CITY OF NEWARK
DELAWARE

COUNCIL MEETING MINUTES

April 23, 2018

Those present at 6:00 p.m.:

Presiding:	Deputy Mayor Stu Markham District 1, Mark Morehead District 2, Jerry Clifton District 3, Jen Wallace (Arrived at 6:05 p.m.) District 4, Chris Hamilton District 5, Jason Lawhorn
Absent:	Mayor Polly Sierer
Staff Members:	Acting City Manager Tom Coleman City Secretary Renee Bensley City Solicitor Paul Bilodeau Communications Manager Kelly Bachman Communications Officer Megan McNerney Deputy City Manager Andrew Haines Finance Director David Del Grande Planning and Development Director Mary Ellen Gray Planner Tom Fruehstorfer Acting Public Works & Water Resources Directory Tim Filasky Assistant to the Managers Mark Brainard

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1. Mr. Markham called the meeting to order at 6:00 p.m.

2. **<u>EXECUTIVE SESSION</u>**

A. Executive Session pursuant to 29 *Del. C.* §10004 (b)(4) for the purpose of a strategy session involving legal advice from an attorney-at-law, with respect to potential litigation when an open meeting would have an adverse effect on the litigation position of the public body.

B. Executive Session pursuant to 29 *Del. C.* §10004 (b)(4) for the purpose of a strategy session involving legal advice from an attorney-at-law, with respect to potential litigation when an open meeting would have an adverse effect on the litigation position of the public body.

C. Executive Session pursuant to 29 *Del. C.* §10004 (b)(4) and (9) for the purpose of a strategy session involving legal advice from an attorney-at-law, with respect to potential litigation when an open meeting would have an adverse effect on the litigation position of the public body and for discussing personnel matters in which the names, competency and abilities of individual employees are discussed.

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

MOTION BY MR. CLIFTON, SECONDED BY MR. MOREHEAD: THAT COUNCIL ENTER EXECUTIVE SESSION FOR THE PURPOSE OF A STRATEGY SESSION INVOLVING LEGAL ADVICE FROM AN ATTORNEY-AT-LAW, WITH RESPECT TO POTENTIAL LITIGATION WHEN AN OPEN MEETING WOULD HAVE AN ADVESE EFFECT ON THE LITIGATION POSITION OF THE PUBLIC BODY AND FOR THE DISCUSSION OF PERSONNEL MATTERS IN WHICH THE NAMES, COMPETENCY AND ABILITIES OF INDIVIDUAL EMPLOYEES ARE DISCUSSED.

MOTION PASSED. VOTE: 5 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead.
Nay – 0.
Absent – Sierer, Wallace.

Council entered executive session at 6:00 p.m. and exited executive session at 7:00 p.m.

3. **RETURN TO PUBLIC SESSION**

1:00

MOTION BY MR. MOREHEAD, SECONDED BY MS. WALLACE: THE CITY MANAGER BE AUTHORIZED TO ENTER INTO A SETTLEMENT AGREEMENT AS OUTLINED IN EXECUTIVE SESSION WITH EASTERN STATES FOR A CHANGE ORDER IN CONTRACT 16-12 WINDY HILLS WATER MAIN EXTENSION.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Wallace.
Nay – 0.
Absent – Sierer.

MOTION BY MR. MOREHEAD, SECONDED BY MR. CLIFTON: THE CITY MANAGER BE AUTHORIZED TO ENTER A SETTLEMENT AGREEMENT AS OUTLINED IN EXECUTIVE SESSION ALLOWING REMEDIATION WORK TO PROCEED ON THE WAGMAN PROPERTY.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Wallace.
Nay – 0.
Absent – Sierer

MOTION BY MR. MOREHEAD, SECONDED BY MR. CLIFTON: THAT COUNCIL APPROVE THE RESOLUTION AND GLOBAL SETTLEMENT OF THE EMPLOYEE ON THE JOB INJURY CLAIM AS SET FORTH IN THE DEPUTY CITY MANAGER'S MEMORANDUM TO COUNCIL DATED APRIL 20, 2018 AND AS OUTLINED IN EXECUTIVE SESSION.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Markham, Morehead, Wallace.
Nay – 0.
Absent – Sierer.

