it said that "A planning commission established by any incorporated municipality under this chapter shall prepare a comprehensive plan for the city or town or portions thereof as the commission deems appropriate." He thought this meant that the Planning Commission should be writing the Comprehensive Plan, not staff.

Bob Stozek, Planning Commissioner (District 1) stated at a recent Planning Commission meeting the commissioners worked with the Planning Department to develop a list of items to address. However, he stated there is limited time to work on these items and the majority of time is spent on projects being

brought before the Board. In addition, he stated it was his opinion the Planning Commissioners do not have the knowledge, experience and the history of the City that exists in the Planning Department.

Ms. Bensley noted many of the Planning Commissioners are new since 2012 when the current Comprehensive Plan update was started. Additionally, she stated that there had been extensive Planning Commission involvement in the process and staff had served as support to the Commission in that process.

Nancy Willing, District 3, stated the Comprehensive Plan was never fully re-written, just updated. The body of the document exists with updates. She noted that there had been wide-ranging public involvement in the process through workshops.

Catherine Ciferni, District 2 stated it was her opinion that many items in the Comprehensive Plan for expansion of services (i.e. parks, etc.) required staff time to research (grants, etc.) to enable the necessary modifications/additions.

MOTION BY MS. BARNES, SECONDED BY MS. SULLIVAN: TO APPROVE THE EVALUATION OF THE PLANNING COMMISSION RECOMMENDATION AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, POWERS, REDDING, SULLIVAN

3. A. DISCUSSION AND POTENTIAL ACTION REGARDING RECUSAL PARAMETERS FOR MEMBERS OF THE PLANNING COMMISSION

It is Dr. Morgan's opinion the City's Ethics Code needs to be updated as he believes it is not consistent with the standards of the State Code of Conduct on the matter of recusals. He believes the State Code of Conduct concludes that a member of a City body should not be voting on issues which affect that person's own employer or the employer of a close relative as defined in that document. He believes the City's Code of Ethics should include a clear statement to that effect.

Ms. Powers wanted to clarify that any change in recusal would not affect membership on a particular board or commission but should be mindful of any circumstance it may create that may affect the ability of a board or commission to have a quorum.

Ms. Barnes asked why this issue was being raised now as she believes it to be a critical issue that would apply to all the boards and why would it need to be included in this particular recommendation. Ms. Powers replied it was added to the agenda after the public scrutiny regarding the recent proposed nomination of a member of the Planning Commission.

Mr. Herron stated he did not believe any reference was made to how much a person would have to make from an employer tied to recusal matter in the City Code as a \$5,000 amount was referenced. Therefore, the question becomes would it apply to the City, and the State Code is quite complex in its definition of the matter and it is not a model of clarity.

Ms. Powers asked Mr. Herron to provide further clarity on the reference to the amount of \$5,000 being the amount that is being mentioned when it comes to recusal, and does it apply to our City Code and the City boards and commissions.

Dr. Morgan stated the issue initially arose in November of 2015 during the Board of Ethics review. There was a recommendation the Board of Ethics should meet soon to update the City's Code of Ethics. Ms. Bensley stated she had been tasked to research and update this matter and is close to completion.

MOTION BY MR. REDDING, SECONDED BY MR. LAIRD: TO TABLE 3A UNTIL THE FINAL MEETING.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, POWERS, REDDING, SULLIVAN

MOTION BY MS. POWERS, SECONDED BY ARISTIGUETA: TO AMEND THE AGENDA TO MOVE PUBLIC COMMENT UP TO ITEM 4 ON THE AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, POWERS, REDDING, SULLIVAN

4. PUBLIC COMMENT

Ms. Ciferni wanted to comment that the committee to which the Boards & Review Commission is referring has largely been formed due to issues she had raised to the City several years ago. She further stated the Ethics Committee has not met in a very long time unless they receive a complaint. She believes the Ethics Board did not know what a complaint would look like.

Jim McKelvey, Board of Adjustment stated it was his opinion the topic of Ethics is very important. He would like to have an understandable document that details the rules for recusal or matters of bias.

Bob Stozek, Planning Commissioner, District 1, reported the last five development projects that came before Council had required changes to the Comprehensive Plan to be approved. If amendments are made to the plan frequently then there really is no plan and arbitrary decisions are being made. He believes waivers are being given, not amendments.

Ms. Bensley stated the way the ordinances are written states it is a Comprehensive Plan amendment as it is actually changing the requested property from one category to another on the map in the plans. So it does amend the plan by not keeping it at the same category, not waiving the requirement.

Kevin Hudson, Board of Adjustment, District 1, stated he believed it to mean that one plot in a particular area is amended, not amendment to a total area.

Ms. Bensley suggested reaching out to Bruce Herron, City Solicitor for clarification. Mr. Herron suggested follow up on the topic come from the Planning Department.

