

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

September 26, 2016

Those present at 6:00 p.m.:

Presiding:	Mayor Polly Sierer District 2, Todd Ruckle District 4, Margrit Hadden District 5, Luke Chapman District 6, A. Stuart Markham
Absent:	District 1, Mark Morehead District 3, Jen Wallace
Staff Members:	Deputy City Manager Andrew Haines City Secretary Renee Bensley Deputy City Solicitor Paul Bilodeau Communications Manager Kelly Bachman Community Affairs Officer Megan McNerney Finance Director David Del Grande Parks & Recreation Director Joe Spadafino Planning & Development Director Maureen Feeney Roser Development Supervisor Michael Fortner Planner Tom Fruehstorfer Public Works & Water Resources Director Tom Coleman Planning & Design Engineer Ethan Robinson

1. Ms. Sierer called the meeting to order at 6:30 p.m.

2. **EXECUTIVE SESSION**

A. Executive Session pursuant to 29 *Del. C.* §10004 (b)(4) for the purpose of a strategy session with respect to collective bargaining, when an open meeting would have an adverse effect on the bargaining position of the public body – FOP Lodge No. 4 Contract

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT COUNCIL ENTER INTO EXECUTIVE SESSION PURSUANT TO 29 *DEL. C.* §10004 (B)(4) FOR THE PURPOSE OF A STRATEGY SESSION WITH RESPECT TO COLLECTIVE BARGAINING, WHEN AN OPEN MEETING WOULD HAVE AN ADVERSE EFFECT ON THE BARGAINING POSITION OF THE PUBLIC BODY – FOP LODGE NO. 4 CONTRACT.

MOTION PASSED UNANIMOUSLY. VOTE: 5 to 0.

Aye: Chapman, Hadden, Markham, Ruckle, Sierer.

Nay: 0.

Absent: Morehead, Wallace.

RETURN TO PUBLIC SESSION

3. The regular Council meeting began at 7:04 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

02:29

John Morgan, District 1, distributed a handout of email correspondence he had on August 23 with Ms. Bensley requesting a copy of the memo prepared by a former City Solicitor in 1996 which he believed was on the general issue of conflicts of interest and circumstances when either a member of Council or a member of one of the City's Boards and Commissions should recuse himself. This memo was sent by Mr.

Herron to Mr. Lopata, the former Planning and Development Director, along with a cover memo. At the Planning Commission meeting on September 6, 2011 when the Planning Commission was considering the rules for the STC zoning district, Mr. Lopata read into the record the memo from Mr. Herron, which referred explicitly to the 1996 memorandum by the former City Solicitor. In order that his fellow members of the Boards & Commissions Review Committee could look at the issue about standards for ethics and conflicts of interests and recusals as well as members of the Planning Commission and all the other boards and commissions of the City, he thought it would be good for that 1996 memo to be made public. It was hard to imagine that there was anything particularly confidential in it 20 years later. Dr. Morgan asked Council to direct the legal staff to make this memo public. If this could not be done tonight, he hoped it would be on the next Council agenda.

Al Porach, District 2, said at the last Council meeting he discussed a nuisance property in his neighborhood which at 1:30 this morning again created a disturbance by loud noises. Mr. Porach spoke with the Police Department twice about this property and was seeking assistance to get the problem resolved.

Catherine Ciferni, District 2, related an incident that occurred on the afternoon of September 9th when she saw a man lie down in the middle of traffic on Main Street and then appeared to be accosted by several individuals. Ms. Ciferni was concerned about the lack of prompt police response following her phone call to 911, the fact that she was not asked to provide her identification, and that there was no attempt to follow up with her. Mr. Markham asked Mr. Haines to report back to Council when he gathered further information from the Police Department.

(Secretary's note: At the request of Ms. Hadden, the following information was added to the minutes.

From Deputy City Manager Andrew Haines:

During public comment last evening, Ms. Ciferni made her own statements regarding a police service incident. Below please find Deputy Chief Feeney's summary of the matter, including the follow up with Ms. Ciferni as a potential witness to the event. At this time, and without any further witnesses, information or video, the police view this matter as closed. If you have any questions after reviewing the below information, please do not hesitate to let Carol or me know.

First, a quick synopsis of the incident. On September 9th, NPD received a 911 call for an intoxicated, elderly, male laying in the roadway on E. Main St. Prior to police arrival, two male motorists stopped and attempted to get the intoxicated subject out of the street as vehicles were swerving to avoid hitting the subject. One of the motorist started to assist the intoxicated subject to the sidewalk when the second motorist offered assistance. The intoxicated subject became combative and tried to punch one of the individuals offering assistance. This individual then applied a zip-tie to the intoxicated male wrists in an attempt to control him as well as prevent him from trying to get back into the street. One of the assisting motorists left prior to police arrival and the individual who applied the zip-tie remained on scene. A bottle of alcohol was recovered from the scene and the subject's level of intoxication was significant.

Following the initial incident, NPD received information from Rep. Baumbach that he was contacted by a potential witness. Rep. Baumbach forwarded a statement that he received from Ms. Ciferni as well as her contact information. On September 12, an officer interviewed Ms. Ciferni via telephone regarding her observations. There are no other independent witnesses or video surveillance of the incident. The officer concluded that a crime had not been committed based on the facts/circumstances and the investigation has concluded.

*Kevin Feeney
Deputy Chief – Field Operations Bureau, Newark Police Department)*

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

11:40

State Representative Paul Baumbach recognized Captain Van Campen for his great accomplishment in graduating from the FBI National Academy. He also recognized Jerry Fickes, the Aetna firefighter who perished on Saturday. He knew the importance of Aetna to Newark and how dedicated the Council was to Aetna.

He complimented the great job done on the Taste of Newark, and the excellent responsiveness of the City and the Police Department when he reaches out for assistance.

He had some interesting meetings with community members about some of the issues on tonight's agenda. He supported the Newark Bicycle Committee's preference of staying independent and not a part of the City structure. He thought they showed dedication to their work and therefore he would like to see their preferences honored.

State Representative John Kowalko apologized for the last meeting when he interrupted the conversation taking place. He also apologized to Mr. Deadwyler for his insensitive attempt at humor.

He commended the vote on the RFP. He thought it was better to have open discussion in the next move towards the parking situation.

Mr. Kowalko was concerned with the closed process where attorney client privilege was granted when it was a matter of a decision being made about ethics. Ethics decisions should not be held or discussed privately. The reason for an ethics decision should be a matter of public record. He hoped Council would consider Dr. Morgan's request.

7. 2-C. UNIVERSITY
(1) Administration

15:08

Rick Deadwyler, UD Government Relations, thanked Mr. Kowalko for his comments and looked forward to continuing work with him. The Taste of Newark was extraordinary, and he really appreciated the ongoing strengthening of the relationship between the University and the City. He thought this was a great example of what could come with this campus-community partnership.

Mr. Deadwyler introduced Jeremy Sunkett, UD Director of Real Estate. Mr. Sunkett was new to the University, and they were really excited about his experiences with working on college campuses throughout the northeast, and what he brought to this role from an economic development standpoint from an awareness of the importance of the campus and community relationship as well as his previous relationships with higher education and the governments they were partnered with.

Mr. Sunkett had the opportunity to meet and talk with Mayor Sierer about various things that the University was working on and were looking to do in partnership with the City. The job was basically two major features – all things real estate related in the University's 8.5 to 9 million square foot real estate portfolio, plus the strategic development of the STAR campus, which he knew was of interest to many people. Within both of those things, the town/gown relationship was very important and integral to doing what they were trying to do the right way.

It was something he believed in and spent as much time doing economic development work as real estate work, so he was a big believer in the town/gown relationship and offered himself as a resource. He knew there were questions about where STAR was headed, questions about the University's real estate holdings in the neighborhoods in terms of the rental houses they own and he was happy to make himself available to answer any of those questions and to address any issues that there might be pertaining to any of their interests. In regards to STAR, everybody was aware of the rail station project, which was something they were working on every day trying to make that happen, hoping to really begin that in earnest in terms of construction in the spring.

Beyond that project and other opportunities out there, hopefully he could come back again and provide more detail about place making which he was very focused on since he came into the conversation. He thought that was an important element of the town/gown conversation because making STAR a place, a destination and a vibrant dynamic real estate environment was part of what would help make it a community asset and not just a University of Delaware asset. In looking around the country at these innovation districts, that concept was something that became integral to that area. He offered that in terms of the thinking he was bringing to the role and was preaching and pushing early in his time at UD.

Mr. Markham asked if there was an updated plan in the works for University property used throughout the City. The easy answer was yes, it touched a couple of different areas. UD was in the process of an update on the master plan for the STAR campus. That master plan was out there, but would naturally evolve with other opportunities on the horizon and as the thinking evolved for STAR, he thought it was a very solid plan, but there were some things they could do to reflect the current conditions. The University was on the front end of that process, which was a separate effort, but part of updating it, he thought, was creating some connectivity to the University's master plan so those things were done in concert. From a master planning standpoint, in the UD world, they were at the framework stage of updating the University's master plan, the core campus plan.

As they got deeper into that, he was sure information would be shared more publicly. To address the neighborhood piece with respect to the rental housing program which was sort of within his purview, there were 50-something odd properties the University owned in the neighborhoods which were used as faculty and staff housing. He was in the midst of initiating an assessment of looking at those holdings and basically trying to develop an asset management plan for them. There was a question asked through Mr. Deadwyler about whether or not the University would be strategically looking to expand that program and acquire more properties. He said with confidence that was not the direction they were moving in. If he had to predict, if they were going to change the makeup of their portfolio, they would probably shrink the amount of properties they had as opposed to looking to take on more, certainly for purposes of housing. He thought the new president wanted to take a look at the rental housing program and put more guidelines and criteria to it. That would affect the amount of holdings UD had in the neighborhoods.

Mr. Markham stressed the sooner the University could get things out to the public, the better as people were very interested in what went on at UD as he thought Mr. Deadwyler would agree.

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

9. 2-D. **LOBBYIST:** None

10. 2-E. **CITY MANAGER:** None

11. 2-F. **COUNCIL MEMBERS:**

24:30

Mr. Chapman: None

Mr. Markham

- Enjoyed Community Day and thought Taste was a beautiful day. He thanked the University for hosting and providing all of the help. Having the president there was a plus this year.
- Asked for a resolution recognizing Aetna firefighter Jerry Fickes.

Ms. Hadden

- Reminded people about her meet and greet on Thursday, October 6th at 5 p.m. at Pat's. Her guest would be Renee Bensley, Director of Legislative Services and City Secretary who would explain the functions of her office.

Mr. Ruckle

- Agreed there should be something to honor the firefighters that were lost. First responders were heroes, and that was the same thing with the police. This was a huge sacrifice, and he knew their families were really suffering right now.
- Also attended Community Day and shot several live videos that were well viewed. He thought the City had to start doing more type of activities like that. He thanked people in the room for their input and making it exciting.
- Attended the DEMEC meeting and noted it looked like the gas rates would stay really low that fired the plants, however, the transmission of the power was what was going up. Hopefully it was going to be a net, keep it stable, and rates would not go up.
- Attended the League of Local Governments and also attended the annual Stafford Block Party. Again, he was confronted by the same individuals that confronted him last year asking when would they be able to park in their City. He told them the City was working on it and hopefully there would be a resolution shortly.

Ms. Sierer: None

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

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

- A. Appointment of Thomas Cofran to the Board of Building, Fire, Property Maintenance and Sidewalk Appeals for a Four-Year At-Large Term to Expire August 31, 2020

26:58

Ms. Sierer presented the appointment of Tom Cofran to the newly formed board. She asked that Council consider his appointment to the Board of Building, Fire, Property Maintenance and Sidewalk Appeals. Mr. Cofran lived in Newark for 45 years, was in the construction business, did home remodeling and cabinet-making and was a teacher and coach for 25 years. He served ten years on the Board of

Building Appeals and would like to continue to serve on this new board. He had knowledge of remodeling and Code requirements.

Ms. Hadden said that Tom Cofran was one of her constituents, and he was a very knowledgeable man and one of the best cabinet-makers in town, if not the best. She recommended him for this position.

There was no public comment.

MOTION BY MS. HADDEN, SECONDED BY MR. RUCKLE: TO APPOINT TOM COFRAN TO THE BOARD OF BUILDING, FIRE, PROPERTY MAINTENANCE AND SIDEWALK APPEALS FOR A FOUR-YEAR AT-LARGE TERM TO EXPIRE AUGUST 31, 2020.

MOTION PASSED UNANIMOUSLY. VOTE: 5 to 0.

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

14. 5. SPECIAL DEPARTMENTAL REPORTS:

A. Special Reports from Manager & Staff:

1. Update on Bicycle Committee Research – Deputy City Manager

28:46

Mr. Haines said there was a memo dated May 19 from Ms. Houck. She did a lot of research, and started a conversation with Ms. Roe on the Bicycle Committee. It started going into historical research of when the committee started, how it was formulated, whether it was acted upon and there were several pages of information – past documents that outlined where it stood from a procedural standpoint. It opened a conversation on Council's pleasure on what they would like to do from a committee standpoint.

As noted earlier this evening, Representative Baumbach commented on the Bicycle Committee. There was another memo Council had dated September 22 from Ms. Houck that also had a paragraph written that Mr. Deshon sent to Ms. Houck to share with Council on the preference and the position of the Bicycle Committee itself. At this point, staff was looking for direction from Council of what it wanted to see out of the Bicycle Committee, how it was structured, independent or official committee. That was where they were today from a dialogue standpoint of what was Council's preference and direction.

The Chair opened the discussion to public comment.

Amy Roe, District 4, bicycled for transportation, enjoyment, and exercise in the City for more than 30 years and believed that bicycling should be encouraged and made as safe and enjoyable as possible in the City. She asked the City Manager to clarify her direction to her staff on their involvement in the Newark Bicycle Committee some weeks ago after learning that the Bicycle Committee was not an official committee of the City. She was very impressed with how she pulled together information on this issue, as much of the prior discussion of the Bicycle Committee was over a decade ago.