4. Mr. Markham asked for a moment of silence and the Pledge of Allegiance.

3:17

MOTION BY MR. CLIFTON, SECONDED BY MS. WALLACE: TO REMOVE ITEM 3H.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Wallace.
Nay – 0.
Absent – Sierer

MOTION BY MR. CLIFTON, SECONDED BY MS. WALLACE: TO MOVE UP ITEM 11A1 AND 11A2 TO ITEM 1, PUBLIC PRESENTATIONS.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Wallace.
Nay – 0.
Absent – Sierer.

5. **1.** **PUBLIC PRESENTATIONS:** None

6. **11.** **ITEMS SUBMITTED FOR PUBLISHED AGENDA:**

A. **Council Members:**

1. **Resolution No. 18- __:** Retirement of Carolyn Molitor, Purchasing Assistant

4:00

MOTION BY MR. CLIFTON, SECONDED BY MR. MOREHEAD: TO APPROVE THE RESOLUTION AS PRESENTED.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Wallace.
Nay – 0.
Absent – Sierer.

(RESOLUTION NO. 18-B)

7. 11-A-2. RESOLUTION NO. 18- ___: JERRY W. FICKES, JR. TRAIL – COUNCILMAN CLIFTON

4:43

Mr. Clifton read the resolution into the record. He added that he was honored to do so and appreciated the work of Joe Spadafino, Parks & Recreation Director as well as Messrs. Markham and Chapman for their involvement. There are many people that made this happen and he is grateful. Mrs. Laura Fickes, wife of the late Jerry Fickes, Wilmington Fire Department was present as well. Mr. Clifton noted there will a public dedication of the trail in the future.

MOTION BY MR. CLIFTON, SECONDED BY MS. WALLACE: TO APPROVE THE RESOLUTION AS PRESENTED.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Wallace.
Nay – 0.
Absent – Sierer.

(RESOLUTION NO. 18-C)

8. 2. ITEMS NOT ON PUBLISHED AGENDA

A. Elected Officials who represent City of Newark residents or utility customers – None

9. 2-B. UNIVERSITY

(1) Administration

7:50

Caitlin Olsen, UD Government Relations, congratulated the recent election winners and said she looks forward to working with them. She reported on Saturday, April 28 from 10:00 a.m. – 4:00 p.m. is Ag Day. It will be held on South Campus near Townsend Hall. It is a student run community event in its 43rd year. She said UD's Division of Professional and Continuing Studies is offering two new programs to help local non-profits with social media marketing. Fundamentals of Social Media begins May 29 and Advanced Social Media Marketing for Business begins August 28. There is a limit to the number of organizations that can enroll and interested non-profits are asked to apply online at www.pcs.udel.edu/socialmedia.

Mr. Clifton thanked Ms. Olsen for her due diligence on the questions he had on the University Courtyard property.

10. 2-B-2. STUDENT BODY REPRESENTATIVE: None

11. 2-C. LOBBYIST:

10:15

Mr. Markham informed Mr. Armitage starting at the next Council meeting moving forward his reports will be moved to the Special Departmental Reports section on the agenda. Mr. Armitage asked if Council wanted to provide additional direction regarding his reports to Council. He said he currently does a monthly report to Council with updates to the table he provides. Ms. Bensley said she emailed Mr. Armitage to discuss the structure moving forward and getting some direction from Council. Typically, there are packet items detailing discussion points on the published agenda. This has not been the procedure for lobbyists in the past, but staff wanted to check with Council in the new iteration of this spot on the agenda, to confirm what the expectations are. Ms. Bensley asked Council if they want a copy of the report Mr. Armitage sends to Ms. Bensley attached to her weekly report or would they prefer a copy of his monthly report included in the packet.

Ms. Wallace said she would like to include both items as part of the agenda. It could just be as simple as a PDF from Mr. Armitage's spreadsheet included in that section. She noted things have recently changed and that is now public information. Mr. Clifton concurred.