MOTION BY MS. BARNES SECONDED BY MS. ARISTIGUETA: TO POSTPONE SENDING THE PLANNING COMMISSION RECOMMENDATION TO COUNCIL UNTIL ISSUES UNDER DISCUSSION CAN BE ADEQUATELY ADDRESSED AT THE NEXT MEETING.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, POWERS, REDDING, SULLIVAN

5. BOARD OF ADJUSTMENT PRESENTATION

Ms. Bensley presented the Board of Adjustment materials and asked if the commission had any questions. In response to a question from Ms. Sullivan, Ms. Bensley reported the City is a home rule Charter municipality. The City of Newark has a five member appointed board. Therefore, a City Engineer and City Solicitor and Mayor do not make up the Board of Adjustment.

Mr. McKelvey stated the Board believed that additional training and clarification was needed. He welcomes further training. He believes the Board decides important issues.

Governing Authority

There was nothing additional to add.

Qualifications

Dr. Morgan stated it was his opinion it was not the best language in the State Code and the City should consider asking the State Legislature to revise the language slightly to include references to urban and/or suburban and/or rural development. Ms. Sullivan stated it was her opinion this suggestion was too deep. Ms. Powers stated she would need more information before making a determination.

On a side note, Ms. Bensley stated if an applicant needs a variance, there are two options. They can ask for a variance from the Board of Adjustment to make it code compliant or they can ask the Planning Commission and then Council for site plan approval.

Orientation/Training

Kevin Hudson reported Bruce Herron, City Solicitor provides an orientation. Periodically there have also been additional trainings. For example, Max Walton, Esquire (a land use attorney) also provided training. He believes the other board members refresher courses would be helpful.

Ms. Barnes concurred with Mr. Hudson and stated she had read in the reviews that the other members would welcome periodic training.

Areas for Improvement

Areas for Improvement would include Robert's Rules Training (as requested by Mr. McKelvey) and a periodic refresher.

Ms. Sullivan asked if Mr. McKelvey had received a job description. Mr. McKelvey stated he received some written materials (case studies) outlining various types of cases the Board of Adjustment would cover.

Dr. Morgan suggested to avoid the appearance of prejudice going forward whoever is providing training for the Board of Adjustment should not be arguing cases before the same members of the Board of Adjustment. He suggested additional land use attorneys be considered. Bruce Herron, City Solicitor believed that Dr. Morgan's suggestion would be unduly restrictive. Kevin Hudson, Board of Adjustment member concurred with Mr. Herron. He believed it would be difficult to find a land use attorney willing to do training who has not been involved in matters with the City and would be willing to forgo taking on clients who may be in

front of the Board of Adjustment in the future. In addition, Mr. Hudson noted there is continuing education in the professional field where lawyers instruct and judges are present.

Ms. Bensley stated the Board of Adjustment members are given the opportunity to attend IPA training that is offered by UD.

Dave Levandoski, Board member concurred with the matter referencing training opportunities and stated the board should be brought together a minimum of once per year for internal training with the City's legal representation.

Rules of Procedure

After discussion on the public comment requirements, Mr. Herron stated it is not clear under state law whether public comment is required at a Board of Adjustment hearing. Ms. Powers asked Mr. Herron to clarify the State Code on the matter of public comment.

Activity Level

The activity level is quite high. Most meetings have been attended by four or five members.

Reporting

There were several modifications requested to the website regarding agendas/minutes that would be corrected by next meeting. Dr. Morgan noted he believed he found the transcript of the meeting on March 19, 2014 contained inaccuracies (some substantive). He believes most were not corrected. He found the transcript of August 19, 2015 to be more accurate. Ms. Bensley reported larger Board of Adjustment cases have a hired court reporter to do a certified court transcript. The transcripts are not permitted to be corrected by City staff as they are not certified court reporters. This matter was previously explained to Dr. Morgan. The same company was used for both meetings. The transcripts were submitted to the court and they did not express concern over accuracy.

Views of the members of the body being evaluated

Add training needed in this section as well.

Views of the public who interact with the body

After discussion, it was decided to delete a large portion of the draft evaluation that focused on the specificity of certain cases that came before the Board of Adjustment.

It would read as follows: Given often controversial nature and complexity of issues, going forward, City Code should be reviewed so that it is written with sufficient clarity that such complex technical and legal issues do not need to be adjudicated by the Board of Adjustment.

Ms. Bensley stated while she understands the opinion to review City Code to provide clarity she believes it is impractical to say these legal issues do not be adjudicated by the Board of Adjustment because any attorney is going to present an argument as to why their client interprets something one way not matter how clear the statute may be.

Bruce Herron, City Solicitor concurred. He further stated one of the main purposes of the Board of Adjustment if a person has a different interpretation of the Code as compared to a City official, they have the right to go before the Board of Adjustment.

Ms. Bensley will provide a draft report for the next meeting.