Ms. Roe attended several meetings of the Bicycle Committee recently and became concerned about the role of City staff on the committee, specifically doing work for the committee, making, and then voting, on motions of the committee. It was especially problematic when the topics of this work, motions, and votes were to engage in a lobby effort within the City of Newark. The City Ethics Code which was adopted by Ordinance, forbid staff from "granting any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen". Section 2-97.10. The Ethics Code also forbid staff from "appearing on behalf of private interests before any agency of the city". Section 9-27.15. It appeared as though City staff had been granting special consideration and had been appearing on behalf of private interests for quite some time for the Bicycle Committee.

The Newark Bicycle Committee, as it was currently formed, did not have by-laws. She asked for them. It had not made a decision on what constitutes a quorum. She asked for that. The membership was ill-defined or not defined, and anyone who happened to show up at one of the meetings was able to cast a vote. This was not the type of organizational structure that was appropriate for the municipal government to be involved in at such an intimate level.

The Bicycle Committee, in her direct experience, was also not receptive to divergent points of view. To be open to a variety of stakeholder voices was essential for government involvement. She thought policy initiatives should not be drafted by City staff, put through a special interest group and then worked into the City's policy process in a manner that was devoid of transparency and outside the scope

of the Freedom of Information Act. This was especially important when the policy proposal at hand, to increase bicycling on sidewalks in the Code, which peaked her recent curiosity in the Bicycle Committee, would place pedestrians, families, persons with disabilities and even bicyclists and motorists at risk.

This City of Newark had a need for a Bicycle Committee, but one that was open, transparent, and accountable to the public. She added that the needs of pedestrians and other non-vehicle street users should also be considered in a more equitable way and one that the City of Newark's Bicycle Committee had not been willing to provide.

Al Porach attended the Bicycle Committee meetings and had for some time. He started to go to see if there were any people like him who he might ride with, but that was not what he found. For all intents and purposes, what he found was a group of individuals who all were associated, in some way, shape, or form, with the University of Delaware. He appeared to be the only one from the outside.

Mr. Porach referred to the City Manager's memo on page 13 which listed their accomplishments pertained primarily to the University of Delaware. So this was an organization that did not operate under the rule of law. If something did not operate under the rule of law, then it was mob law. When they voted on how they wanted to proceed, he asked them for the count of the vote. Mr. Porach was the only dissenting vote at that meeting. That was the problem. It was made up of all University personnel primarily. Second, it had a tendency to be a lobbying group. An email was received from the Chairman encouraging participation in a particular politician's reception to support him. Later there was an apology from that particular person saying this was probably out of line. He thought it was out of line, but that was what they did and had been doing. For all intents and purposes, they were operating as a 501 (c), a lobbying group, and that was what they were doing primarily to benefit the University of Delaware.

Mr. Porach did not have time to go through all of their accomplishments, but he call this a Jack Horner argument – the ends justify the means. The most ludicrous thing on here was the bicycle track. There would be 10,000 phantom bicyclists riding back and forth on that track when that space could be used for 50 metered parking spaces that would benefit the City.

John Morgan, District 1 attended the meeting of the Newark Bicycle Committee in late August along with Dr. Roe. He was concerned with what he saw as an imbalance because almost all the ordinary citizens in the room aside from City staff were of course, avid bicyclists. It seemed to him they were not as sensitive to the issues of danger when bicyclists and pedestrians shared narrow sidewalks as they might be. An observation made at that meeting was that the members of the committee were responsible, mature adults, who he was sure rode their bikes very safely, but the City had some serious problems in downtown Newark where they had a lot of people who were not very responsible and mature in how they ride their bikes around campus and on City sidewalks adjacent to campus.

Dr. Morgan was not really sure whether the City wanted to have a formal City of Newark Bicycle Committee with members appointed and approved by Council or whether they should leave the Newark Bicycle Committee as a separate, private organization. He thought if it was left as a separate, private organization, it should be recognized as exactly that. It was a special interest group, and there were other special interest groups. He suggested if there would be a special interest group for the bicycling community, there should also be a special interest group for the pedestrian community who walk around the downtown area and on sidewalks adjacent to the University, and their views should be heeded along with the bicyclists. Dr. Morgan definitely supported increasing the bike-ability of the City of Newark. He would be happy to see more bike lanes on various streets. He made some specific suggestions and thought a balanced perspective was needed on all of this moving forward.

Mark Deshon, District 5, pointed out the committee had other interests in bicycling besides what was involved with the University of Delaware. He thought the characterization that they were all involved with UD somehow may be somewhat circumstantial. He knew that the University of Delaware was probably the largest employer in the City, and he was a proud Blue Hen. He worked there 33 years. He was no longer working there, but was trying to do some public service.

The committee met on September 15 and discussed their interests related to their future relationship with the City. On that day they decided collectively and agreed they preferred to maintain an independent status as an advisory group. The members felt the committee was operating efficiently and that it currently had good support from the City and its partner organizations. Furthermore, it hoped the City would continue its present activity level within the Newark Bicycle Committee through participation by liaison staff. Two city staff members at that meeting abstained from the actual decision-making.

Some of the activities the committee was involved in were community-initiated things: the League of American Bicyclists, a bicycle-friendly community program – they basically supported the City on that; the University of Delaware Welcome Days where they participated in a welcome ride for incoming students; Bike to Work Day, held every year on National Bike to Work Day which was a partnership among the committee, the City, the University of Delaware, DELDOT and the Newark Bike Project. They held bicycle safety checkpoints at the University campus (Delaware Avenue and the Green) about four times a year. They created bike commuting brochures, including rules and tips for bike commuting, Safe Routes to School planning and education which was in process, a proposal for a low stress, two-way separated bike lane on Delaware Avenue which was in process, the Big Jump grant application which was in process and a civilian education campaign which was in process.

Helga Huntley, District 1, spoke in support of the Bicycle Committee keeping whatever status it would like to keep. She thought it was clear that it was a special interest group, and if pedestrians wanted to have a special interest group, they were free to form one. If the City was interested in forming its own committee, she thought that would cause more issues as far as fairly representing all views. She thought it was just fine that the Bicycle Committee as its own special interest group represented its own interests.

She thought the main question before Council tonight was how much the City staff should be involved in the work of the Bicycle Committee as a private group and thought that was an assessment as to how helpful it was for the City to know what the Bicycle Committee was planning on doing and vice-versa how much input the City could provide to the Bicycling Committee. She thought that was a discussion to be had between Council, between City staff and the Bicycle Committee.

Catherine Ciferni, District 2, was not aware until about four or five months ago that the Newark Bicycle Committee was not an official part of the City. She saw changes made regarding cycling done in the downtown that blatantly disregarded pedestrian usage. To adequately take recommendations to heart and look out for the public safety and citizenship of all citizens, she felt those suggestions needed to be represented as an official committee of the City, subject to appointments, meeting minutes, FOIA and things like that.

At Ms. Ciferni's end of Main Street, one could evidently ride on the sidewalk beyond Tyre Avenue. However, that sidewalk was narrow with a high concentration of senior citizens who used wheelchairs. She did not know that the Bicycle Committee would be aware of something like that, but the City should be. That was where she saw conflicts – they could make recommendations, but some of those recommendations should be better vetted in terms of a City-citizen matrix. She would like to see it be something either more official or their suggestions vetted more closely if they were not going to be part of the City's committees, that their suggestions had to be vetted through other committees.

Jeff Riegner, District 1, explained that several years ago he reached out to City staff about his interest in reforming a Newark Bicycle Committee. At the time he had three middle school age sons. He was also a professional who worked in planning and designing bicycle facilities around the country. He saw a lot of cities that realized some real benefits from emphasizing walking and bicycling. He was asked if he could get the group back together, not understanding whether there was any official makeup of the committee, whether it was an official City committee or an interest group.

He emphasized some of the things that Mr. Deshon said about the work done by the committee. A lot of it happened before he started, and a lot has happened after he stepped down as chair a couple of years ago. The Hall and the Pomeroy Trails enjoyed significant input from the Newark Bicycle Committee, City staff, DelDOT staff and other agencies who were moving those projects forward.

He noted that Mr. Deshon talked a lot about events that brought the community together like Bike to Work Day and educational opportunities to help people ride more safely and to interact better with drivers and pedestrians. Mr. Riegner did not have a particular interest in how the committee moved forward. Certainly the committee decided they would rather stay a private group. He emphasized that for the good of the City that City staff continue to act at least as liaisons so that there would be some good interaction between the Newark Bicycle Committee and City staff, and therefore by extension, Council so that all the great work that went on in the past could continue.

Mr. Ruckle asked Mr. Bilodeau if any ethics violations were taking place by having the City staff on or attending the committee meeting. Mr. Bilodeau responded as long as they were just liaisons and were just there and not involved with the decision-making process or voting, there should not be a problem. Mr. Ruckle asked if that was the way it was right now.

Susan Grasso reported that during most or all of their meetings except for the one meeting referred to by Ms. Roe, their decisions were generally arrived at by consensus, so just by discussion, talking things through, working through all the issues and then coming to a decision that everybody agreed on. So there typically was no formal voting. Mr. Ruckle asked whether staff participated or were just there to listen. Ms. Grasso said they were there to listen and offer their thoughts about the issue at hand. The first time they ran into an issue where they could not arrive at an agreed-upon solution (it had to do with the sidewalk issue), which was much more complicated than what was being represented here. She thought it was a separate issue. At that point, she felt Mr. Deshon was put in an awkward situation, and in order to move the rest of the agenda forward, just called the vote so they could make a decision and go forward. They were very aware that the committee was not really clearly defined and were excited about the opportunity this presented and really stepping forward to create a true non-profit organization with by-laws and with membership defined and voting defined.

Mr. Ruckle wanted clarification that staff would have to not offer advice, just be there to listen to stay ethically in balance. He asked if offering advice was a conflict. Mr. Bilodeau said offering advice was not a conflict, but if staff was telling the committee how they should vote on something and decide something, then yes, it was a conflict. That was what liaison work was.

Ms. Hadden pointed out that on the list of 15 initiatives, or successes, since June 2015 and with respect to Mr. Porach, only three were clearly University of Delaware. All the rest appeared to benefit the community. She wanted that to be in the record that this was not overwhelmingly a University of Delaware list.

Ms. Hadden continued that originally, there was the Newark Traffic Relief Committee and two subcommittees, the bicycle subcommittee, the transit sub-committee, and at the two-year mark Council voted 4 to 2 to sunset the Newark Traffic Relief Committee and merge with the Traffic Committee chaired by the Chief of Police. At that time it was voted that that bicycle subcommittee would report directly to Council, but there was no formal acceptance by Mayor and Council, and it sort of went away. So in 2003-2004 they stopped meeting.

Then in 2008, Jeff Riegner or another interested member of the public came forward and requested that the Bicycle Committee be started up again and they did. In 2010 Newark was designated a bicycle-friendly community, and the committee successfully initiated a bunch of other things.

What was obvious to Ms. Hadden was this was a very hard-working group of volunteers whose passion on promoting safe community bicycling was evidenced by the many initiatives they brought to the community since they resurrected the committee. To her, it was a logical conclusion that the Newark Bicycle Committee worked well in this working-group format that they currently enjoy, and as her dad would say, "If it ain't broke, don't fix it."

Mr. Markham said in listening to the public, it seemed the issue was presence of staff. It seemed to him the committee could come up with their ideas, call staff like anybody else in the audience and ask questions. Any resident or Council member could call and say, "I want to know background, law...whatever on these issues", and they can go from there, not have a vote, not have the presence which he thought if they were going to have an informal committee, he thought presence of staff was an issue. So that could be one thing and then any change to the law could be sponsored by a Council member. They could put it on the agenda and bring it forward. What he wanted to see was for staff to be consultative the same as any other person in the City. They call and talk to them, and then if there were legislative changes, Council brought it forward, they had a sponsor, and it was out in the public.

Mr. Chapman did not think that this topic was thoroughly presented in terms of background. He understood there were valid concerns. He thought both sides were heading down the same path which was a recognition that the Newark Bicycle Committee was not part of the typical or the sanctioned committee/commission groups of the City of Newark.

As he understood it they had membership in terms of their committee body that was residents both in the city and out of the city, but there's consultants or liaison roles from DelDOT, county and out of the city of Newark, essentially all of these stakeholders as well as constituents, both in and outside of the city. He thought that provided opportunity for a working session, which was how he understood a lot of these meetings to be. And they were coming up with good ideas, and initiatives and thoughts. They were not going to solve anything, they were making suggestions, and he was happy to have a group of people that were willing to put in the time and effort to do this.

Mr. Chapman thought there was a relatively simple solution here which was to allow the Newark Bicycle Committee to continue to act more or less as they were, recognizing, independently, that they were not part of the City of Newark programs and he was happy to allow staff comment and liaising on the whole thing with the exact design and participation to be determined.

Ms. Sierer asked if other Council members had been in attendance at the Committee's meetings. She felt it was very important that staff was there, and at a minimum, that they be in attendance at the engineering subcommittee. She also thought it was important that they were at the Bicycle Committee meeting because that was one way that this group had been so effective. They got real answers at the meeting or the ideas or advice or what was going on that may impact the project they were working on, whether it be a DelDOT or grant issue.

She felt it was well-spent staff time. It was an hour or so meeting once a month. This was how they had been so proactive and were moving forward. She attended a lot of those meetings and was actively involved in bicycling in this community, and thought it would be a real shame to kill the spirit of the volunteers and staff who were working towards a bicycle friendly community and have made progress.

MOTION BY MS. HADDEN, SECONDED BY MR. RUCKLE: THAT THE NEWARK BICYCLE COMMITTEE BE ACKNOWLEDGED TO NOT BE AN OFFICIAL CITY OF NEWARK COMMITTEE, AND IN RECOGNITION OF THE BENEFITS DERIVED BY THE COMMUNITY FROM THE VARIOUS BICYCLE COMMITTEE FORMATS OVER MANY YEARS, THAT THE NEWARK BICYCLE COMMITTEE BE AFFORDED LIMITED LIAISON STAFF GUIDANCE MEANING NON-VOTING.

MOTION PASSED. VOTE: 4 to 1.