Mr. Markham asked Mr. Armitage if he had a summary of specific items that he is going to cover so people will see that in the report and be prepared for public comment. Mr. Armitage said the timing gets crazy and is often ten days out. He said he can do some foreshadowing but there will probably be additional things to add. He hopes that does not create a problem for Council members or for the public. Mr. Markham said Council will need some advanced warning especially if in depth conversations with possible direction are to follow.

Ms. Bensley asked for direction on the timing of submission of Mr. Armitage's items. She asked Mr. Armitage to let her know ten days in advance if he expected to be present at the meeting so she can make sure he was placed on the agenda. However, as far as the packet items, she was not certain if Council wanted to stick with the standard seven days or if they wanted Mr. Armitage to provide a more accurate update later in the week based on what the legislature is doing at that time, especially at this time of the year.

Ms. Wallace would like both done. A packet item can be done and updates provided as necessary even if they are not included on the website in a timely fashion. Ideally, she would like the items updated on the website, but she does not think the seven-day requirement should be removed. She believes all efforts should be made to meet that as much as possible. She said any reports could be dated and updates can be added to the packet.

Ms. Bensley said she would likely post something with the packet the day it is posted followed by a wrap-up at the end of the week prior to the Monday Council meeting, rather than each time something new gets sent. Things can move very fast especially at this time of year with quite a few updates. Mr. Armitage said everyone is doing their best to be transparent, but at the same time, the timing can get in the way of making sure people see information far enough in advance.

Mr. Morehead said there should be the expectation the verbal update is the most current at the Monday evening Council meeting. Part of the reason this was changed was a request from a resident to have a public comment period before Mr. Armitage is provided direction. Mr. Morehead said he believes this is entirely appropriate. Mr. Armitage said he is clear and in agreement with the process.

Mr. Armitage reported there are only 22 legislative session days left. The Bond Committee will meet for four days and the Joint Finance Committee will meet for seven days. He noted he sent the DEFAC report to Council the previous week. He said there has been very little change in the projects for revenue with the biggest drop being insurance, taxes and fees. He noted no one from the insurance department was present at the meeting to explain to DEFAC why the numbers changed that much. There was a fair amount of discussion between the gambling industry and the Department of Finance about the impact of new tables games from Maryland. The industry thinks it will be a $5 million decline and people in finance making the estimates believe it will be $1 million. However, with a $4 billion budget, those still are not really big numbers. Currently things remain steady. The next DEFAC meeting is May 21. The new members on the committee continue to ask insightful questions of the budget director. Eighty percent of the State's budget is rather iron clad for determining what is needed next year.

The biggest driver is salaries for teachers. Every year, the unit count changes and it is not known until September what the student count will be. Each year they are somewhat surprised by what the teacher unit count is going to be. Fringe benefits for the State are almost 40 percent of salary which is a big number for them. There is pension and then Medicaid with 236,000 people on the rolls on Medicaid and the State. Last year, it increased by 11,000 people.

One of the things they thought was changing last year, but unfortunately was missed, was the requirement for notarization of absentee ballots. This means any absentee ballots still need to be notarized. He asked Council to provide direction to return and make sure that matter gets resolved. It was changed for the state elections but did not change for the municipalities. Mr. Markham asked if Newark absentee ballots must be notarized. Ms. Bensley said the absentee ballot structure is twofold. First, a resident must fill out an absentee ballot affidavit to request the ballot. That is what needs to be notarized. Once they have that notarized the affidavit and returned it back to the City, the City then sends them their ballot. They vote and return the ballot. She noted the City provides free notary service for residents for absentee ballots if they come to the City Secretary's office. Free notary service is also provided for residents who are home bound or elderly. An Election Board member will schedule a mutually agreeable time to go to the voter's home and do the multi-step process. If they are unable to come in during business hours and they go to another place for notary services, they may be charged. When working with Mr. Armitage on this, it was believed it was a good idea to lift it at the state level and since Council had provided guidance at that point believing it would include municipalities to pursue it, they would like to see it go all the way through the process and be changed for municipalities as well so it is standardized

across the State. That way it will not confuse voters about why, in City of Newark election they must get the affidavit notarized and in state elections, they do not. The hope is to remove any potential confusion.