No further changes were made in that section

Activity Level

1. Meets monthly (as needed).
2. In the past five years, the board has met 40 times.
3. Discrepancies in the minutes on the website will be completed by the next meeting of the Boards & Commission Review Committee.
4. There are five members on this committee.
5. There are no vacancies on this committee.

Board Membership

6. The committee member's term is four years for the four members with the exception of the chair which is at the pleasure of the Mayor.
7. There is a City residency requirement.
8. Not applicable as there is a City residency requirement.
9. How long is the Chair's term? At the Mayor's pleasure, per State Code.
How is the Chair selected? Appointed by the Mayor, per State Code.

Compensation

There is no compensation. Kevin Hudson, Board of Adjustment member, stated he did not believe compensation was appropriate. He believed the current group to be a dedicated and great group of individuals.

Final overall recommendation of the Boards & Commissions Review Committee:

After discussion, the following was finalized:

1. The City should consider asking the legislature to modify §322(b) to read "urban and/or suburban and/or rural development.
2. The City should provide more opportunities for regular training of the members of the Board of Adjustment annually.
3. Expectations for recusals of members of the Board, aligned with the standards in the State of Delaware's Code of Conduct (Title 29, Chapter 58, Subchapter 1), should be clearly established in readily understandable language. In particular, Council should ensure that a quorum of members of the Board are not employees, or have "close relatives" who are employees, of the same employer.
4. City Code should be clarified to reduce the opportunities for appeals of zoning decisions to be filled with the Board.
5. Complementary statement.

Ms. Barnes asked Ms. Bensley to add under the final overall recommendations a complimentary summary comment of the quality of the current Board of Adjustment.

Dr. Morgan asked to what extent the current members of the Board of Adjustment were asked whether they may potentially have to recuse themselves at the time they were being nominated and appointed.

Ms. Bensley and Ms. Powers stated it is asked in the application. Mr. Hudson, is the only member that has not gone through the updated application process and he is up for renewal in 2016.

Mr. Levandoski stated when he was initially appointed to the Board of Adjustment there was no formal application. When he was reappointed, there was a form.

Dr. Morgan stated when Mr. Levandoski was appointed in January 2013 this was less than one month after UD offered the lease to TDC for its project. Dr. Morgan asked Mr. Levandoski if he informed then Mayor Funk there was a large project on the campus that might involve an accessory use of a power plant. Mr. Levandoski stated it was never discussed.

6. PUBLIC COMMENT

There was no public comment.

7. INTRODUCTION OF NEW BUSINESS

A. Update on Council Action Regarding Previous Committee Evaluations

Ms. Bensley reported that for the Consolidation Recommendation for the Board of Building Appeals, Sidewalk Appeals and Property Maintenance Appeals Board that Council accepted the recommendation of this board and consolidated the three boards. They are currently recruiting new members and one member was appointed on August 22, 2016. They are using the website to recruit and have found this to be successful.

There was discussion regarding the reason Councilman Chapman voted against the new appointment. Ms. Bensley reported the final vote included an amendment which had been provided by Dr. Morgan, therefore, Councilman Chapman did not necessarily vote down the applicant; but rather the whole motion. In addition, Ms. Bensley reported Council voted unanimously to approve the recommendations of the Community Development & Revenue Sharing Advisory Committee. The Conservation Advisory Commission will be on the September 27, 2016 agenda. The DNP Strategic Development Subcommittee finalized the report at the August 17, 2016. This will be presented to the DNP Board on September 8, 2016 at 4:00 p.m. at Marriott Courtyard. The plan is for this committee to be on the October Boards & Commissions Review Committee agenda.

B. Discussion Regarding November Meeting Date

Ms. Bensley noted that the current date for the November meeting was the week of Thanksgiving and asked if the Committee would like to move their meeting. The consensus of the Committee was to move their meeting to November 29, 2016.

C. Other New Business

8. Next Meeting Date – September 27, 2016

9. The meeting adjourned at 9:50 p.m.

Renee K. Bensley, CMC
City Secretary

/tas

DRAFT

**CITY OF NEWARK
DELAWARE
BOARDS AND COMMISSIONS REVIEW COMMITTEE
MINUTES
SEPTEMBER 27, 2016**

Those present at 7:04 p.m.:

Members: Vice Chair John Morgan, District 1
Jo Anne Barnes, District 2
Christopher Laird, District 3
Roberta Sullivan, District 4
Maria Aristigueta, District 5
M. Howland Redding, District 6

Absent: Chair Rebecca Powers, At-Large

Guests: Kevin Henker, Board of Business License Review

Staff: Renee Bensley, City Secretary
Bruce Herron, City Solicitor
Michael Fortner, Development Manager

1. **MEETING CALLED TO ORDER BY CHAIR REBECCA POWERS AT 7:04 P.M.**

2. **APPROVAL OF THE MINUTES OF THE AUGUST 23, 2016 BOARDS AND COMMISSIONS REVIEW COMMITTEE MEETING**

MOTION BY DR. MORGAN, SECONDED BY MS. BARNES: TO POSTPONE THE APPROVAL OF THE MINUTES

MOTION PASSED UNANIMOUSLY. VOTE: 6 TO 0.
AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, REDDING, SULLIVAN
ABSENT: POWERS