Aye – Chapman, Hadden, Ruckle, Sierer.

Nay – Markham.

Absent – Morehead, Wallace.

15. 6. RECOMMENDATIONS ON CONTRACTS & BIDS:

A. Recommendation to Extend Auditing Services Contract with CliftonLarsonAllen

01:01:15

Mr. Del Grande presented the recommendation to extend auditing services. On May 13, 2013, City staff recommended and Council awarded RFP No. 13-01, Provision of Audit Services, to CliftonLarsonAllen (CLA) for a one-year contract with the option of extending the agreement for a maximum of two additional years. In 2013 CLA ranked highest among the three other firms that submitted proposals primarily due to their experience, performance, and comparable government engagements, the experience of the staff, of those assigned to the engagement and experience with conducting A-133 single audits. CLA conducted the annual audits for fiscal years 2013 through 2015, and their contract expired with the completion of the 2015 audit.

Through this period, they performed well in providing auditing services to the City. Due to the change in the Director of Finance position, along with being in full swing with preparing the 2017 budgets, union negotiations, project training, etc. there was not sufficient time to prepare a request for proposal, receive and evaluate submissions, and conduct interviews to meet the 2016 audit schedule. In his discussions with CLA, they agreed to extend their current pricing in the amount of \$64,500 to conduct the 2016 audit, with one change based upon the City's request which was if an A-133 single audit was not needed for 2016, the audit fee would be reduced to \$59,500 for a savings of \$5,000. It was not anticipated that an A-133 single audit would be needed for 2016.

The A-133 audit was the audit for governmental funds. In 2015 the City had just under \$400,000 in federal funding and the threshold was \$750,000, so staff did not perceive that happening in 2016 as well. Therefore, Mr. Del Grande felt it would be in the best interest of the City to extend the audit service agreement with CLA for one additional year to conduct the annual audit for fiscal year ending December 31, 2016 and provide a request for proposal for the provision of audit services in early 2017 for the 2017 through 2019 audits.

There were no comments from the public or from Council.

MOTION BY MS. HADDEN, SECONDED BY MR. RUCKLE: TO EXTEND THE AUDITING SERVICES CONTRACT WITH CLA FOR ONE ADDITIONAL YEAR TO CONDUCT THE ANNUAL AUDIT FOR FISCAL YEAR ENDING DECEMBER 31, 2016 IN THE AMOUNT OF \$64,500.

MOTION PASSED UNANIMOUSLY. VOTE: 5 TO 0.

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

16. 7. **FINANCIAL STATEMENT:** None

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

A. **Bill 16-08** – An Ordinance Adopting a New Comprehensive Development Plan to be known as the Comprehensive Development Plan V for the City of Newark

01:04:43

Ms. Bensley read Bill 16-08 by title only.

MOTION BY MR. RUCKLE, SECONDED BY MS. HADDEN: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 16-08, AN ORDINANCE ADOPTING A NEW COMPREHENSIVE DEVELOPMENT PLAN TO BE KNOWN AS COMPREHENSIVE DEVELOPMENT PLAN V FOR THE CITY OF NEWARK.

MOTION PASSED UNANIMOUSLY. VOTE: 5 TO 0.

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

Mr. Fortner presented the draft Comprehensive Development Plan V, dated September 9, 2016. The Planning and Development Department memo dated September 14 outlined the changes made to the last draft that Council reviewed in March. That draft was dated January 5, 2016. This revised draft included changes from the March 4, 2016 memo, outlining recommended changes from state agencies from the PLUS review meeting on February 24, and also included the changes from the March 14 memo, outlining additional, non-substantial edits recommended by Messrs. Gifford and Morehead.

This process began by updating the Comprehensive Development Plan V in June 2012 with a community outreach effort at Newark New Day, and then again in September at Community Day. This led to the adoption by the Planning Commission of a document they called "the plan for planning" in October 2012. This document established basically initial agreement and consensus among the key decision-makers on the overall purpose and process of the comprehensive planning effort. It developed a plan for outreach and encouragement to stakeholders. It outlined the public participation process and different approaches to it and it also gave a general timeline.

In the four years subsequent, approximately 50 public meetings were held to collect comments and input from the public in a variety of different ways. Those were taken from the plan for planning - open houses, community surveys, civic and community presentations and community displays. They worked with state and local agencies through the State Planning Office Preliminary Land Use Service (PLUS), which included two pre-PLUS meetings in order to better coordinate efforts with state agencies and seek their technical assistance. On February 24, 2016, the draft that was dated January 5, 2016 went through the final PLUS review. At that meeting, PLUS participants made general recommendations on the Plan V draft, but did not cite any certification concerns. Based on that PLUS meeting, the draft of Plan V was sent to Council for a public hearing on March 14, 2016.

However, the PLUS review letter dated March 15, received the afternoon of the meeting, stated that the Department of Natural Resources and Environmental Control, or DNREC, indicated a previously undiscussed certification issue in the section titled "Source Water Protection Areas." So as a result, that draft was withdrawn from the Council agenda to provide City staff an opportunity to resolve the certification issue with DNREC.

Since that time, the department worked with the Public Works and Water Resources Department to address DNREC's concern. The certification issue with DNREC was addressed in Chapter 4, a section originally titled "Water Quality and Supply," was replaced with a new section titled, "Source Water Protection," and this section started on page 31 and included the section subheadings, "Source Water Protection Areas," "Excellent Recharge Areas," "Wellhead Protection Areas," and "Surface Water Protection Areas" and included a revised map as shown in the display of Map 4-1 which was provided by DNREC to replace the existing map that was in the Plan.

Since Council's consideration was delayed, the department also requested the Planning Commission re-review sections of the plan that had been edited since their last review on January 5, 2016. The Commission completed its re-review and again recommended approval.

On August 31, 2016, the Planning and Development Department received a confirmation from DNREC that concerns were addressed, and a new PLUS review letter was generated, stating that the certification issue was resolved. That letter recommended they proceed to Council for approval, pending the Governor's signature.

In the revised draft, dated September 9, 2016, the Planning and Development Department incorporated all recommended changes from the department memos and the new text that was reviewed and approved by DNREC. Other changes were outlined in the memo dated September 14.

One of the important changes of Comp Plan IV was done in 2008 and Comp Plan V in 2016 was a revision of the future of land use designations. The Comp Plan V had 11 classifications, including three residential classifications and five commercial classifications. For the Comp Plan V based on recommendations from the Office of State Planning Coordination, technical assistance from the Institute of Public Administration, as well as many reviews by the Planning Commission and discussions with the public, these categories were refined to seven classifications. These classifications which were more standard and more commonly used by other jurisdictions' comprehensive plans were broader. They included the general categories, residential, commercial, industrial, mixed use, or mixed urban, parks and open space. This left many specifics for regulating density and permitted uses to the Zoning Code.

In Newark, based on recommendations through dozens of public meetings and through the process, two modifications were made to those broad categories. First they included a classification for University, because this was distinct from other land uses and the City had a corresponding zoning district. The second modified residential into two categories: residential low-density, and residential high-density. This was still simplified from the three categories of Plan IV – by keeping a residential high-density, it allowed the City to continue to plan more appropriately for locations for higher-density multi-family housing. This matter was fairly well settled, at the Planning Commission meeting in August, but the Planning Commission heard public comments regarding increasing the residential land use category from two back to three categories. This would include residential low-density, residential medium-density, and residential high-density. The Planning and Development Department strongly recommended against going back to three residential categories in the Comp Plan.

Proponents of the three categories argue that having three categories would add to the leverage that Council had in reviewing developments that increase density. However, any development that asked for a meaningful change in the density would already require a zoning change. Since a change in the zoning of a parcel was at the complete discretion of Council, they already had the leverage they needed to turn down any higher-density developments that they felt were not in the best interest of the area. By creating a third residential classification, it created an administrative burden and a need for more comp plan amendments without giving Council any more leverage to turn the plan down.

Finally, if Council elected to return to three residential categories at this late date in the planning process, the Comp Plan adoption would have to be delayed further so the maps could go through another complete review to re-designate each residential parcel affected by the change. This would affect many areas of the town that would be converted from residential low-density to residential medium-density, including most of Old Newark around Kells Avenue, the area of the Binns, Silverbrook, Woodshire Woods, much of the west of Casho Mill Road, and much of New London Road, West Main Street, and neighborhoods around Cleveland Avenue. The Planning Commission after hearing the suggested change from the few members of the public decided to take no action and continued recommending Plan IV categories as they currently exist.

Also, at the August Planning Commission meeting, the Planning Commission recommended a change to the definition of residential low-density and residential high-density to close a gap between 10 and 11 units per acre. The January 5, 2016 plan had low density up to 10 units, and then high density started at 11 units. This gap effectively meant that no development that calculated between the densities of 10 and 11 units per acre could meet the comp plan. The Planning Department previously addressed this gap by using standard rounding so if it was 10.5 or lower it was rounded down to 10. If it 10.5 or higher it was rounded up to 11.

The changes outlined on page 9 defined low density as 11 or fewer dwelling units per acre and high density over 11 and up to 36 units per acre. By closing this gap it would take away the need for rounding. 11 units per acre was determined to be the appropriate unit count for below low and high

density. The Planning Commission considered setting the number for higher densities at 10 units per acre. 10 units per acre could cause a number of developments, such as Cherry Hill Manor and Blair Village, to be changed to high-density from low-density. As a result, the Planning Commission decided instead to set it for 11, so as to not trigger additional land use designation changes.

Finally, there were many areas of the City that were zoned RM (garden apartments) that had a future land use designation as residential low-density. This was because they currently had a single family detached house or attached or a row home currently on the site, and the land did not meet the minimum requirement for RM zoning to have garden apartments which was one acre. These properties would either need to seek variances through the Board of Adjustment or site plan approval from Council. If they sought and were granted the variance by the Board of Adjustment, they would still need Council approval for a comp plan change, giving Council leverage if they did not think the new development was appropriate for the area. If they went for site plan approval, they would still need the comp plan amendment, so this showed the zoning map with a lot of the property around New London Road and Cleveland Avenue, for example, as being RM garden apartments. They were kept in the comp plan as low-density residential because they did not meet the requirements automatically by right to have apartments there. Council would still have discretion.

Because the adoption of the comprehensive plan was required by state law and because there was extensive public outreach and participation in the development of the Comprehensive Plan V, because all edits provided to-date have been incorporated into the document, and because the Planning Commission recommended approval at their July 2, 2014 meeting, the July 5, 2016, and their August 2, 2016 meetings, the Planning and Development Department recommended Council approve the Comprehensive Development Plan V draft dated September 9, 2016, to take effect immediately upon receipt of the certification letter from the Governor.

The Chair opened the discussion to public comment.

Jean White, District 1, said it was clear a lot of work was done on the Comprehensive Plan and there were many good things in it. She addressed the change from a three tiered density to two tiered and reviewed the categories and their density levels. She thought this change was a mistake because she felt there was a big difference between the low and medium density categories.

It was true that a zoning change might be needed and it could be argued that was enough. She would argue it was not enough. She thought when there was a Comprehensive Plan change that brought it to the attention of residents, Planning Commission and Council, that this was something that should be reviewed carefully. That extra step, she felt, was extra protection in such a change that would happen.

John Morgan, District 1, endorsed the comments made by Mrs. White. He thought there may be an important legal issue in having only a two tier system as opposed to a three tier system His understanding was that if a developer brought forward a proposal that conflicted with the Comprehensive Plan, that in itself was a good enough reason for that proposal not to go forward because it conflicted with the Plan which had the force of law. If only zoning controlled the density, then Council members had to give a reason when they voted on a zoning change. He did not think the reason could just be, "I don't like it." There was a specific list of criteria they had to look at. He thought that extra step would safeguard Council from being put in a position where they felt they had to vote for something just because it made them feel uncomfortable if they could not identify a legal reason to vote against it.

He urged Council not to approve the Comprehensive Plan tonight, and that they ask the Planning Department to have a three tier system with something like up to six units per acre as low density, that would be single family detached residential, that there would be medium density, which might be something like 6 to 12 units per acre, such as Cherry Hill Manor and that they would have high density, which might be 12 to 36 units per acre. He thought that would provide a better safeguard for the City, because if they had developers buying up adjacent lots where there might be only one or two houses per acre, and if they could say it was low density if they put 10 to 11 townhouses per acre, yes, but the green cover was reduced by a factor of two and it increased the impermeable cover by a factor of 10 leading to stormwater issues.

Bob Stozek, District 1, agreed with the previous two speakers. He was not sure what the rush was to go from three densities down to two. He was not sure where the thought was to just collapse low and medium into low. He asked what the thought was to come up with the number of up to 11. He asked where the research done on housing studies, housing plans that were going forward was. Mr. Stozek's concern was it made it easier for someone to cull together a couple lots and put in what was now a medium density up to 11 per acre into an established neighborhood that was low density.

He really had a problem with calling these changes to the Comp Plan amendments. To him, an amendment was something you make an official change to the Comp Plan that was written into the law. He felt what they had done recently was make waivers to the Comp Plan for a particular project.

Tim Green, District 4, said it seemed to him there should be three levels and that the medium level should stop at 10, not 11. His reaction was because of recent decisions by the Council.

Becky Evans, Cherry Hill Manor property owner, agreed that there was a need to retain all three categories of residential density, low, medium, and high in the new Plan. By going to two densities, there would be no regard for the difference in having a single family home lot next to a group of townhouses. Several lots adjacent to each other could easily turn into high density housing, which could significantly change the character of a single family neighborhood. People who were looking for privacy, quiet, green space around homes, would then have no voice in retaining their present lifestyle, leading to people leaving and looking for better neighborhoods elsewhere. It would seem that the goal was to replace the current residents with a whole new set that lived in closer proximity to each other.

She felt there really was no low density in the new plan. She thought most people would consider 11 units per acre to be far from low density. To lump low density in with medium density just disguised the fact that there was no low density.

Al Porach, District 2, said somebody brought up the Comprehensive Plan having the force of law. He thought it was really just a guide. Mr. Fortner said no, it had the force of law.