Ms. Wallace said traditionally there is a process and there are different requirements. She said when she had to do the process in 2016, she found it to be very confusing. She said she would be in favor of Council giving direction to Mr. Armitage to move forward with this and anything to make voting easier is a good idea.

Ms. Bensley clarified this will remove the notarization requirement for the affidavit and will not remove the requirement for the affidavit itself. The state is currently working on a Constitutional Amendment to consider "no excuse absentee balloting," which would likely get rid of the affidavit making it even simpler. This would be a step in the meantime, to make it easier and less confusing for other residents.

Mr. Hamilton believes this is important and reported he had several students that went away, but are still registered here and wanted to file absentee votes in the last election. He noted they found the whole process a little challenging, and the cost to get a document notarized could be challenging to a student on a budget. He would like it if the requirement were removed.

Ms. Bensley suggested looking at an effective date later in the year, either July 1 or January 1 so it would not change in the middle of the proposed referendum. Mr. Armitage said he would suggest January 1, because there will be other municipalities having things throughout the rest of the year, plus the confusion of the state election in November. Hopefully, it can be done in this legislative session, rather than the next legislative session.

He said there are three sponsors in the House for the lodging tax and he is still waiting for some confirmation from the Senate sponsors. Two other bills that have been vetted by staff, HB360, which concerns sexual harassment and is new legislation. He cannot tell whether it is coming out of the Department of Labor, because that is where Representative Keeley works or because she has determined that is something important in the working world. Any employer in the State that has more than four employees, will have to have training for all the supervisors, every other year. There would be postings required throughout the building, plus every employee would be required to be handed a sexual harassment policy that will be created by the State's Department of Labor. Particularly, from the State chamber, there is a lot of concern about the additional time and effort that it will take for people to deal with some of this. The other issued that jumped out at him was whether he would be considered a City employee and how would that impact him and could make Newark legally liable for something that he did. It is not clear from the way the bill is written today, if Newark could be held liable or could any other contractual employee. There is a committee hearing on Wednesday. He would like to be able to go listen, but he would also would like to be able to share some comments or some direction.

Mr. Morehead said years ago when he worked in the corporate field and had sexual harassment training he believes it is something people do not forget, so he believes it is not necessary every other year. He thought a person just did not forget the threat of litigation as it is extreme and too onerous. Having said that, it is his opinion the federal law is strong. It is certainly a serious issue, so he would think that everyone should get trained, but as far as who is responsible, it would be in the management supervisory structure of a corporation.

Mr. Armitage said it does say supervisory employees every other year to be retrained.

Mr. Morehead said supposing there were two people at the same level, both hourly employees, in a union for example; he is not sure what would happen if one complained about the other, would be a problem for, for the City. It is very clear if a supervisor is abusing a direct report for example. Based on his experience with this he said he still has not forgotten it, and that was over 20 years ago. He does not see the need to retrain consistently and constantly. He would train new people and train everyone once. He would be happy to hand out whatever policy procedure or documentation and make sure everybody has seen it. He thinks every other year training is extreme.

Ms. Wallace said she falls somewhere differently than Mr. Morehead. She would be in favor of of the continued training and she thinks having different experiences there are people who do need to be constantly reminded, and sexual harassment is not just about between supervisors. It can be amongst coworkers. She would like to have some clarification on what constitutes an employee, and would that include contractors. She is not certain where she stands on that topic yet but she thinks that is probably something that should be clarified and she would support this. She believes it could send an important

message that the City of Newark takes this kind of issue seriously, and in this day in age this is a hot issue. It is her belief there are areas where there are not many female employees, and this can go a long way into making female employees feel more welcome.

Mr. Lawhorn said he tends to agree with Ms. Wallace and thinks that some people need to be reminded repeatedly and there may be a small subgroup of people that may need to be reminded more than once every two years. He is not certain that two years is necessarily the right timing but he thinks that some repetition is good. The definitions for what sexual harassment is has changed rapidly, especially in today's culture. Not only do people need to be reminded, but he thinks what was sexual harassment 20 years ago and what sexual harassment is today has probably evolved quite a bit and will continue to evolve rapidly in his opinion.