3. **APPROVAL OF THE MAY 31 AND JUNE 28, 2016 EVALUATION OF THE PLANNING COMMISSION BY THE BOARDS AND REVIEW COMMITTEE**

Maureen Feeney Roser, in her absence, forwarded her comments to the Committee via Ms. Bensley in response to Bob Stozek's concerns, which were as follows:

1. The number of Comp Plan amendments being considered.
2. The consistency and the decision making of the Comp Plan amendments.
3. Mr. Stozek's belief that the process was actually a waiver to the Comp Plan, not an amendment.

Ms. Bensley relayed Ms. Feeney Roser's comments, in which she reported in the last five years the Planning

Commission considered 54 development proposals. Those included annexations, rezonings, major and minor subdivisions, special use permits, parking waivers, etc. Fifteen percent (8) of those plans required some type of Comprehensive Plan amendment to accommodate the plan. Of the eight, seven were recommended for approval by the Commission and subsequently approved by Council. Comp Plan amendments were discretionary approvals so there was no guarantee the Plan would be modified. Per Ms. Feeney Roser, the Commission and Council took Comp Plan amendments seriously. Every Comp Plan amendment was considered as part of a larger development proposal. No Comp Plan amendment was evaluated by itself and usually included other discretionary decisions (rezoning, etc.). Any amendment considered was part of a development package. Most of the eight projects were considered in the past year. Although this seemed like a high number, Comp Plan IV was approved in 2008. The further the City was from the adoption of a Comp Plan the more likely there were to be amendments because it is a living document.

When considering how the City of Newark looked when Comp Plan IV was approved eight years ago, the Chrysler plant had closed and UD had not purchased the property for STAR campus. The STC zoning category did not exist. The density bonuses for apartments in the BB zone for one and two bedroom had not yet been instituted. Newark had not won the Great American Main Street Award which assisted in bringing more downtown development. The off campus student housing market was not as robust. Additionally, at that time in 2008 there was a recession and this had stymied the building economy.

Ms. Bensley reported that Comp Plan V was approved by Council the previous evening on September 26, 2016. Once this was approved and executed by the Governor, it would have the force of law. There still may be amendments periodically, but this updated document would assist in stemming the flow of what had transpired in the last year.

The City of Newark had over 7,200 parcels. There had only been eight Comp Plan amendment applications in the last five years. This was a relatively small amount. There were two categories for residential and now two categories for commercial rather than five previously. The Comp Plan should be a general document and land use and the Zoning Code was what mandated allowable uses in density, not the Plan. There was an action item on the Planning Commission's Draft Plan to review and update the Comp Plan on a regular basis.

Regarding the second point Mr. Stozek made in reference to consistency and decision making. Each proposal for land development was handled consistently administratively. Comments from the departments were collected by Planning & Development and shared with the developer who would then submit revised plans and the review process began until the proposal met Code. If the proposal did not meet the Comp Plan, then an amendment was considered by the Planning Commission. This was accompanied by a report and recommendations from the Planning & Development Department. The Commission reviewed all materials, held a public hearing and rendered a recommendation to Council: for, against or for with conditions. The proposal along with the department's report, Planning Commission recommendations and materials were sent to Council for review and consideration. This also required a public hearing. The approvals requested could change how an agenda item was handled on the Council level (i.e. Ordinances changes).

Regarding the topic of waivers versus amendments, there was no waiver from the Comp Plan. Rather, when Council approved a Comp Plan amendment, the land use designation for that parcel was changed to reflect the new land use category approved and the associated Comp Plan map for the planning area was revised so it was compliant. A waiver would allow a property not to meet the Comp Plan which was illegal.

Ms. Sullivan asked how a waiver was different from a special use permit. Ms. Bensley stated nothing referenced in the discussion this evening was a waiver. Another word for a waiver would be a variance which the Board of Adjustment would issue. Ms. Bensley detailed the terms to go before the Board of Adjustment. She further stated a Comp Plan amendment and for a rezoning it would take an Ordinance; which requires a first and second reading with notification requirements. Subdivisions and special use permits could go before Council for one reading. They had different notification rules.

Mr. Laird asked how many times a developer could submit unlimited proposals for the same property development. Ms. Bensley stated there are two reviews. One was before a Council hearing and one was after. For example in Barksdale Green's case, it came before Council and was denied. Code stated they could not introduce a new proposal for that property for two years, unless three quarters of the Planning Commission or three quarters of Council said that they could.

If it occurred before the review process for Planning Commission and Council, the applicant could resubmit based on comments as many times as they wanted until they were to a point where they were ready for further review.