Catherine Ciferni, District 2, echoed what everyone else said. She thought the City needed mixed uses and mixed densities as well. She did not know where there was a lot of low density in Newark. It seemed like there was just higher and higher density in Newark. She did not think the City should create fewer categories. She reiterated the issue that was brought up about allowing for waivers but not amending the Comp Plan was also an issue that was brought up when the Boards and Commissions Review Committee reviewed the Planning Commission because the Comp Plan does have the force of law and when they did change something or allow for something, it changed the overall character of the planning of the community. When they made individualized adjustments to each development plan, then they did not see the force of how they were changing that community unless they were forced to look at the Comp Plan.

She suggested that Council take that recommendation to heart, and keep the three categories in the Comp Plan. This community repeatedly stated what it would like to see. They did not always know that they were being heard when they got recommendations counter to what they said they wanted.

Chris Locke, 13 Spring Water Way, believed that the Comp Plan was required by law but could be modified at the discretion of Council. Mr. Fortner said that was correct.

The discussion was returned to the table.

Mr. Chapman mentioned in previous meetings that the longer this Comp Plan process draws on, the less likely that it would ever get finished. As soon as one piece got fixed something else in the very long document needed to be updated then too. During his election and two re-elections he made reference to the fact that this was a very important document. If they had to keep referencing something so old, a lot of these requests for amendments were stemming from that. The new document was attempting to put the City in a position where they were not looking at as many amendment requests, or if there was an amendment request, then nothing was changed on that front.

The other thing about density. The fact of density being controlled by zoning more than anything else, he thought was absolutely true. He pointed to a recent experience that Council had in the fall and winter last year when he recommended that Council down zone the property owned by Newark Country Club. Lot sizes, by right, from a 25,000 square foot lot to a 9,999 square foot lot. That would have cut down a potential redevelopment of that property by roughly 50% if that low. It had nothing to do with anything more than zoning. It was all within the density. The density descriptions inside of what was currently Comprehensive Plan IV and would have been captured inside of the reduced two density descriptions and the proposed Comp Plan V. The control was in the zoning.

MOTION BY MR. CHAPMAN, SECONDED BY MR. MARKHAM: THAT COUNCIL APPROVES AND ADOPTS COMPREHENSIVE DEVELOPMENT PLAN V, BILL 16-08, AN ORDINANCE ADOPTING A NEW COMPREHENSIVE DEVELOPMENT PLAN TO BE KNOWN AS COMPREHENSIVE DEVELOPMENT PLAN V FOR THE CITY OF NEWARK.

MOTION PASSED UNANIMOUSLY. VOTE: 5 TO 0.

Aye: Chapman, Hadden, Markham, Ruckle, Sierer.

Nay: 0.

Absent: Morehead, Wallace.

(ORDINANCE NO. 16-27)

18. 8-B. BILL 16-24 – AN ORDINANCE AMENDING THE COMPREHENSIVE DEVELOPMENT PLAN BY CHANGING THE DESIGNATION OF PROPERTY LOCATED AT 6 ANNABELLE STREET

01:34:27

(Secretary's Note: Items 8B, 9A, and 9B were discussed simultaneously, but voted on separately.)

Ms. Bensley read Bill 16-24 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 16-24.

James Watts noted that he and his family owned 6 Annabelle Street in Newark. He grew up in this house with his five sisters and one brother. They moved here in 1963. The house at 6 Annabelle was in deplorable condition at the time, and he and his father for the next 10 years spent literally thousands of hours fixing this house. It was a great place for the family and there were lots of children his age in the neighborhood and the ages of his siblings. They had a great time there.

The neighborhood obviously changed greatly since that time. Over the years it became a neighborhood of student rentals with no owner occupied houses left that he was aware of. His father, Ralph Watts, was the last hold-out as an owner living in his house at 6 Annabelle Street. After all his siblings grew up and left the house, his parents continued to live there. They used the extra rooms they now had to help others who were in some kind of crisis and needed a place to live – families, single moms with children and some students.

His mother passed away and his father continued to live there for many years. He told many stories, some funny, some not so funny about living in a neighborhood with students. Mr. Watts made a personal commitment to him to do everything he could to keep the house in the family. The house stayed vacant since his father's death in 2013. They did look into getting a rental permit in 2014 but decided against it. His father did get a rental permit in the 1990s. As the City put more and more restrictions on conversions from owner occupied to rentals, he felt it prudent to protect himself in case he ever wanted to use the house as a rental. He got a rental permit and got yearly inspections on the house, but he always lived in the house. Mr. Watts thought he let the permit lapse in 2001 when the zoning for Annabelle was changed from RD to RM.

The house had always been owner occupied. There were no Code violations against the house. They were asking the City to allow them to divide the house into apartments. In talking with Ms. Feeney Roser, she said that she was not aware of anyone else trying to do this since she worked for the City, so this was something new. Because of the size of the house and the way the neighborhood changed, they were asking for four apartments.

There was a section of the Newark Code which allowed for large house conversions to apartments. It was fairly restrictive in its requirements, as it should be. Protection of existing homeowners was the most important consideration. When the Code was written, he was sure the writers tried to cover every possibility. In looking at the house at 6 Annabelle, it was located in a residential neighborhood, but he could not envision the writers necessarily having this kind of neighborhood in mind where 6 Annabelle was located. This neighborhood was already zoned RM, and was completely non-owner occupied. Therefore, he did not think some of the restrictions to convert this house were necessary, so he applied for and got two variances – one was for lot size. To build apartments under RM 2,722 square feet per apartment was required. For a house conversion, 4,000 square feet was required. Their variance required 3,267 square feet per apartment, which was still well above the 2,722 square feet requirement for apartments. This still left much open space, as could be seen on the submitted plan.

Also, the house on the other side of the street from 6 Annabelle (3 Annabelle) had apartments. This house was converted into apartments before 1963, when his family moved into 6 Annabelle. This house was smaller than 6 Annabelle with a much smaller lot size.

White Clay Mill apartments sat adjacent to the back yard of 6 Annabelle. Looking at all houses on Annabelle being rentals, the house across the street already being apartments, and 6 Annabelle being right next to an apartment complex, he thought was further evidence that what they proposed for 6 Annabelle was in line with the existing neighborhood.

Also, the Building Department would require that all existing building codes were met as if this house was being built new from the ground up today. This would require installation of a sprinkler system, fire separations, new ingress and egress areas, and all other safety requirements. Also, they had to conform to all LEED requirements. The bar was set very high for a house that was over 100 years old.

He thought it reasonable to say converting this house to four apartments was the best path. He asked Council to approve the plan submitted to convert 6 Annabelle Street into four apartments.

Mr. Markham asked Ms. Feeney Roser to confirm that the property previously had a rental permit and most recently had not failed any inspections. Ms. Feeney Roser said she knew her report said the rental permit was somewhat recent, but 2001 was when Mr. Ralph Watts let the permit lapse. It was inspected up to that time and there were no issues with those inspections.

When Mr. Watts applied for a permit in 2014, he asked how to get a rental permit. He was told to apply and the City would come out to take a look at the house. When they did that they had a list of things he needed to do to bring the house up to Code in the years it had gone from 2001. Because it was a single family home at this point, he would only be allowed to have four renters in it, and it was not cost effective for him to bring it up to Code for those uses. There were no property maintenance concerns on this property.

In response to Ms. Hadden's question as to why Mr. Watts was bringing this forward at this time, Mr. Watts replied he was working on it since 2014 to get to this point. The house meant a lot to the family.

There was no public comment.

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: THAT COUNCIL APPROVE THE AMENDMENT TO THE COMPREHENSIVE DEVELOPMENT PLAN BY CHANGING THE DESIGNATION OF THE PROPERTY LOCATED AT 6 ANNABELLE STREET.

Mr. Chapman received clarification from Ms. Sierer that even though Council voted to adopt Comp Plan V, it was not yet signed by the Governor and thus was not yet in force, so this change was still required.

Mr. Chapman planned to support this Comprehensive Plan change because he believed that this did not impact health and safety in a negative way, and the use was in line with surrounding uses.

Ms. Hadden did not normally believe that changing the Comprehensive Plan was a practice Council should get into unless it was obvious that something needed to be done because the property was out of line. What helped her with this was the fact that if the Governor had signed off on Comprehensive Plan V within the last year or so, this would not even come before Council, but because she thought that amending the current Comprehensive Plan IV for 6 Annabelle Street would not have a detrimental effect on the community and would bring the location in line with what was occurring there, she would support the amendment.

Mr. Ruckle would support the change. He did not feel it would be detrimental to the community and did not think it would impact the health and safety of the neighborhood.

Mr. Markham would not support the change because he believed with all the issues the City had with rentals and the actions going on at Cleveland Avenue that this would have a negative impact on nearby properties.

Ms. Sierer would support the plan for the reasons stated by Ms. Hadden.

MOTION PASSED. VOTE: 4 to 1.

Aye: Chapman, Hadden, Ruckle, Sierer.

Nay: Markham.

Absent: Morehead, Wallace.

(ORDINANCE NO. 16-28)

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

- A.** Request of 6 Annabelle LLC for a Special Use Permit to Divide a Large Existing Single Family Home into Four Apartments at the Property Located at 6 Annabelle Street

01:48:27

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: THAT THE SPECIAL USE PERMIT BE APPROVED FOR 6 ANNABELLE STREET TO DIVIDE A LARGE EXISTING SINGLE FAMILY HOME INTO FOUR APARTMENTS AT THE PROPERTY.

Mr. Chapman would support the Special Use Permit for the same reasons stated regarding the Comprehensive Plan amendment changing the designation of the property in Bill 16-24.

Ms. Hadden said for the same reasons she stated before she thought this would not have a detrimental effect on the community and she would support the Special Use Permit.

Mr. Ruckle would support the Special Use Permit for the same reason he stated before as he did not think it would have a detrimental effect on the community or that it would impact the health and safety of the neighborhood.

Mr. Markham would not support the Special Use Permit because he believed it would have a negative influence on nearby and adjacent properties.

Ms. Sierer would be supporting this for reasons stated by Ms. Hadden.

MOTION PASSED. VOTE: 4 to 1.

Aye: Chapman, Hadden, Ruckle, Sierer.

Nay: Markham.

Absent: Morehead, Wallace.

20. 9-B. REQUEST OF 6 ANNABELLE LLC FOR A MINOR SUBDIVISION TO DIVIDE A LARGE EXISTING SINGLE FAMILY HOME INTO FOUR APARTMENTS AT THE PROPERTY LOCATED AT 6 ANNABELLE STREET (SUBDIVISION AGREEMENT AND RESOLUTION ATTACHED) (SEE 8-B & 9-A)

01:50:22

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: THAT THE SUBDIVISION AND RESOLUTION BE APPROVED FOR 6 ANNABELLE LLC FOR A MINOR SUBDIVISION TO DIVIDE A LARGE EXISTING SINGLE FAMILY HOME INTO FOUR APARTMENTS AT THE PROPERTY LOCATED AT 6 ANNABELLE STREET

MOTION PASSED. VOTE: 4 to 1.

Aye: Chapman, Hadden, Ruckle, Sierer.

Nay: Markham.

Absent: Morehead, Wallace.

(RESOLUTION NO. 16-V)

21. 8-C. BILL 16-25 – AN ORDINANCE ANNEXING AND ZONING TO RS (SINGLE FAMILY DETACHED RESIDENTIAL – 9,000 SQUARE FEET) 16.374 ACRES LOCATED AT 0 VALLEY ROAD AND 308, 309, 310 AND 311 MASON DRIVE

01:51:13

(Secretary's Note: Items 8C and 9C were discussed simultaneously, but voted on separately.)

Ms. Bensley read Bill 16-25 by title only.

MOTION BY MR. RUCKLE, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR BILL 16-25.

Steve Director, Esq., represented Mr. Dan Kandra in this matter. Mr. Director said the two communities built in Newark by Mr. Kandra, Paper Mill Falls and Briarcreek, were assets to the City. He

asked that the Planning Department report and the recommendations and vote of the Planning Commission be incorporated in the record. There were votes in favor of the annexation and a zoning change and votes in favor of the subdivision as requested.

Briarcreek North – Mr. Kandra owned 9.4 acres on Valley Road. Adjacent to that were Mr. and Mrs. Spears who owned seven acres. The idea was to annex both of these parcels into the City, make them one large parcel and develop it for adults over-55. One of the problems was the failing septic systems and well water. Mr. Kandra's idea was to annex it, hook up to the City's water and sewer and provide a nice community for the over-55 category. As with any land use situation, people did not really like change but he felt they also had to open their minds a little bit. There were many positives here such as the active 55-plus category provided a mix to the City. They were great residents, they were in good health, they were quiet, they used local goods and services, they went out to dinner and breakfast, they went to movies, they used professional banks, financial services, and they patronized all sorts of local businesses. They paid fair property taxes, they paid water and sewer bills and they took care of their properties. They formed homeowner's associations and did not wait for the City to come in and fix a problem. They did it themselves. This type of population placed an extremely low stress on the community. They did not stress the police, they did not stress the fire, and they did not stress emergency services. They did a lot of volunteer work. All communities needed this blend of ages, professions and balance. People in Paper Mill Falls and Briarcreek really loved the communities in which they lived and Dan Kandra as a builder. The reports contained glowing comments about Mr. Kandra as a builder and as a person.

Mr. Alan Hill, Senior Vice President, Hillcrest Associates, referred to visuals from his PowerPoint presentation during his comments. He showed the location map for the property which was five parcels that totaled approximately six acres located west of Valley Road and south of Mason Drive. The subdivision of Christine Manor was to the north and east, and the existing 55-plus community of Briarcreek was across the street. There were two houses currently on the property. There was a large five bedroom contemporary house constructed in the late 80's and a small three bedroom ranch house constructed in the early 90's. A previous subdivision that took place in New Castle County a couple of years ago subdivided the existing lots the two homes were on into four lots. That would have meant adding an additional two wells and an additional two septic systems that would be elevated sand mound septic systems on those lots. By abandoning the two wells and the two septic systems that would be on this property, they would be reducing the chance of pollution to the ground water with the septic systems (especially with the sand mound systems which were not the best) and with capping the two existing wells on the property now, they reduced the risk of any adverse effect to the existing wells of the neighbors by reducing the chance of drying up those wells in extreme conditions and reducing the chance of low pressure in those wells.