Mr. Morehead said this is still federal law and it is important and it is serious, and he takes this seriously. He believes this is an issue of enforcement. The law is very clear. To make a hostile workplace in any interpretation of that falls under existing sexual harassment law. While they can improve the enforcement, the law is extremely clear. He will defend that he is not living in the past, and this is an important issue, and he gives it his full support. If people read the law and understand the law, it is very clear and it is very comprehensive, and it has been for quite some time.

Mr. Markham asked Mr. Armitage if a draft is available online. Mr. Armitage said he will forward it to Council along with their interview.

Mr. Clifton noted in the federal government it is an annual requirement. December is an educational month in the military. Mr. Armitage asked if that applies to every employees or just supervisory level. Mr. Clifton said it applies to every employee.

Mr. Armitage said he will send a copy to Council and he will ask some questions at the upcoming meeting on Wednesday and send Council additional information Wednesday evening.

Mr. Markham said the general feeling he is getting from Council is to support this even with the every two-year stipulation on training. Mr. Armitage said he will attempt to clarify who is an employee and whether it includes volunteers, interns and persons providing services by contract. Mr. Markham said some of those other positions are hard to enforce or even do background checks. Mr. Armitage said background checks have expanded in scope of who are included in the process. He said in all the parks staff, two years ago they expanded to include all City volunteers in Parks & Recreation if they are dealing with children.

He reported the minimum wage bill failed in the Senate a while ago, but has been reintroduced now as SB170. The same conceptt, $8.75 an hour, becomes law in October 1, 2018 and would jump 50 cents to $9.25 an hour on October 1, 2019.

12. 2-D. <u>CITY MANAGER</u>:
34:50

- Recalled that previously Council generally supported the County's effort in requesting full restoration of paramedic reimbursement funds from the state. Mr. Del Grande spoke with Matt Meyer and he asked the City to provide something more official. He asked if Council would like him to return with a resolution of support for the County's effort. Council was unanimous in their support. Mr. Coleman said he will return to Council on May 14.
- Received a copy of the near final draft of the Source Category Permit Regulations for dry abrasive blasting of water towers from DNREC. The current plan is for the regulation to be listed in the Delaware Register of Regulations on June 1. Implementation will follow in the fall. In the interim, they have provided a principal and commitments agreement for dry abrasive blasting that will cover the period between now and when the regulations are finalized to ensure the goals of the regulation will be upheld in the interim. There are no plans to move forward with a tank project until late 2019 at the earliest as part of the South Wellfield Project. For this project, the City is investigating whether it will be cost effective to just remove the tanks altogether and construct new ones. He believes this will likely be the case.
- Mentioned there were 35 people in attendance at last week's Town Hall meeting. They asked many good questions and offered good feedback. Staff has compiled their questions into an FAQ that will be posted on the City's referendum web page. The materials from that first meeting on are the referendum's web page which is www.newark.de.gov/vote. Included are the PowerPoint slides, posters and a video of the presentation.
- Announced the City did a presentation to the Cherry Hill Manor Neighborhood Association and welcomed the opportunity to meet other community associations to discuss the possible referendum.

Mr. Markham asked who would be signing the Agreement on Principles. He asked if the agreement comes before Council as well. Mr. Coleman said the agreement is with Mr. Bilodeau for review to determine if Mr. Coleman signature is adequate or if Council has to approve. He said it essentially says if you put out a contract the City will follow the guidelines in the regulation. Mr. Markham asked that Council be informed of the answer at the next meeting.

Mr. Morehead said this had been discussed before just not pertaining to water structures but every external structure that could have lead paint such as park equipment, possibly bridges, etc. It sounds like this policy does not cover these extra items. Mr. Coleman said the agreement does not. The state permit will only cover blasting of exterior water tanks but they are down to a small size. So basically, an exterior tank but he is not certain of the exact size. Once DNREC gets their agreement in place, the plan is to have Newark develop regulations by piggy backing off of theirs for water towers and similar structures and the City would directly use their regulations as a reference. Developing their own for a non-water tower structure was going to be a lot more complicated because there is no permitting structure to piggy back off like it will be for water tanks. His expectation would be, initially to get something in place and then develop the other.