Dr. Morgan thought the Planning Commission recommended approval for most projects brought before them. However, Dr. Morgan believed there was a lot going on behind the scenes that was not seen at public meetings when developers brought proposed projects to the Planning Department. Mr. Fortner noted that, as detailed in Ms. Feeney Roser's memorandum, there was a lot to the process. He stated the law required the City give each parcel a future land use designation or category. The category assigned to the zoning had to be changed to match the land use category.

Ms. Barnes asked if the public was included in the vetting process that the developer went through the Planning Department. Mr. Fortner stated the City encouraged developers to reach out to the community. It had proven to be effective and useful as was done in the case of developer Hal Prettyman with his South Main Plaza project.

Dr. Morgan reported he had heard that some members of the public had stated there was not enough notice of projects (15 days) before they came before the Planning Commission. He believed there should be a longer lead time. Mr. Fortner responded that plans became public when they were submitted to the City. Mr. Fortner believed there to be enough time for the review of plans. Mr. Redding noted that the timeframe for public notice was outside of this Committee's purview.

Ms. Sullivan suggested adding item C under Recommendations to suggest adding a statement about permitting boards & commissions to attend conferences and/or continuing education with regard to a workshop to look at past experiences and opportunities for improvement based on past experiences. This was requested to be added by members of the Planning Commission.

MOTION BY MS. SULLIVAN, SECONDED BY DR. ARISTIGUETA: TO APPROVE THE ADDITION OF MS. SULLIVAN'S SUGGESTION REGARDING TRAINING/WORKSHOPS TO BE LISTED AS ITEM C UNDER RECOMMENDATIONS CONCERNING TRAINING AND CONTINUING EDUCATION.

MOTION PASSED UNANIMOUSLY. VOTE: 6 TO 0.

AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, REDDING, SULLIVAN

ABSENT: POWERS

MOTION BY MR. REDDING, SECONDED BY DR. ARISTIGUETA: TO APPROVE THE MAY 31 AND JUNE 28, 2016 EVALUATION OF THE PLANNING COMMISSION BY THE BOARDS AND COMMISSIONS REVIEW COMMITTEE AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 TO 0.

AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, REDDING, SULLIVAN

ABSENT: POWERS

4. APPROVAL OF THE AUGUST 23, 2016 EVALUATION OF THE BOARD OF ADJUSTMENT BY THE BOARDS AND REVIEW COMMITTEE

Dr. Morgan addressed the issue mentioned previously regarding the same attorney doing trainings for the Board of Adjustment and then hearing cases before the Board and the thought it seemed prejudicial. He provided a page of the minutes from June 8, 2015 Council meeting where Helga Huntley expressed her concern on the matter and also a letter provided by Ms. Huntley addressing same. In furtherance of the same topic, Dr. Morgan researched Attorney John Paradee and found he had not represented any applicants before the Board of Adjustment at least in the last ten years. It is his opinion that when the City of Newark conducted training sessions for the laymen on the Board of Adjustment, it should not be hiring the same attorney who also certainly would be arguing the City's case before the same Board of Adjustment.

Ms. Bensley asked if Dr. Morgan would use the same logic for attorneys that argued cases for the complainants in the front of the Board of Adjustment. He stated he would apply the same logic. Ms. Bensley stated she did not think an attorney would agree not to take a client for two years if they provided one training to the Board of Adjustment.

Mr. Laird stated this had been discussed at a previous meeting, was in the meeting and he was uncertain why it was being brought up again.

Ms. Sullivan proposed since this topic was captured on pages five and six in the August 2016 Boards & Commission Review Committee minutes, this topic be postponed until the committee did the actual review and the approval of the meeting minutes.

Ms. Barnes asked Dr. Morgan to provide the draft detailing the language to add to the recommendation. Dr. Morgan stated it was provided on the original review form. Ms. Sullivan stated it was Item #4 in the original set of recommendations. It read, "training of the members of the board should be provided by outside attorneys who will not subsequently argue cases before the board to avoid even the perception that the members of the board may be prejudiced by their training." Ms. Barnes stated she would be open to the recommendation if a timeframe were put on it, such as two years.

Ms. Bensley stated Mr. Fortner had a suggestion that perhaps a provision regarding diversity of attorneys recruited for training be considered as opposed to a blanket prohibition for a single attorney who may argue a case in front of the Board of Adjustment. Ms. Bensley also noted Boards of Adjustment in neighboring areas used UD's IPA training for their members, which was taught by the same attorney the City had used.

Mr. Redding would agree with the provision recommended by Mr. Fortner and asked that it be brought to a vote. He also noted it was important to remember that the importance of utilizing the best individual for the training must be kept in mind.

Ms. Sullivan noted on the first page there had been agreement to eliminate everything in the comment section under qualifications. Ms. Bensley stated she had the portion crossed off but it was still a part of the overall recommendations. After discussion, it was decided to be left in the overall recommendation but would be taken off in the areas of improvement and the comments section on the first page. The recommendation would be added to the recommendation under 2A.