The cherry trees seen on the upper right picture were located off the driveway that leads to the property from Mason Drive. Those were determined by Parks and Recreation as some of the only trees on the property that they felt the developer should make the effort to save. In talking with the neighbors they asked if what was a driveway now could be turned into a footpath to access from Mason Drive into the proposed community so they could have a sidewalk access all the way out to Valley Road. Mr. Hill said they would add that in as a condition of approval should this get approved tonight.

Mr. Hill referred to photographs from inside the wooded area which would remain undisturbed around the pond and the wetlands. The proposal was to dredge out the pond, remove the sediment, clean it up and make it a feature of the neighborhood. There was a total of approximately one acre of wetlands within the center of the community. They would add a 50' buffer which could not be disturbed.

There was a suggestion that there might be bog turtles in the area. Mr. Hill contacted the wetlands expert who did the delineation at the site, and he said with the tree canopy around the wetlands it was not the type of vegetation and atmosphere the bog turtles would like. They preferred more open, grassy, mucky type of soil, so he remarked there was no chance of having bog turtles in that location.

Mr. Hill referred to the existing community of Paper Mill Falls built by Mr. Kandra in approximately 2001. It was the first luxury over-55 restricted community in this area of Delaware. It was annexed from New Castle County in the same way this annexation was proposed. The photos shown were recent and after 15 years the neighborhood still looked well-kept and reinforced the type of homeowner the luxury over-55 buyer was.

Briarcreek was very similar to Paper Mill Falls and to the proposed Briarcreek North. The two communities were sought after and did not stay on the market as long as other 55-plus homes in New Castle County. The homeowners maintained the stormwater on the site to a higher than normal standard in a subdivision.

Mr. Hill displayed the architectural elevation which was similar to the Briarcreek and Paper Mill Falls projects. The façade was more of a stone look and a high quality composite siding. Stucco would not be used. Many of the end units had a side entry garage which was unusual for a townhouse community to be able to offer that option.

The site plan for the 35 proposed homes had a single access street. They checked with Aetna Fire Company and the City Fire Marshal who reviewed the plan to ensure their apparatus could safely access the homes and turn around in the cul-de-sac at the end of the street. The entrance to Valley Road was located on the outside of a curve which was the optimum place to put an entrance because it maximized the site distance in both directions. The proposed street would have sidewalks on both sides of the road. A sidewalk connection would be added between the existing cherry trees to Mason Drive and a sidewalk that came through the back side of the development and tied the back to Valley Road. Sidewalk was also being added along the frontage from the existing culvert to the property line. It would not be extended into Christine Manor, only for their frontage of the property. DelDOT had a minimum requirement they imposed on all developers to improve the frontage of the roads along the frontage of the property. On this project they asked the developer to widen the existing 8' lanes in each direction to 11'.

Mr. Hill was made aware of a concern from the neighbors that widening this road would lead to other widening in the area. He talked to DelDOT about that, and they had no plans in their five-year plan which was as far as they projected to have widening or other construction on the roads in Christine Manor.

A lot of stormwater was proposed on this job. Mr. Hill pointed out stormwater bio retention areas, a stormwater infiltration area and two additional retention basins.

Some screening was also added from the original proposal as a result of conversations with neighbors and local politicians. A little gazebo was proposed as a community gathering place. The original Briarcreek had a gazebo that was very successful and led to a lot of informal gatherings as a centerpiece to the neighborhood. It was valuable in small neighborhoods like this.

LEED certification was required as part of the site plan approval. For this type of community, the level was 45 points. They had 47 points filled out and submitted to the City. It was possible for them to do more, and once all the improvements were added to the homes, it would be more than 47.

In relation to Comp Plan IV the site was located on the edge of the County. That was identified for low density residential, which in the Comp Plan IV, was one to three units per acre. The proposed density was 2.26 units per acre in compliance with Comp Plan IV and also complied with Comp Plan V.

Regarding the annexation Mr. Hill pointed out that the growth of the City of Newark into this area was primarily to supply sewer to those homes. The area had poor quality soils. The trend seemed to be as properties were sold, if they could tie into the sewer, they did.

With the annexation they were proposing to connect to the City water, the sewer, the electric service, as well as trash removal. Right now, Briarcreek did their own snowplowing. They did not impose that on the City. The intention was to combine the new Briarcreek North with the original Briarcreek, and they would continue to do their own snowplowing as one HOA.

Currently, the area was zoned as NC21 under New Castle County. That was primarily because it was on sewer and well service, and that dictated a lot of their rezoning from the UDC some years ago. RS zoning was proposed for the property which was consistent with the low density development of one to three dwelling units per acre. It was consistent with the Briarcreek subdivision right next door and also Paper Mill Falls. The reason why it was zoned RS and not an RR zoning for the townhouses was it was done to protect the City should they do the annexation, the rezoning, and something happened with the developer, and they did not follow through with the plan as approved, because the annexation would have already taken place, and it would leave the City with an area that was zoned RR and that had much higher density available to a builder that did not have the morals and public standing of Mr. Kandra.

The plan proposed a 2.26 unit per acre density, which was less than Briarcreek at 2.51 and Paper Mill Falls at 2.57. Also proposed for this plan was 40% open space, and under the site plan approval process, which they were applying for, they would gain a density bonus to be able to do eight units per acre. They were not applying that density bonus but were keeping it under three units per acre.

If they did not have the 40% density bonus (which they were not asking for), they were only required to provide 17% open space for this many units. That was the maximum open space that would be required by the City for a non-site plan approval process. That would only require 2.7 acres of open

space – 6.8 acres of open space were proposed which meant they were giving up more than 4 acres of additional open space to the community. It would be private open space, so it would be maintained by the HOA. It was not being dedicated to the City for public use.

As part of the site plan approval process, they were asking for variances from the RS zoning for the minimum lot areas, the minimum lot width, the maximum building coverage, the maximum lot coverage and the side yard building setback. That was all because of the RS single family home zoning. Paper Mill Falls and Briarcreek had similar variances as part of their approval with the annexation, the rezoning, and the site plan approval.

Mr. Hill referred to an overlay on the air photograph showing the location of the houses and the proximity to the closest buildings and homes. The closest home was on the Maryland side at over 90 feet away from their proposed home. Up on the east side of the project, they had homes that were between 97 feet and 124 feet away from the backs of those units. He pointed out that they were not asking for any relief on front or rear yard setbacks.

Stormwater management was a big issue in the City. For obvious reasons, there were areas that suffered from plenty of flooding and had concerns. They had an interesting, unusual situation here. They were very close to the top of the watershed in the City. They had what they call their point of analysis, and that was where they do their calculations. That was the existing culvert that crossed underneath Valley Road. Right now, the site was approximately 16 acres. Then, this area of Maryland of over 50 acres all came down to this same point.

In this area there did not appear to be a stormwater management facility. Everything ran via the pipes from the roads to that culvert. So they were having to over-manage their 16 acres to compensate for the 53 acres that was coming down to this culvert.

Mr. Hill showed a close up of their property and the existing drainage patterns. He pointed out the location of the culvert and where they measured their flows and a channel where a stream came across from the neighborhood. Most of the time, this was just a shallow flow. He then indicated the location of their pond and a channel that ran down through their property. It was an intermittent channel that only flowed when it rained. Arrows showed this property was a bit unique. It had a little bit of a ridge that ran down the state line. Almost as if somebody built a barrier between the states. There was also a ridge that ran across the top of the property and then swept off. It was almost self-contained on their side, even though they had to maintain the 53 acres coming from Maryland to the property.

Mr. Hill showed the proposed plan overlaid over this. Anything on the Maryland side was transferred down into the bio-retention basin. There were a series of five basins that all cascaded and carried the stormwater down. That was all part of their over management of this area to protect this culvert and start making this culvert not failing. It was in a current failing condition which means that when they had a 100 year storm, it flooded.

The Public Works Department made sure that after their design they did not flood over the roadway. They were over managing the site with the series of stormwater management basins to maintain all the water coming through to keep this from flooding and protecting the downstream neighbors.

Mr. Hill referred to the stormwater management for the existing Briarcreek neighborhood. The site improvements for Briarcreek North were high – it was not a cheap site to build. To be doing this while keeping under three units per acres low density, he thought they were doing a very good job.

In the conversations with the neighbors there was concern about clearing the site and risking the chance of mudslides, erosion, etc. Mr. Hill said they were not going to clear the site because they had the large area of trees in the center of the site they could not disturb because of the wetlands and the wetland buffer. The first thing that happened when they constructed a site like this was they put in erosion and sediment controls. Those were located generally in the locations where the basins were now. Those had to be stabilized with grass growing before they could start building the houses and building the roads.

The regulations did not allow the developer to create sites that were not stabilized, that were a hazard to the environment. That was a time consuming process to go through the construction improvement plan process and comply with all the regulations and then to build it.

Regarding the culvert under Valley Road the metal patch and the cone were part of the washing away the road because it flooded. The culvert, as part of the project, would be replaced and the road repaved so it was safer with paving and sidewalks and functioned to protect downstream residents.

Mr. Hill referred to an existing culvert showing the flow level, the one year storm elevation, the ten year storm elevation and the 100 year storm elevation that was up above the road. With the improved culvert which looked a little odd, they brought this level down and were actually a foot below the existing paved road, managing that water to a point where they were not adding any additional rate to the downstream effect there. If they did not comply with the regulations to the satisfaction of the Department of Public Works, they would not have been able to present to the Planning Commission and be here this evening presenting to Council.

Mr. Director asked Mr. Hill in the slide with the culvert whether there were three culverts in there or two. Mr. Hill responded there was a large oval pipe that was proposed and two smaller relief pipes. It was a way of managing the flow, letting the smaller storms go through while holding back the bigger storms to make the stormwater. Stormwater was a numbers game and this was what they came up with to meet the numbers and show the reduction in the stormwater leaving the site

Mr. Director noted the following five perceived negatives:

1) No development – he felt that was probably the biggest objection. However, development was a reality. Mr. Kandra’s proposal took Mr. Spears’ seven acres which were on a well and septic, two homes, four sites, took his nine acres and turned it into an attractive, desirable property built by a local builder with an excellent reputation. The idea was that Council and the developer worked together to have responsible change. If they did not get approved one of the alternatives was that a national developer could come in with a motivation solely to make money and with much less regard for aesthetics and for the people. That developer eventually would get some approval.

2) Density – this issue was a puzzle, and Mr. Hill walked them thorough it. Briarcreek North was proposed at 2.26. With the amount of open space, they could go up to 8 units per acre, but as Mr. Hill pointed out, nobody was suggesting that. Mr. Director remarked that Paper Mill Falls and Briarcreek were not adding stress to the City as far as police and emergency services and were paying water, sewer and taxes. Both were attractive communities. Density at Paper Mill Falls was 2.57 and Briarcreek was 2.51 with 28% open space.

It was suggested that some units be dropped. In order to pay for the expensive improvements, including the extensive stormwater management system, they really could not drop the units, and the units did comply at 2.26 units per acre.

3) Stormwater was addressed by Mr. Hill but Mr. Director added that the City engineering approved it, and the City was a DNREC approved agency.

4) Traffic – as Mr. Hill mentioned, DelDOT did not see the need in a five year plan to do anything to Valley Road. They did want the width increased in front of the development. As far as the kind of traffic generated by over 55 residents, many of them were retired, some worked part time, some were consultants and worked at home, they volunteered, and they generally tried to avoid peak traffic periods.

5) Miscellaneous - trees. Mr. Hill reported a lot of trees were being retained and an extensive landscape plan was proposed for the site. Somewhere around 350 trees and shrubs would be planted on the property before planting the additional screening that proposed tonight.

Impact on the neighbors – there was significant support from Briarcreek. A lot of positive comments were heard from dedicated professionals in the Planning Department and the Planning Commission. Change was going to happen. The City could control it along with the developer.

Mr. Director felt they addressed the issues that were out there. All communities, including Newark, needed a mix, a blend of students, young families, active adults and seniors. Just like Paper Mill Falls and Briarcreek, this community would bring in quality housing to a very desirable sector of people. These were people who spent money on local goods and services, supported local businesses and were good for the City. This community was well-planned, addressed concerns and was aesthetically pleasing. He thought it would help to make Newark a thriving, advancing city. He also thought they should be glad that Mr. Kandra was willing to invest in the City which sent the message it was thriving. Mr. Director lived and worked in Wilmington and did not see that in Wilmington.

Regarding the traffic, they knew it was a concern to the local residents. Mr. Hill reported they did an unofficial traffic count. DelDOT provided the numbers used in their reports for the traffic studies and what they put on the plans for turning motions and other things. Based on a limited window of opportunity they only got to do the study once, but it was an all-day count from 6 a.m. to 7 p.m.

DeIDOT reported that almost 600 cars used that road on a daily basis – the developer counted just over 500. When doing a traffic study, AM and PM peaks were considered. The AM peak was 7 to 9, and the PM peak was 4 to 6. DeIDOT said there would be seven cars leaving Briarcreek for work; they had one in that time frame. In the afternoon, DeIDOT had nine cars coming back and the developer had 11. The highest count of people leaving the neighborhood was between 12:30 and 2:30 p.m. while the highest point for coming back was between 1:30 and 3:30 p.m.

Mr. Hill noted that DeIDOT also provided a split of where the traffic was going from the neighborhood. They thought that 51% of the traffic leaving Briarcreek was headed to Church Road. That was more like 40% of the traffic. 60% of the traffic heads down to Barksdale Road, so they were not cutting through the neighborhood as much as people thought, they were going the other way.

Mr. Kandra knew there was some concern about the resales in Paper Mill Falls and Briarcreek. He contacted realtor Bob Cronin. He checked the sales in Paper Mill Falls from its inception after everyone had bought in there and that was 2003 until now. There was an average time for houses on the market of 32 days since 2003. With Briarcreek, the average time a house was on the market from 2006 until now was 79 days. On top of that, he knew there was at least one home that never went to market in Briarcreek as it went to contract by word of mouth.