Mr. Morehead asked if it would be possible to get a list of all the items that are in the City that could potentially need to be dry abrasive blasted. Mr. Coleman said it would probably be a pretty lengthy list but staff can probably put something together and noted it may be easier to qualify based off potential or test results or something similar.

Mr. Morehead said he believes they are at the point where they cannot just talk about water towers anymore and need to broaden the focus and make sure everything is covered, and if they need to yank anything out of the ground and dispose of it as hazardous waste, then they should do that. But they need to know what they are talking about, what things exist and what things need to be taken care of.

Mr. Hamilton asked if the tanks are going to be removed in 2019, what procedures will be followed. Mr. Coleman said they will still need to deal with the lead and it will not be blasting it into the atmosphere. He added staff is in the early stages of the review so they will determine a path forward.

- Reported April 14 was the Community Clean up. There were 180 volunteers who spent over 500 hours of their time. They removed around 300 bags of trash and bulk items including shopping carts, tires, bicycles, etc. He thanked all the participants.

Mr. Markham asked Ms. Bensley to provide an update on the City Manager search. Ms. Bensley said there are some dates that needed to be decided, specifically the meeting with the GovHR representative after Council receives the report from Ms. Earl with the initial group of candidates before Council makes first cuts. Ms. Earl is scheduled to come to Newark the week of May 21. An exact date has not been selected yet, but Ms. Earl is available May 23 and May 24. Additionally, looking at the second round of interviews along with the portions of public process will be around the last week of June. Council had indicated they wanted to keep the meeting the final week of June and keep the Council meeting on June 25 and do events for the city manager candidates as a special meeting. The tentative dates for that meeting are June 26 and June 27. Ms. Bensley asked Council to check their schedules and let her know if May 23 or 24 works. The other dates are June 25-27 for events around the second round of City Manager interviews.

Ms. Bensley mentioned there is concern from her office around having a Council meeting on June 25 when the packet would be due the day before the referendum in the citywide election. She is not sure if this will influence Council's decision. She noted the City Manager events could be done in place of a regular Council meeting.

Mr. Clifton said he is available May 23 and May 24. He will be out of town from May 25-June 2.

Mr. Markham said May 23 and 24 is good for him. He asked the remaining Council members to get back to Ms. Bensley about those dates.

Ms. Bensley said Council expressed at the last meeting they wanted Implicit Bias Training from UD. Ms. Olsen provided her with contact information and a date of Wednesday, May 2 at 6:00 p.m. was confirmed for training in Council Chamber. It is a public meeting, and would be posted and advertised for the public. Mr. Markham said he would not be attending as he received the training at his workplace.

13. 2-E. <u>COUNCIL MEMBERS:</u>

46:37

Mr. Hamilton:

- Reminded all of upcoming "Ag Day" and said it is a great community event.

Ms. Wallace:

- Reminded all the Council members it is not necessary to reiterate a shared opinion of a previous Council member during a conversation on a topic by choosing not to "weigh-in" if their opinion has already been stated. She added there have been recent discussions and ideas brought forth by the City Secretary to reduce the time spent on meetings.
- Available on May 23 and 24 as well as June 26 and 27 for the City Manager search events.
- Asked for confirmation on the May 1 public forum for District 3 so she may place the announcement in her e-newsletter. Mr. Coleman confirmed this.

Mr. Morehead:

- Welcomed Mr. Lawhorn to Council.
- Asked the status of 919 Rockmoss Road and what is holding up the CIP project from completion. Mr. Coleman said it was his understanding additional testing was needed on the property for asbestos before proceeding. Mr. Morehead said his understanding is the testing is complete and the City is looking for funding around $10,000 to complete the project that has been two years in process. Mr. Coleman said he could not speak to the details Mr. Morehead provided but noted there was a meeting the previous week and the topic was briefly mentioned, but he cannot recall the specifics. He will provide an update at the next meeting. Mr. Morehead asked the matter to be returned to Council, specifically for the funding so Council may authorize it and move forward.