Ms. Sullivan noted on page 2 under rules of procedures in the comment section, the second paragraph should be "required" not allowed. Also, Mr. Herron, City Solicitor was to compare this section to the State Code. On Page 3, under reporting, compliance with existing reporting requirements, paragraph that read, "the transcript..." under future meetings. It was agreed "potentially controversial" not necessarily all meetings. Also, the word "huge" should be removed. The last sentence should read, "Council should ensure that no more than two out of the five members...."

After those changes, the following motion was made:

MOTION BY MR. REDDING SECONDED BY MR. BARNES: TO APPROVE THE BOARD OF ADJUSTMENT RECOMMENDATION BY THE BOARDS AND REVIEW COMMISSION WITH THE NOTATION TO CREATE DIVERSITY OF RESOURCES USED TO OBTAIN TRAINING WITH REGARD TO TRAINING OF BOARD OF ADJUSTMENT MEMBERS TO AVOID THE PERCEPTION THAT THE MEMBERS OF THE BOARD MAY BE PREJUDICED BY THEIR TRAINING.

**MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.
AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, REDDING, SULLIVAN
ABSENT: POWERS**

5. BOARD OF BUSINESS LICENSE REVIEW PRESENTATION

Ms. Bensley introduced Mr. Kevin Henker, Board of Business License Review and presented the specifics of the Board of Business License Review (entered into the record). There were no comments received from two of the members, Mr. Henker and Mr. Brady as the board had not met during their tenure. Mr. Del Grande, Finance Director noted the same.

6. DISCUSSION AND POTENTIAL ACTION REGARDING THE COMMITTEE REVIEW OF THE BOARD OF BUSINESS LICENSE REVIEW

Ms. Bensley stated that the staff recommendation was for the Boards and Commissions Review Committee to submit a recommendation to Council to sunset the Board of Business License Review and to amend the relative section of the Code to provide that any appeals that may ever occur to be directed to City Council. Ms. Bensley stated the procedural change would be an Ordinance in front of Council.

Mr. Redding inquired about the firm currently researching potential violations of City business licenses. Ms. Bensley reported the estimated license fees would be determined by the Finance Department under City Code. If there were individuals that wished to appeal any business license they would come before this board. Ms. Bensley would contact Mr. Del Grande to find out if there would be a significant violators found through this process before issuing a final recommendation.

Mr. Henker concurred with the Boards & Review Commission recommendation to delay. Additionally, he stated he would feel more comfortable with training as he felt he did not have adequate training.

Ms. Bensley stated Mr. Del Grande reported in his weekly report an update on this project. He stated they had their kick-off meeting on July 20, 2016 followed up with the company on the satisfaction items from that meeting. They indicated City Code was being reviewed along with relevant forms. They also met on September 22, 2016 on a path forward. He would provide an update on the license audit review on his next weekly report. Expected completion date for this project of May 31, 2017.

Additionally, Ms. Bensley reported the business license fees varied depending on such things as number of employees and type of business (restaurants, commercial, recreational, etc.). Ms. Bensley would follow up with the Finance Department on this matter, i.e. updates, timelines, etc., and bring information back to the Committee at their October meeting.

Mr. Redding would not suggest the sunset of this committee until further research is completed.

MOTION BY DR. ARISTIGUETA, SECONDED BY MS. SULLIVAN: TO POSTPONE THE FINAL RECOMMENDATION OF THE BOARD OF BUSINESS LICENSE REVIEW TO THE OCTOBER MEETING.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

AYE: ARISTIGUETA, BARNES, LAIRD, MORGAN, REDDING, SULLIVAN

ABSENT: POWERS

7. PUBLIC COMMENT

Mr. Henker stated he thought it would be a good idea to obtain guidance from Ms. Bensley before a sunset of this committee be considered.

Jean White, resident stated it was her opinion a combined board may be better rather than allowing this matter to be transferred to Council. She believed the large yellow signs to advertise potential projects may be useful as well.

8. INTRODUCTION OF NEW BUSINESS

A. Update on Downtown Newark Partnership

Ms. Bensley stated the DNP Strategic Development Subcommittee presented their recommendations at the last DNP Board meeting. The Board deferred making a final decision until the November meeting to give staff time to determine an adequate budget to implement recommendations. Therefore, they asked their review in front of this committee be no earlier than December 2016. There would not be a December meeting. Therefore, the Personnel Review Committee would occur at the next meeting and also finalize what was discussed this evening. The DNP review would then be discussed at the January meeting. After all the boards were reviewed, this commission would circle back and discuss the over-arching issues involving all the committees. The DNP Board would consider the DNP Strategic Development Subcommittee recommendations at the November 10, 2016 meeting, however there may not be a final vote at the meeting on the recommendation.

After discussion, the consensus of the Committee was to cancel their November and December meetings.

B. Other New Business

Dr. Aristigueta would do the review of the Personnel Review Committee.