Another home in Briarcreek was listed on a Friday, and the contract was sold on a Monday. By the same token, there was one unit in there that was on the market for a lengthy period of time. It was a middle unit and had no master bedroom on the first floor. He thought that was one of the reasons why it was slow to sell.

The discussion was returned to the table.

Ms. Hadden referred to the slide with the culvert, the proposed and what was actually there. She had trouble reading the "stream-based flow" number. Mr. Hill said it was 137.67, and that was the stream depth on a daily basis. Ms. Hadden asked whether the proposed new culvert system took into account that the development was built? Mr. Hill confirmed it did. Ms. Hadden asked if she was correct that this was going to have no effect at all on the water flow that went into the stream. Mr. Hill confirmed that on a day-to-day basis, there was going to be no change to that stream.

Mr. Ruckle asked who provided electricity to the two houses currently there. Mr. Hill said it currently was coming from Delmarva Power. He asked Ms. Feeney Roser if the City had to buy that contract out. Ms. Feeney Roser reported the two houses currently on this site would be demolished. Once they were demolished that disconnected the electricity and then the City could serve.

Mr. Ruckle said he had some calls from the neighbors and thought the County was also going to state that they wanted more trees along the edge all the way around. He asked if they were going to leave the current trees or put new trees in that would take years to grow. Mr. Hill responded there was a mix of both and referred to a slide from the presentation. He said there was a suggestion about adding some screening along the edge of the right-of-way but did not believe the City would allow them to add trees into the proposed right of way, but there were trees on the other side of the state line.

Mr. Coleman said generally they did not allow trees in the right of way. He would need to really look at the plans and see if there was a utility proposed for the area between the curb and the edge of the right of way. Mr. Ruckle said the neighbors' fear was losing their view and he hoped to try to minimize that. Mr. Coleman added there were five houses there.

Mr. Ruckle commented as the only licensed realtor on Council he could state that there was an unbelievable need for over 55 communities. There were none in development in New Castle County above the canal. The main thing was not to affect the current neighbors, and they would be concerned about their property values. As long as they keep this screen, it would not diminish their real estate values. Somehow they had to figure that out to keep everybody happy.

The Chair opened the discussion to the public.

Beverly McFarland lived in the Briarcreek development directly across from Briarcreek North. She was here to represent her community. The community said thank you for the invitation to provide input on the proposed Briarcreek North project. This afforded them the opportunity to provide their input as residents of Briarcreek's 55 and over community. For the past 11 years, residents of Briarcreek enjoyed living in their quality Kandra-built homes.

Most of the residents searched for a quality 55 and older community that would provide a private, secure experience, low maintenance style, sidewalks and convenience to healthcare. They found it all in Briarcreek – high quality homes, outstanding Newark public services and attractive quality of life. In their judgement as residents of 55 plus community, the benefits they experienced at Briarcreek would also be enjoyed by the residents of Briarcreek North. Many people drove right into the development and asked where there were more houses like this because they were screaming for 55 plus homes, and these were quality 55 plus homes.

For these reasons they supported the building of Briarcreek North and urged Newark City Council members to do the same. Moreover, they urged Council to annex the Briarcreek North site and approve the Kandra Builder's project to assure the residents of Newark had control over the development of this property adjacent to their community. Ms. McFarland had a petition signed by 37 people in the development, but that represented 24 out of the 28 homes in the development. Most of them had two people in them.

Ms. McFarland had another petition with 143 signatures. These were people who lived in the City of Newark. They said, "We, the undersigned hereby request the Honorable Mayor and the members of the City Council of the City of Newark, Delaware to approve the annexation, rezoning and subdivision plan for Briarcreek North located on Valley Road submitted by Dan Kandra and the Kandra group."

John Morgan, District 1, did not have a direct, personal interest in it. He recommended paying close attention to what the immediate neighbors said about their concerns and that their concerns be addressed. He felt it was important for Mr. Kandra who was a quality builder to address the concerns of his immediate neighbors for this project because it would be easier for him to persuade the neighbors in Cherry Hill Manor if he wanted to do something with the Barksdale Green project in the future.

When Dr. Morgan was reading the title of this bill, it talked about rezoning to RS, single family detached residential, but when he looked at this, it resembled townhouses rather than detached. He asked for an explanation. Ms. Feeney Roser said that would be the site plan approval option. It allowed for deviations from the Code in order to move developments forward that may seem to have other benefit to the City, so that was the difference. Dr. Morgan commented that it seemed to him going from detached to row houses was a big deviation.

Marilyn Woodman, Valley Road, was a resident of the County and Christine Manor. Her home would be 97 feet from the edge of building 1 (shown on the last page). She noted the picture showed vegetation that would not exist. She knew bushes would be planted, but it would take a few years to get any kind of growth on them. They also heard people did not like change. The neighborhood surrounding the proposed project was not a development area, and Briarcreek North was a development. She also heard, "controlled development." She thought that was interesting because they had single homes, most on at least an acre and many on more than an acre. She felt in the existing community it would stick out like a sore thumb. There was no argument that Mr. Kandra was a quality builder with a great deal of integrity. She had no objections to the development, but would like to see it reflect the character of the surrounding community.

She believed the statement was made that they were going to fill in the deep ditch on one side of Valley Road below the culvert. She said that ditch was in Maryland, and when they checked the Maryland Department of Transportation, Elkton or Cecil County was never informed of any of this.

Ms. Woodman said the statistics the developer had were the sales figures, and she pointed out there was a 50% turnover in both Paper Mill Falls and Briarcreek. In the case of Briarcreek, a great many of those homes (50%) were sold for less than their original value.

Patricia Fogg, Briarcreek, was a Newark resident since 1985 and a 34 year employee of the City. This evening she saw that Council had a unique opportunity to consider and approve a development project that was a known quantity and of known quality. After observing Briarcreek from afar for a few years and now living there for the past year, she spoke with some confidence on the nature of the work that Dan Kandra brought to Newark. His proposal for Briarcreek North was on a property that would be developed in one form or another now or in the future.

If approved as presented, it would mirror the wonderful homes in Briarcreek. While Council did not always know exactly what it was getting when they approved a project, in this instance they did – a spectacular addition to the neighborhood and to the City at large. She hoped Council would approve this project this evening.

Lisa Diller, New Castle County 5th District Representative, pointed out that over a number of years on County Council, she saw many development projects come before them. The mark of a quality development was not simply the development itself but the process the developer used to engage the surrounding communities in what was going to happen. Nobody was saying the change could not happen, but there were folks who lived so close like the people in Christine Manor who were not even talked to by the developer. She would have been happy as a County Council person to set up a meeting with the developer and with these people if anybody had asked. The only reason she found out the annexation was occurring was because she got an email from a constituent. Having talked to the State Planning Office she understood that when the City proceeded with an annexation that it was contained in the Comp Plan and went through the PLUS System as an update to the City of Newark Comp Plan.

The reality was the City had people who were being affected. She did not know if City Council members had the same ability she did on New Castle County Council if there were questions or concerns about a development, to send it back to the Planning Department with questions that could be answered at a later date. She asked if Council members had that ability. Ms. Sierer replied yes.

Ms. Diller said the fact that many of these people were shut out of the discussion on this development and lived so close to it, even if they were not City of Newark residents, surely they had a voice. She thought the City needed to figure out a way when doing this kind of annexation and there was a community right next to it, that they should be included.

Julianne Santora, Valley Road, said one of her concerns with the development was the environmental aspect. She heard the bog turtle mentioned. She had an endangered species list from the State of Delaware and was curious to know if there were any studies done other than the turtle because there were salamanders, tree frogs, several bat species, birds, and she did not hear any of those mentioned. Mr. Hill responded that they had not been requested to do any environmental studies other than the standard wetland studies required. Ms. Santora said she mentioned it because even though they were not required, they were on the endangered list. Her concern was what happened if afterwards it was learned that animals, insects and amphibians were mowed down without any notice or any research.

Mr. Coleman said the culvert replacement under Valley Road and the dredging of the pond located in the center of the site, would both trigger a review for endangered species by the State. If there were habitats for the various endangered species, they would require an appropriate study. It would only be triggered if there was a subaqueous permit application but there would be because it was a requirement to replace a culvert which would impact subaqueous lands.

Ms. Hadden asked if the culvert was repaired first and then the pond was dredged and then the development goes up or does the development go up, and then the other things happen. Mr. Coleman explained the development could not move forward until they could put the culvert in because if they could not do the culvert then they could not meet DeIDOT's requirements so they would need to get the permit to be able to begin construction. The request for the permit was the trigger that would start it.

Ms. Santora said that went for the amphibian life but there were also birds, insects and other things that should be considered. She thought it would be really bad if they went ahead and did something like that and disturbed endangered wildlife listed on the State website. The other thing Ms. Santora touched on was emergency services. As mentioned before, it was said there would not be a strain on police, fire, emergency services, etc. but, working in public safety, she said that was not true. It was a known fact that as people got older, they were more susceptible to health problems. New Castle County had nine medic units and had no intention any time soon of putting up another one. The one that served this area was from 7 a.m. to 7 p.m. and then got assistance from other paramedic units in further areas.

Brian Coleman, Valley Road, said his concern was not with the quality of the proposed subdivision or with the moral or ethical character of the builder, it was rather with what he saw as some inconsistencies between City of Newark principles as set out in the Comp Plan and the language used in the Planning and Development Department report dated July 22, 2016. The major part of Planning Area 14 was Christine Manor which was created in the 1950's. It was houses in various shapes and sizes on relatively large lots and in the report of July 22, when there was a comparison of properties close to or adjacent to the proposed Briarcreek North, Christine Manor was not mentioned at all. There were five subdivisions outside of the planning area that were mentioned. When it reported the adjacent properties, it mentioned Briarcreek first, even though it was situated across Valley Road from the proposed, new subdivision. Once that had been discussed then it mentioned Christine Manor even though some of the properties in Christine Manor physically adjoined the proposed new development and should have more consideration in terms of impact.

The map of Planning Area 14 showed six properties in Christine Manor that would physically adjoin the proposed new development. Yet, the July 22 report mentioned just two. One of the site approval criteria was given in the July 22 report on page 3, it was Relationship to Neighborhood and Community. However, the report only mentioned the need to improve relationships to neighborhood and community with regard to the homes in Cecil County, with no mention of Christine Manor. He was pleased to see some changes from what was in the report in terms of landscaping to shield the three properties on Valley Road from the very close new buildings that were proposed.

Mr. Markham asked that the location of Christine Manor be pointed out on the map in relation to the proposed Briarcreek North property.

Helga Huntley, District 1, had a question about the proposed culvert. There was a statement that it was part of the plan for reducing the stormwater leaving the site and she did not understand that since the culvert was off the site. If they reduced the water leaving the site how did changing the culvert change how much water came off the site. Her second question was it showed that the 100 year flood level decreased with the new culvert design. She wondered whether that was a decrease due to the new culvert design or a decrease due to the other stormwater management on the site. Also, on the first slide there was a walkway going up to Valley Road with a little box on it. She asked what that was. Mr. Hill responded that the culvert was the point where they were now analyzing the stormwater flow, and the culvert design was an integral part of the stormwater management design to be able to manage the 53 acres coming into the property from Maryland. The little box was the location of a booster pump for the water supply.

Ms. Huntley referred to the part of the Code that described site plan approval specified under the heading "Density Bonus" that in RS zoning, the developer was required to provide 40% open space. In the presentation, it was said this did not apply since the applicant was not asking for a density bonus. She asked whether the open space requirement applied to all site plan approvals or whether it only applied to those making use of the density bonus. She thought it was relevant because the Code also specified that open space had to be dry and level and if the applicant was required to provide 40% of his site as open space that had to be dry and level, she did not think the current plans met that because they included the ponds in their count of the area for their open space. Mr. Bilodeau believed the requirement for the dry and level had to do with open space dedicated to the City and not private dedicated space.

Ms. Huntley said in the Code section on site plan approval it said specifically that Chapter 27, Appendix VI, Conditions, had to be conformed to by the space and Chapter 27, Appendix VI talked about land dedicated as open space. It did not talk about land dedicated to the City. She asked why that would not apply. Mr. Bilodeau replied that historically regarding the dry and flat there has been applied to property publicly dedicated to the City. If she read through that whole provision, it also provided in the case they did have drainage problems like with the wetlands, that the City could also require a payment in lieu of to make up for the problem with not being dry and flat, which he believed would be part of this agreement. Ms. Huntley missed that entirely.

Ms. Feeney Roser said the first question was is it a requirement of site plan approval or a requirement of the density bonus within site plan approval. The way the Code read it said, "With site plan approval, the total number of dwelling units shall be permitted as specified below." In RS, one could go up to eight dwelling units per acre but would have to require 40% open space. There was 40% open space here. The open space definition in the subdivision regulations which it referred to Appendix VI said, "Open space may be water or land." In the conditions Ms. Huntley noted, that was always interpreted to be land dedicated to the City for parkland, and they would require it be open and dry. One of the requirements also was that 17% of the site should be land dedicated to the City or a payment in lieu of donating the land. In this case, the Parks and Recreation Department had a formula of \$450 per unit that could be applied at the Construction Improvement Plan phase. That was normally where it was, although recently, staff had put it into agreements and it was not in this one now. That could be done tonight at the table.

Shelley Einbinder, Johnston Drive, Christine Manor, was a Maryland resident. Her driveway was on the Mason-Dixon Line. She sent a letter this morning to Council which she thought they received so if it was read and understood, she would not address any of the issues directly. If not, she would speak more directly to the points in it. Last week she met with State Representative Paul Baumbach, City Councilman Mark Morehead and New Castle District 5 Representative Lisa Diller. They were informative and she thought, fairly neutral. One of the questions asked was, "How often does City Council veto, or go against, something that Planning approved?" Their response was, "Not often," but they mentioned something interestingly enough, which was actually from the last meeting that was actually another Kandra development which was approved by Planning but rejected by Council. What they said was, "It did not pass the sniff test." It was basically based on stormwater issues but passed all planning issues but really was not in the intent of the law. She felt most of this application actually did address that.