Mr. Lawhorn:

- Shared feedback from District 5 particularly, he reported residents are happy about the shopping center work on New London Road.
- Said his constituents are happy about the Pomeroy Connector Trail and progress continues despite some small hurdles.
- Reported there are some slight concerns about snow removal in his district along with some speeding issues. He wanted to commend City staff on how quickly they respond to concerns he raised during his campaign.
- Reported his constituents are concerned about rental housing in Fairfield and Fairfield Crest. His residents believe there is high demand for student housing. He believes rental housing is creeping back in to some residential areas and he asked that everyone be aware of this issue and noted there are many good ideas out there. He asked Council to be mindful of these concerns when looking at new development projects moving forward.
- Stated that he has heard from many residents they love the City of Newark, love living there and there are many services provided for an outstanding value. He believes this a credit to City staff.
- Noted his campaign was a learning experience for him and he enjoyed meeting new neighbors. He has a tremendous respect for the individuals that participated in the election.

14. 2-F. PUBLIC COMMENT:

55:00

Amy Roe, District 4, wanted to speak about lead paint. She referred to three action items that she believed were supposed to be completed by the end of 2017. They include the report on how the Windy Hills water tower breach occurred, an update to the Municipal Code and an update to the contract language to prevent this situation from ever occurring again in the City. She asked how did they get to the point where a City contractor contaminated neighboring yards with lead paint, chips, grit and dust and the issue was not corrected for over two years. She asked how did it require a FOIA request and consistent effort by members of the public and why did this have to occur before the City acted. She believes this situation has tarnished the City's reputation of being committed to service excellence and if there were steps that were overlooked that could prevent this situation from occurring again, they need to be implemented. Changes to the Municipal Code and contract language are essential as future water towers that are owned by the City that have lead paint are slated for sandblasting or now possibly removal. Specifically, the two water towers at Scottfield and the two water towers in Arbor Park.

The safety of communities from exposure to lead is critical and she is very disappointed that this issue has not been put on the agenda and addressed by City Council. She believes the City also needs to prevent the future use of lead paint. She noted while there is a prohibition against lead based indoor paint used in residential properties, which was established in 1978 by the United States Consumer Products Safety Commission, there is no current prohibition on using lead based paint in commercial and industrial application outdoors. Lead based paint can be found on more than just water towers including roadway

markings, including the striping of parking lots and curbs, outdoor playground equipment, fire hydrants, fences, stadiums, bridges and utility infrastructure. In her opinion, Newark's Building Codes should be updated so the use of lead based paint is prohibited within the City of Newark outdoors.

Merilynn Kessi, District 1, said she and her husband are co-owners with Scott and Christina Sheldon of a one-half acre pond on their properties which was constructed around 1960 as a farm pond. Around 1989 during the development of Stone Spring, High Pond Drive was constructed and a stormwater collection system was connected to the private pond. Throughout the year, rain water and in the winter, melting snow with road salt from the road, flow into the pond. The overflow of the pond is regulated with a vertical galvanized corrugated steel pipe and an almost horizontal outflow pipe going under the berm into the adjacent property where it then flows through another system into the Christina River. In January 2018, the residents received a letter from the City of Newark informing them that an inspection of the pond revealed corrosion of the water outlet structure which needed repair or replacement. They met with two City engineers to discuss the issue and agreed that something needs to be done. The City engineers informed them the landowners are responsible for the cost of the repairs. The residents have received two quotations from contractors. One proposes to reline the rusted metal pipes without damage to the soil or the pond itself for $18,795. The other proposal is digging approximately ten feet deep into the berm and replacing the existing pipes for $18,712. The second solution requires draining the pond, will probably kill hundreds of fish and requires a permit and engineering costs of several thousand dollars. Ms. Kessi reported they have decided to go with the relining proposal which is the least invasive and the most environmentally friendly solution as well as being the most cost effective. She noted they had recently received the good news from the County Conservation District that the board had approved 30% of the cost or approximately $5,640 to support this project. Since the City of Newark now has sent stormwater from High Pond Drive into their pond free of charge for 29 years, they were asking the City to consider the land owners by matching the Conservation District with a 30% donation of $5,640 from the repairing the pond outlook structure which should last from another thirty to sixty years. She thanked Council for their consideration.