Dr. Morgan stated he did not have any progress in getting information of recusals. He provided an email from Roy Lopata, former Planning Director (entered into the record) regarding UD employees on the Planning Commission. With regard to issue of recusals, Ms. Bensley reminded Dr. Morgan that Council has the right to waive or retain privilege and request the item to go on Council's agenda. None had done so at that time. Dr. Morgan wanted the Committee to make a formal request at the October meeting to Council that the Solicitor's 1996 analysis be made public. Ms. Bensley noted Dr. Morgan made the request to the Chair of this Committee to add this item to the agenda of this meeting and the request was turned down because this issue has been discussed and this Committee decided they did not want to address the ethics matter at this time.

9. NEXT MEETING DATE – October 25, 2016.

10. The meeting adjourned at 9:19 p.m.

Renee K. Bensley, CMC
City Secretary

/tas

DRAFT



**CITY OF NEWARK
DELAWARE**

October 18, 2016

TO: Boards & Commission Review Committee Members

FROM: Renee Bensley, City Secretary *RWB*

VIA: Carol Houck, City Manager *CSH*
Andrew Haines, Deputy City Manager *AH*

CC: Mayor and Council

SUBJECT: Personnel Review Committee Background Information and Staff Recommendation

Governing Authority

The Personnel Review Committee is governed by Chapter 2, Article IX, Division 6A of the Newark City Code (attached).

Qualifications

City Code provides that members of the Personnel Review Committee shall "be composed of three member, residents of the city of good repute, not council members, each of whom shall be appointed by the mayor with the consent of a majority of council." (Section 2-96.5).

Orientation/Training

Currently no training for committee members is provided.

Rules of Procedure

The Personnel Review Committee rules of procedure are outlined in Section 2-96.8 of City Code. The chair for the Committee is designated by the Mayor (Section 2-96.5). Two members of the committee is a quorum (Section 2-96.7).

Activity Level

Only two appeals have been received by this Committee since it was established and both were settled prior to a hearing. Therefore, the Committee has never met. There are currently three members on the Committee, however all are serving on expired terms and two of the three have indicated they do not wish to be reappointed. Members are appointed for three year terms. Members are required to be residents of the City. There is no compensation for this committee.

Reporting

Currently, the Committee is required to keep minutes under the State of Delaware Freedom of Information Act and Section 2-96.11 of the City Code. There are no minutes for the Committee as they have never met. As there are no minutes for this Committee, they are not posted on the City's website.

Stakeholder Viewpoints

All Board members were contacted by mail to solicit comments for the review, however, none submitted comments. Deputy City Manager Andrew Haines submitted comments and a recommendation, which are attached.

Necessity

While it is necessary to have an appeals mechanism for grievances related to management personnel issues, maintenance of a standing citizen board to hear appeals is not required.

Recommendations

Staff recommends that the Boards and Commissions Review Committee submit a recommendation to Council to sunset the Personnel Review Committee and amend Division 6A of the City Code to provide that any appeals filed regarding management personnel grievances be heard by either City Council as a whole or by a subcommittee of City Council.

Thank you for your consideration and please contact me if you have any questions.

/rkb

DIVISION 6A. - PERSONNEL REVIEW COMMITTEE

Sec. 2-96.4. - Creation; appointment.

There is hereby created a personnel review committee for the purpose of publicly hearing and determining the facts surrounding the suspension or removal by the city manager of any supervising official of the various departments of the city.

(Ord. No. 88-37, Amend. No. 2, 12-12-88)

Sec. 2-96.5. - Composition; vacancy.

The personnel review committee shall be composed of three members, residents of the city of good repute, not council members, each of whom shall be appointed by the mayor with the consent of a majority of council. One member shall be designated by the mayor as chairman. Appointments shall be made for the term of three years. When a vacancy occurs during the term of any member of the committee, the mayor shall make an appointment for the unexpired term with the consent of council.

(Ord. No. 88-37, Amend. No. 2, 12-12-88)

Sec. 2-96.6. - Supervising official defined.

For the purpose of Section 2-96.4, the term "supervising official" shall mean any department head, chief official, director, or supervisor of the various departments of the city.

(Ord. No. 88-37, Amend. No. 2, 12-12-88)

Sec. 2-96.7. - Quorum.

Two members of the personnel review committee shall be sufficient for organization and for the purpose of receiving, reviewing, and determining matters properly brought before it.

(Ord. No. 88-37, Amend. No. 2, 12-12-88)

Sec. 2-96.8. - Powers; procedure.

(a)

Any supervising official, suspended or removed from service by the city manager, pursuant to the applicable powers invested in him, upon request made within seven days from the date of notice of such suspension or removal shall be accorded a public hearing by the committee for the purpose of hearing and reviewing such suspension or removal.