She pointed out that the application was signed by Mr. Hill, not by Mr. Kandra or Mr. Spears and thought that was actually a serious deviation. Also, the last house sold in Briarcreek sold for \$85,000 less than its last sale price after nine months on the market.

Some were long-term issues. The fact that the picture they had up was an isolated image with no connection to either the traffic issues which actually the Comprehensive Plan did speak very clearly about Nottingham Road, the implication of the golf course if it was ever developed and Barksdale Road which had other significant traffic issues that were pending with the re-opening of the Gore plant and the possible development of the site at Barksdale and the end of Valley Road.

Valley Road was actually the other thing they would have certain requests for. One was a third-party review paid for by Mr. Kandra of the plan, especially stormwater, traffic and long-term impact to the environment and the neighborhood and especially to the well water.

The second one was that LEED Silver Certification should be part of the receipt of a certificate of occupancy for any development on that site.

Third, there should be some consideration of a plan for development because the construction traffic on Valley Road would be significant and would provide for deterioration of an aged road, maintained by both DelDOT and the Maryland road system and how that road could be used for transportation during any future construction, not just if Mr. Kandra's plan goes through.

She thought Ms. Woodman submitted a petition that they should be able to ask for a super majority vote for the annexation. (*Secretary's Note: The petition previously was denied due to not having enough valid signatures submitted by the deadline.*)

Terry Taylor, Briarcreek, addressed a couple of concerns of some of the neighbors. The traffic impact was going to be minimal. Seniors tended to not travel at peak periods. DelDOT estimated that Valley Road could handle 900 to 1,000 car trips per day. Currently, there were under 600. They did a traffic study of the cars that came out of Briarcreek – 45 cars. Using that as a basis, it would only be 60 cars coming out of Briarcreek North. Very, low impact and way below DelDOT guidelines. The density was 2.6 – much lower than what could be built in there.

The wetlands guidelines for the State that they had to have five detention ponds. The water would actually be better than it was right now because of the state requirements and would improve drainage.

Ms. Taylor was a realtor for 30 years and she knew that Briarcreek North would have a positive impact on the area. Over-55 was the fastest growing segment of the population. There was a distinct need for over-55 housing and these were excellent. They would increase the tax base for the town. Seniors often had more disposable income and would spend their money at local businesses.

Overall, she thought it was a lovely addition to Newark and the area. As a realtor, she really followed the prices in the neighborhood. The house that sold for about \$70,000 less than the original, listed in December which was the worst possible month to list. It was under contract by June. It did not show well because it was vacant and a few other things. The properties normally sold very fast.

The other two houses that sold last year, one sold by word of mouth immediately, and the other one sold in four days. It was very desirable, but mostly it was the need for over 55 housing. She looked all over when she moved here seven years ago. She thought it was a very valuable property to have with very little impact because the wetlands were taken care of and traffic not being an issue at all.

Michael Heyman, Mason Drive, felt this was not a fair fight tonight for all of the residents who were opposed to this development. The lawyer for the developer was given an hour-and-a-half to make their case. Residents were given three minutes. As a direct result of the poor condition of the sign which was a public notice, numerous residents were denied their right to have their voices heard at the Planning Commission meeting. He said Councilwoman Diller would attest to the fact that in order for a driver to read that sign, they would have to slam on their brakes, leave their car parked in the middle of the right lane, get out, walk through weeds and then read it. When one drove past the sign it was a blur and it was dangerous and impractical.

Mr. Heyman thought some would argue that the sign met the bare minimum of the Freedom of Information Act. He worked very closely with Senator Karen Peterson in a citizens group to help her get [FOIA] passed, so he cared very much about this issue of open government, but this should not be left up to the State Attorney General's office to decide this. It should not be legalese. If Council could not stop

the development in its tracks, he asked them to delay their vote and send it back to the Planning Commission so residents had the time to thoroughly research the development. Ms. Einbinder was probably their best researcher. She had four days to do this. Also the developer had two high quality lawyers. Residents should have the right to hire their own real estate lawyer to contest this project.

Ed Cairns, Christine Acres behind Nutter's Store, lived just north of this proposal. There was concern in Christine Manor about the traffic generated by this development and its impact on Valley Road, and he had knowledge in this area. The Institute of Transportation Engineers, ITE, published a trip generation document that showed projected vehicle trips for various units. They gave 9.6 trips in daily for single family housing. Unfortunately, the ITE did not have data for over 55 housing, so this developer used ITE's retirement housing data to project that these 37 units would each generate 3.4 trip outs per day which would add 127 new trips on Valley Road's 586 existing trips, or roughly 22% more traffic. This was inaccurate because over 55 communities generate more traffic than retirement housing with retired folks who were no longer working. Mr. Cairns made traffic counts in an over 55 community near Newport, DE and measured 7.8 trips outs per unit per day which was a more accurate estimate, slightly less than single family housing since there were fewer school age children in over 55 communities.

Using that the 37 additional units would generate 289 new trips per day on Valley Road, or almost a 50% increase, over twice what the developer projected in his plan. Furthermore, he split the new traffic equally between northeast bound to Church Road and southwest to Barksdale Road in Maryland, which was inaccurate because Valley Road residents say most existing traffic goes to Barksdale Road and this new development was closer to that road. Where Valley Road connected in Maryland, the 50 foot wide road in Delaware abruptly connected to the 22 foot wide road in Maryland at the top of a little rise on a slight curve. Mr. Cairns could not design a more hazardous intersection if he tried. The solution to this mess would be to reduce the number of units permitted for this new development to a lower level consistent with existing housing density in Christine Manor of one per acre or less.

Ann Goodman was a lifelong resident of Christine Manor off of Valley Road in New Castle County. Going off of what Mr. Cairns just said about a more realistic traffic increase resulting from Briarcreek North, she was concerned about whether a road as hazardous as Valley Road could handle 37 more units, not for driving but for alternative transit. She and a lot of other residents used Valley Road as a means of getting to and from Newark via bicycle or even by walking. She bicycled to and from work and school for the past six years. With the current amount of traffic she had few issues but tended to avoid cycling at peak hours. With a smaller traffic increase she may have more issues, but it could probably still be doable. If a 50% increase in traffic happened on a winding, narrow, back road with no streetlights and dangerous intersections at both ends, it might be a bit much if they did not want a significant public safety issue.

There was no other way in and out of the neighborhood besides Valley Road so there was no question of taking a different route. The only sidewalks and shoulders that existed would be right next to Briarcreek, which left about 85% of Valley Road being shoulder-less and completely dark with residential neighborhoods on either side. In that condition it would be highly unsafe for anyone biking or walking with that amount of traffic on there. Despite what DeIDOT said about being able to handle it, she did not know if that took into account people who walked or biked on those roads. Despite the 25 mph limit on the road, very few people went less than 40. This concern was in light of more recent cycling deaths on roads like Brackenville Road. Admittedly Brackenville Road had a much higher speed limit, but the structure was very similar. Because Valley Road was so well traveled without alternative transportation, and because so many people drove at least 40-45mph regardless, she would not be surprised if they started having more issues unless the unit numbers were diminished.

Karen Hurley-Heymen, Mason Drive, Christine Manor, was over 55. She was in this neighborhood for about three years and loved it. Valley Road was a winding country road with trees on either side. One of the presenters said DeIDOT's five year plan did not include any widening of Valley Road, but when did that five year plan start? She asked if we were in year four or year one. If it was year four, then in a year they could plan to widen Valley Road which would hurt a lot of people who lived on that road. They would lose three feet on either side to widen the road and she thought there would be a 15 foot setback. That meant some people would have their front door about 12 feet from the edge of Valley Road. She saw that coming in the future. She did not know why people could not use Casho Mill Road which was a large road and asked why the traffic would be funneled down Valley Road. It was unconscionable to her that anybody would want to do that. People walked along it with their babies in strollers, jogged and walked their dogs, so their quality of life would be affected by this development which she was never even given a chance to know about. She found out about it because of a flyer. The placement and location of the subdivision notification sign made it difficult for the public to see it. Ms. Hurley-Heymen hoped Council would consider the devastating impact of this development on the residents of Christine Manor.

Kevin McCullough, Ballantrae Court in Maryland, said four of the townhouses in the proposed development would be on his back property line. At the last approval meeting, a buffer was talked about. Mr. McCullough had all mature trees on his back property line and he thought that road was 47 feet from the back property line to the back of that road coming in. With the canopy on the trees and his understanding that there could not be anything planted on the right of way, he would have headlights from people coming down that road shining right into his house.

Mr. McCullough showed the location of his home on the map and said it was a big berm, like somebody bermed it up to keep the water on one side or the other. The topography map was not that accurate. He put about 200 tons of dirt in his back yard just to keep the water running that way. Most of the water went to that berm in the back property line from everybody above him in the neighborhood and goes down to that creek. He was concerned about the quality of life. He noted as far as the environmental impact, there was a bog turtle there.

Catherine Ciferni, District 2, was curious about market and understood the desire for 55-plus. She asked what the price point would be for these buildings. The second question was whether the layout was designed for aging in place. Once residents in a 55-plus community get 10-15 years in, that was a huge burden to not only public services and aging in place but also getting around. Transportation became an issue for the elderly. She asked if paratransit would have adequate access to a 55-plus community and were the driveways wide enough. It did not sound like the roads were wide enough to allow for paratransit turns and things like that. People looking at 55-plus were also generally looking at aging in place. Most of the 55-plus communities she saw at the higher end, unlike this one, they were larger and tended to also provide lifestyle choices like clubhouses and other amenities. This did not do that and it was farther out, so it was not like an urban center. She was confused about infrastructure and the market that it was attracting and hoping to keep.

Mr. Hill responded as far as the price point, the middle units would be low to mid \$400,000's. The end units would be high \$400,000's to low \$500,000's. There were first floor masters available for people to be able to grow old there. They had discovered that at both Paper Mill Falls and Briarcreek people actually had handicapped ramps build into the garages. Some of these units would be available with a three car garage so there was plenty of room to be able to do that. As far as location where the buyers were coming from, he did not know. He would probably ask the people in Briarcreek where they moved from. He thought most of those were from northern Delaware.

Sue Goodman, Dixon Drive in Christine Manor, referred to the Briarcreek traffic study and the fact that they only go out for lunch. They were living there for 11 years. They were not 55 anymore. Most were probably 65-plus. Her neighborhood was almost all 55-plus. There were a lot of ranch houses. People were moving in there later. They wanted privacy, the mature trees, and all this that they moved in there for. They did not just go out to lunch; they drove quite a bit. They wanted to put a walking path back into Christine Manor which was not too much of an issue, but 37 units – there were not even 37 houses on her side of Christine Manor. When people bought into a neighborhood where they just annexed about half of this into the City of Newark, when people bought into this area, that was supposed to be one acre or larger lots. Now all of a sudden, they bought into a place like that and they did not expect a house to be right up on top of their house when the lots were supposed to be one acre or even half an acre lots.

Mary Pat McDevitt, Dixon Drive, was Sue Goodman's neighbor. She was new to Delaware and also new to her current home. She had a traffic concern on her side in reference to the walking path on Mason. She wanted to make sure that it would never be open to through traffic because that would bring a lot more traffic into the area. Her second question was whether they would be able to annex into water and/or sewer and if so, with all of this development, would some sort of discount be available.

Mr. Hill explained that the foot path was something that State Representative Baumbach requested be added to the plans. As part of that he asked that a bollard be put at the end to make sure there was no chance of traffic to access that. The intent was to take the existing driveway and reduce it down to a foot path width. That would take care of looking after the walking path.

Mr. Coleman reported at this time there were no plans to extend water/sewer service outside of the development here that was being done by Mr. Kandra. As was mentioned earlier, they would require a private pump station that would allow for a higher pressure in this area that may allow it to serve further up hill. The houses on the north side of Christine Manor that were currently served were served from a different pressure zone. At this time he was not sure where they would end up pressure wise, but depending on that, this system may not have enough pressure to necessarily serve some areas of Christine Manor. That was something they would work out in CIP phase. As far as extending sewer service, the state now required any failing septic within a specified distance of a public sewer system to try to connect to

the public sewer system, so anyone in Christine Manor who now had public sewer closer would have a much easier time of connecting. The City did not pay for connections to its system for annexation like this.

Chris Locke, 13 Spring Water Way, lived just north of this property. He was very familiar with the area. He thought the developer did a wonderful job. He spoke as a developer as well and very rarely did one developer speak highly of another developer.

Mr. Locke first commented on the accusation that something was wrong with this development because 50% of the houses resold for less than they originally sold for. That was very common for development built between 2006 and 2008 which was at the highest point of the real estate market in New Castle County. The market was just finally rebounding from that deficit. In regards to annexation requests, City Council needed to look at whether projects would benefit the City. He thought the developer clearly showed tonight there was an economic and societal benefit from having this development annexed into the City. Mr. Locke complimented Council for listening to comments from people who were not City residents including even State of Maryland residents. This issue was not a County issue or a State of Maryland issue – it was a City issue and Council had to think of the benefit for the City. That was the hard fact of governance. A resident from Briarcreek presented a petition from 24-28 homeowners in support of the project which was unheard of. In addition, there was a petition of 134 City residents supporting the project. He never heard of that during his years living in the City since 1976. There were also comments made that “we did not know” – Planning Commission heard this on August 2, there was a 15 day notice provision, and he thought the City’s County Representative should be aware of what was going on in City politics if she wanted to be involved in the process. Also, there was a meeting last week –County Council Representative Diller said that she, Mr. Morehead and State Representative Paul Baumbach were there. That would have been a perfect time to have the developer invited to talk about any concerns. The lawyers had 22 minutes to present their case tonight. Public comment was going on now for almost 90 minutes, and he thought that was plenty of time to discern what was best for the benefit of the City. He spoke strongly in support of the project and hoped Council did the same.

Out of respect for Ms. Diller, Ms. Hadden asked that this request be returned to Planning for a process review and perhaps put a 30 day limitation on how much time, which would allow Ms. Diller to reach out, work with the developer to identify people that may be affected by this who may like to have some input. Hopefully, both sides who have spoken for and against the project tonight could get together and reasonably talk and under Ms. Diller’s watch resolve these issues.