- (b) The written request, pursuant to the provisions of paragraph (a) hereof, shall be filed with the city secretary at the office of the city secretary.
- (c) The provision in paragraph (a) of this section providing a public hearing may be waived in writing by any person requesting a hearing with the consent of the committee.
- (d) There shall be no regularly scheduled meetings of the committee. Meetings and hearings will be scheduled as requested or required at the discretion of the committee.
- (e) The supervising official and/or counsel or representative of record shall be notified of the date, place, and time of the hearing. Where practical, at least 48 hours notice of the hearing shall be given, utilizing such means of notice as the committee shall direct.
- (f) All witnesses before the committee shall testify under oath to be administered by the chairman or member presiding at the hearing.
- (g) Parties at the hearing shall have the right to cross examine witnesses presented on behalf of adverse parties.
- (h) The committee shall have power to compel the attendance of witnesses and/or the production of documentary evidence by the issuance of subpoena.

(Ord. No. 88-37, Amend. No. 2, 12-12-88)

Sec. 2-96.9. - Dismissal or withdrawal.

- (a) Any person requesting a hearing pursuant to this article must appear in his own behalf and/or by counsel or other agent at the hearing. The committee may, in its discretion, dismiss the proceedings without a hearing for failure to so appear.
- (b) A request for a hearing, review, and determination may be withdrawn at any time prior to the decision of the committee.

(Ord. No. 88-37, Amend. No. 2, 12-12-88)

Sec. 2-96.10. - Opinions.

All opinions of the committee shall be considered final when signed by the chairman or presiding member of the committee and filed in the office of the city secretary who shall in turn transmit it to the mayor and council. All opinions of the committee shall be in written form and shall, where practical, include findings of fact and reasons in support of the opinion.

(Ord. No. 88-37, Amend. No. 2, 12-12-88)

Sec. 2-96.11. - Record of proceedings.

A record of the entire proceedings at all public hearings shall be kept on a tape and summary minutes prepared for public use. Interested persons shall have access to the stenographic report of the committee hearings in addition to other material appearing in committee files during normal business hours in the office of the city secretary. Additional copies of the stenographic report may be procured at the expense of the persons requesting such additional copies.

(Ord. No. 88-37, Amend. No. 2, 12-12-88)

Sec. 2-96.12. - Rules of procedures; adoption; amendment.

The committee shall make, adopt, and publish rules of procedure in accordance with the provisions of the foregoing sections which may, from time to time, be amended by action of the committee.

(Ord. No. 88-37, Amend. No. 2, 12-12-88)

Sec. 2-96.13. - Applicability.

The provisions of Sections 2-96.4 to 2-96.13 shall apply only to supervising officials who have received notice of suspension or removal from service by the city manager.

(Ord. No. 88-37, Amend. No. 2, 12-12-88)



**CITY OF NEWARK
DELAWARE**

October 18, 2016

TO: Renee Bensley, City Secretary

FROM: Andrew S. Haines, Deputy City Manager 

RE: Boards & Commissions Review Committee: Personnel Review Committee

Thank you for the opportunity to comment on the Personnel Review Committee that is established in Section 2-96.4 to 2-96.13 of the City of Newark Code. The section was last amended in 1988 and in my opinion, is not aligned with today's public labor law. The unionized workforce within the City (AFSCME, CWA and FOP) have never utilized this committee, as the Delaware Public Employer Relations Board will hear disputes. Further, the Equal Employment Opportunity Commission, Delaware Department of Labor and arbitration through the American Arbitration Association all hear labor disputes, which relegates the Personnel Review Committee in the City of Newark to overseeing management employee appeals of suspensions and terminations.

The City should maintain the appeal process for a management employee, however, the structure should be realigned and amended. The actual grievance process (Section 2-96 to 2-96.3) should remain in place. The appeal to a grievance or decision is when the Personnel Review Committee would be involved.

I would recommend the future structure reflect:

- Eliminating the Committee in the current format and redefine committee members as sitting mayor and city council members.
- The city solicitor be the counsel to the Committee, and advise and direct the proceedings of a given hearing.
- The Committee have a written opinion of its hearing findings.

These amendments would align properly with the City Charter and Code, which establish the city manager's authority for day-to-day operations, including suspensions and terminations. The current Personnel Review Committee does not properly address the follow-through of a hearing, and only Mayor and Council, with a majority vote, can direct the city manager to take action. If an appeal is questioning the personnel decision of the city manager, and if mayor and council are the only City of Newark body with the authority to direct he or she to change an action, then

should directly hear the testimony of an appealing management employee.

The frequency of such appeals are extremely rare, with two being requested since 1973. In both scenarios, the hearing itself was never convened as each matter was settled prior to the hearing. I have reviewed this matter with counsel involved with labor statutes. Their other suggestion is in lieu of having mayor and council as a whole defined as the Committee, three members of council could be named as the Committee and report to mayor and council as a whole. The hearing would be public, however, the discussion of employee(s) and/or the decision of the city manager would be covered by executive session statutes.

Please advise if you have any further questions, or if additional information is requested of the review committee.

c: Carol Houck, City Manager