Mr. Ruckle asked if there were any accident statistics on Valley Road. He asked what it would take to put a light at the entrance or a stop sign or make a three-way-stop sign at the entrance of this development. Mr. Coleman reported in order to do a stop sign, they would need to require a signal/stop sign warrant analysis to be run. It would depend on traffic volumes. He had no problem looking at that through the CIP process.

The concern Mr. Ruckle had about this project in general was they needed to keep the barrier up. He thought there should be mature trees around the edges. After talking to some of the folks that contacted him, they did not want to see the lights or the cars; they did not want to be affected by this property. If they could give people the look and feel they wanted, he thought that was really what they were saying. Everything else was within the Comp Plan and was actually under for density. He thought that was going to be between the developer and the surrounding folks. If that was what it was going to take, it might be in their best interest.

Ms. Feeney Roser thought that one of the reasons for Ms. Hadden’s suggestion was because of notification. The sign was determined to have met City Code for notification, and there were letters that went out to property owners in Delaware within 300 feet of the boundaries of this on July 22, and then Marylanders within 300 feet on July 26. It took a while to come up with their names and addresses. There had been notice. The letter that went to New Castle County went to the general manager of land use, so she thought there was a real good attempt to reach out. Ms. Feeney Roser confirmed that the City did what they were required to do in providing notification.

In regard to going back to the Planning Commission, Ms. Feeney Roser reported that Planning Commission unanimously recommended in favor of this project. They did hear a lot of opposition from the public. She was not sure that any of the arguments would be new to them, so she did not expect a different result. Mr. Chapman provided clarification that it was a five-zero vote. Two members of the Planning Commission were absent.

Mr. Markham addressed sending back to the Planning Commission. There usually had to be a legal basis to do that. He asked what legal basis Council would have at this point in time to send the same plan

back. They would have to send back direction to make changes, or the applicant had to request it go back. Mr. Bilodeau said as far as the legal basis went, he had not heard of any legal basis other than possibly the notice with the sign. The staff determined that the sign met the requirements, so he did not see that as a basis from a legal standpoint.

Regarding the last annexation that they did for sewer Mr. Markham asked how close that property was to where they were now. They had annexed a property in the County specifically for their sewer failure. Mr. Coleman replied it was further north from here. They were generally working from the north side down coming out of Timberline Drive. Mr. Markham said if they were to have a sewer failure residents in that area would have the option of annexation.

Mr. Chapman did not see a reason why Council would refer the plan back to the Planning Commission – he thought it was thoroughly discussed and reviewed.

Mr. Ruckle asked if the applicants could deed restrict that one path to a walking path, was that something that could be put into the agreement. Mr. Hill said that could be done and about the landscaping, as a condition of approval, they would strive to please the neighbors with buffering as Mr. Ruckle suggested.

Regarding the trees along the Maryland line, where the right of way touched, Mr. Coleman said there was a sidewalk in that right of way. There were no other utilities, so if Council wanted to waive the sidewalk requirement along that stretch that would realistically be the only way to squeeze trees in there. A section could be left out, and it would be less sidewalk realistically for the City to maintain because there would be no adjoining property owner to be responsible for maintenance of that sidewalk. They could add a mid-block crosswalk with some sort of refuge island and then go around back and add trees.

Mr. Coleman referred to the location on the map which was along the bottom edge from the circle to the cul-de-sac. They could look at restricting or removing the sidewalk requirement there. That would have to be an action of Council since they were required to have sidewalk on all roads. If they put a crosswalk over by the island, they would give people a way to jump over to the other side and walk down the side that had houses on it.

Ms. Hadden said in the event that the development was approved, stormwater downstream, especially in the Rahway area, was a serious concern of hers. It appeared that the developer did a fantastic job with containing water on the site, and with the improvements of the culvert, it should have minimal, if no, effect downstream if Mother Nature went along with everything. She asked if the developer would consider volunteering to put forth a \$100,000 bond that would stay in effect for some three years after the last unit was built to use that money in the event that it could be proven that there was a stormwater issue in another area downstream that could be proven to be related to the site. That money could be used to improve the situation. Mr. Hill said one of the things that Public Works would probably request an H and H study of the channels downstream as part of the CIP approval, so they would have a good baseline there as well. Mr. Coleman confirmed that. Mr. Director thought it was an interesting idea. He thought it would be almost impossible to get a lender to issue a bond for something like that. He said it was probably not going to work, so that was one thing he did not think they could solve. He thought it was pretty robust stormwater management and the culvert was pretty significant.

Mr. Markham asked what environmental studies would be done before the first shovel was turned, or could they start down the road and then have the endangered species study done and then have an issue. Mr. Coleman responded that generally speaking DelDOT's approval would be contingent on them making the upgrades to the culvert. If they could not get a permit to make those upgrades, they could make the restriction on the floor definitive that they could not start until permits were in hand including the endangered species study associated with the State permitting process. Otherwise they could be building something that would not be able to be compliant. It would be the subaqueous lands permit from DNREC at the culvert. There was a public notice period that went along with that, and all the other public agencies got to comment on it at DNREC. Mr. Coleman added those were jurisdictional wetlands so it would require a permit from the Army Corps of Engineers.

Mr. Markham had five amendments to make to the annexation. The first amendment had to do with waiving the sidewalk requirement on the western edge between unit 15 and 16, and the second required additional screening to be determined in the CIP process by the Public Works and Water Resources Director and the Parks and Recreation Department. The third amendment was that an environmental study for endangered species would take place before the project was started with a subaqueous lands permit from DNREC and the Army Corps of Engineer general permit in hand before any development started. The fourth was the developers shall be responsible for all upgrades to the City of

Newark water and wastewater infrastructure necessary to satisfy all requirements in the Municipal Code. Upgrades shall comply with the City of Newark standards and specifications that are subject to approval by the Director of Public Works and Water. That is the easement. The last one would be the developer agrees to pay cash in lieu of open space fee of \$450 per unit for 37 units totaling \$16,650, which would be used by the City for future improvements in nearby parks.

Mr. Bilodeau believed that if Mr. Markham wanted them to pertain to the annexation, if that was his amendment, then they could move forward with that. Ms. Bensley said that because the topics were so diverse, they should be done separately. She recommended they be added as “whereas” clauses.

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: TO ADD “WHEREAS THE DEVELOPER AGREES TO PAY A CASH IN LIEU OF OPEN SPACE FEE OF \$450 PER UNIT FOR 37 UNITS TOTALING \$16,650, WHICH WILL BE USED BY THE CITY FOR FUTURE IMPROVEMENTS IN NEARBY PARKS.”

MOTION PASSED UNANIMOUSLY. VOTE: 5 to 0.

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

Nay – 0.

Absent – Morehead, Wallace.

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: TO ADD “WHEREAS THE DEVELOPER SHALL BE RESPONSIBLE FOR ALL UPGRADES TO THE CITY OF NEWARK, WATER AND WASTEWATER INFRASTRUCTURE NECESSARY TO SATISFY ALL REQUIREMENTS OF THE MUNICIPAL CODE OF THE CITY OF NEWARK AND THE STATE OF DELAWARE’S OFFICE OF DRINKING WATER AND FIRE MARSHALS. ALL INFRASTRUCTURE UPGRADES SHALL COMPLY WITH THE CITY OF NEWARK STANDARDS AND SPECIFICATIONS THAT ARE SUBJECT TO APPROVAL BY THE DIRECTOR OF PUBLIC WORKS AND WATER RESOURCES.”

MOTION PASSED UNANIMOUSLY. VOTE: 5 to 0.

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

Nay – 0.

Absent – Morehead, Wallace.

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: TO ADD “WHEREAS THE CITY WILL WAIVE THE REQUIREMENT FOR THE SIDEWALK ON THE WESTERN EDGE OF THE PROPERTY BETWEEN UNITS 15 AND 16 AND REQUIRE ADDITIONAL SCREENING TO BE DETERMINED BY PUBLIC WORKS AND WATER RESOURCES AND THE PARKS AND RECREATION DEPARTMENTS DURING THE CIP STAGE.”

MOTION PASSED UNANIMOUSLY. VOTE: 5 to 0.

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

Nay – 0.

Absent – Morehead, Wallace.

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: TO ADD “WHEREAS AN ENVIRONMENTAL STUDY FOR ENDANGERED SPECIES, THE SUBAQUEOUS LANDS PERMIT AND THE ARMY CORPS OF ENGINEERS GENERAL PERMIT WILL BE REQUIRED TO BE COMPLETED AND SUBMITTED BEFORE THE CIP APPROVAL.”

MOTION PASSED UNANIMOUSLY. VOTE: 5 to 0.

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

Nay – 0.

Absent – Morehead, Wallace.

Mr. Ruckle asked if the deed restriction regarding the walking path not being turned into a road should be included at this time. Ms. Bensley stated that all of the deed restrictions were in the subdivision agreement, so she recommended including it as part of that approval process.

MOTION BY MR. CHAPMAN, SECONDED BY MR. RUCKLE: TO APPROVE BILL 16-25 AS AMENDED, AN ORDINANCE ANNEXING AND ZONING TO RS (SINGLE FAMILY DETACHED RESIDENTIAL – 9,000

SQUARE FEET) 16.374 ACRES LOCATED AT 0 VALLEY ROAD AND 308, 309, 310 AND 311 MASON DRIVE

Mr. Chapman stated he would be voting in favor of this annexation and zoning to RS. He saw this land making improvement to the surrounding area as far as stormwater concerns. He believed that the RS zoning was in line with surrounding city property. This would be fulfilling a housing need inside of the city and he believed this would be an appropriate use.

Mr. Markham noted he would be voting in favor in this, because the proposed annexation of Briarcreek North did not conflict with the purposes and land use recommendations of the Newark adjacent land use section of Comprehensive Plan IV and because the annexation, rezoning and major subdivisions with site plan approval with the Subdivision Advisory conditions should not have negative impact on adjacent neighbors.

Ms. Hadden said that with the improvements to the stormwater and with the amendments addressing issues of endangered species review and tree buffer coverage, she no longer felt that this project would be detrimental to the community and would be voting to support the annexation.

Mr. Ruckle was in support of the annexation. He thought with the changes Council made to protect the neighbors' privacy, it was going to fill a positive housing need of the community. It was going to bring diversity to the city. He thought it fell within the zoning of RS.

Ms. Sierer stated she would be voting in favor of the project for reasons stated by Mr. Markham.

MOTION PASSED UNANIMOUSLY. VOTE: 5 to 0.

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

(ORDINANCE NO. 16-29)

- 22. 9-C. REQUEST OF DANIEL F. KANDRA FOR A MAJOR SUBDIVISION AND SITE PLAN APPROVAL TO CONSTRUCT 37 INDIVIDUAL RESIDENTIAL LOTS WITH HOMES ON 16.374 ACRES LOCATED AT 0 VALLEY ROAD AND 308, 309, 310 AND 311 MASON DRIVE (SUBDIVISION AGREEMENT AND RESOLUTION ATTACHED) (SEE 8-C)**

04:30:26

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

Mr. Ruckle noted that the neighbors were concerned about the walking path remaining a walking path and wanted to deed restrict it. Mr. Coleman suggested restricting the path to non-vehicular traffic instead of a walking path to accommodate bikes, scooters, etc. Ms. Bensley recommended adding the restriction as a fourth bullet point in item 6 in the subdivision agreement and item d in the resolution.

MOTION BY MR. CHAPMAN, SECONDED BY MR. RUCKLE: TO DEED RESTRICT THE FOOT PATH TO NON-VEHICULAR TRAFFIC.

MOTION PASSED UNANIMOUSLY. VOTE: 5 to 0.

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

Ms. Bensley requested that as a procedural courtesy, Council consider doing a singular omnibus amendment incorporating all of Mr. Markham's amendments from the annexation agreement as the subdivision agreement was what staff referenced through the process, and they would want to make sure that they were included in there so nothing was missed.

MOTION BY MR. MARKHAM, SECONDED BY MR. CHAPMAN: THAT ALL THE AMENDMENTS TO THE ANNEXATION AGREEMENT BE ADDED TO THE SUBDIVISION AGREEMENT.

MOTION PASSED UNANIMOUSLY. VOTE: 5 to 0.

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

Nay – 0.

Absent – Morehead, Wallace.

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

MOTION PASSED UNANIMOUSLY. VOTE: 5 to 0.

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

Nay – 0.

Absent – Morehead, Wallace.

(RESOLUTION NO. 16-W)

23. MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: TO EXTEND THE MEETING.

MOTION PASSED. VOTE: 3 to 2.

Aye – Markham, Ruckle, Sierer.

Nay – Chapman, Hadden.

Absent – Morehead, Wallace.

24. **10.** **ITEMS SUBMITTED FOR PUBLISHED AGENDA**
A. Council Members:

25. **10-B.** **OTHERS:** None

26. **11.** **APPROVAL OF CONSENT AGENDA**

04:34:45

Ms. Bensley read the Consent Agenda into the record.

A. Approval of Council Minutes – August 22, 2016

B. Approval of Council Minutes – September 12, 2016

C. Receipt of Alderman’s Report – September 23, 2016

D. Receipt of Planning Commission Minutes – August 2, 2016

E. ***First Reading – Bill 16-27*** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Increasing the Court Security Fee and Removing the Sunset Provision – ***Second Reading – October 10, 2016***

F. ***First Reading – Bill 16-28*** – An Ordinance Amending Chapter 20, Motor Vehicles, Code of the City of Newark, Delaware, By Increasing the Fine Structure for Cell Phone Violations to Match the State of Delaware Fine Structure – ***Second Reading – October 10, 2016***

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: THAT THE CONSENT AGENDA BE APPROVED AS PRESENTED.

MOTION PASSED UNANIMOUSLY. VOTE: 5 to 0.

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

Nay – 0.

Absent – Morehead, Wallace.

27. **Meeting adjourned at 11:37 p.m.**

Renee K. Bensley
Director of Legislative Services
City Secretary