Mr. Morehead said he will reach out to Ms. Kessi directly. He asked the Acting City Manager if the City normally takes over stormwater facilities. Mr. Coleman said that was true, however, this property came in before that. He is not sure of the exact date but ponds in neighborhoods like this have been taken over by the City. He said this would be a prime example of a project that he feels is eligible for funding through the stormwater grants program. The program allows a match of up to 50% of the homeowner's responsibility for such projects, up to $5,000 per home owner. If the homeowner's responsibility is around $12,000, the City's grant would be approximately a 1/3 split. This would be the City's first experience at this staff has not worked through the procedure yet. Mr. Coleman said he has made Acting Director of Public Works Tim Filasky aware of this and added this would be a good example of a project staff can work through and figure out how to do it.

Mr. Morehead asked if City development laws continue to allow drainage onto private property like this. Mr. Coleman said the City does not allow ponds on private property but this was an old farm pond that was converted.

Mr. Morehead said the pond being there is fine, but he noted the development is not that old. Mr. Coleman said the modern storm regulations did not come into existence until around until 1991. The pond predated that time so it is technically being a pre-1991 pond so it is a different regulation.

15. 3. <u>APPROVAL OF CONSENT AGENDA</u>:

- **A.** Approval of Council Meeting Minutes – March 26, 2018
- **B.** Approval of Alderman's Report – April 12, 2018
- **C.** Receipt of Planning Commission Parking Subcommittee Minutes – March 1, 2018
- **D.** Receipt of Planning Commission Minutes – March 6, 2018
- **E.** Receipt of Real Estate Tax Assessment Quarterly Supplemental Roll – April 1, 2018
- **F.** Approval of Polling Places for June 19, 2018 Referendum
- **G.** ***First Reading* – Bill 18-10 –** An Ordinance Amending Chapter 22, Police Offenses, Code of the City of Newark, Delaware, to Define and Prohibit Unlawful Activity on Rooftops – ***Second Reading*** – **May 14, 2018**

1:02:50

Ms. Bensley read the consent agenda into the record.

MOTION BY MS. WALLACE, SECONDED BY MR. MOREHEAD: TO APPROVE THE CONSENT AGENDA AS RECEIVED.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Wallace.
Nay – 0.
Absent – Sierer.

16. 4. ITEMS NOT FINISHED AT PREVIOUS MEETING: None

17. 5. APPOINTMENT TO BOARDS, COMMITTEES AND COMMISSIONS:

A. Appointment of Christopher Rogers to the Vacant At-Large Position on the Board of Adjustment for a Term to Expire September 15, 2019.

01:03:50

Mr. Markham said Mr. Rogers completed his application and resume and is in attendance to address any questions Council may have.

Ms. Wallace asked Mr. Rogers how he would address any potential conflicts of interest. Mr. Rogers said he currently works for AECOM. They have an on-call contract with the City for engineering services. If a potential conflict occurred, he would recuse himself. However, he noted the chances of a conflict between what they do as an engineering firm and the Board of Adjustment's role in reviewing and hearing variances and appeals of administrative decisions is slim. It does exist, he was conscious of that and would recuse himself from any involvement with the Board of Adjustment on these types of matters or conversely any internal discussions in his office that may impact something in front of the Board.

Ms. Wallace asked if there could be other potential clients besides the City of Newark. Mr. Rogers said he does not represent private developers.

Mr. Hamilton thanked Mr. Rogers for showing up at the meeting and said it is always good to have an applicant present to answer questions that may need to get answered. He said he had spoken with previous Council member David Athey and he gave Mr. Rogers a very high recommendation. He believes Mr. Rogers to have a lot of experience with the organization.

Mr. Morehead thanked Mr. Rogers for showing up. He echoed Ms. Wallace's question and wanted to probe a little further. He asked what type of engineering work AECOM did and if it was development. Mr. Rogers said the company he works for does not typically represent developers. He cannot say never, but 98% of the work he is involved with is public projects for municipalities. He is the planner for the City of New Castle and Delaware City. The firm typically does water and sewer projects, rate studies, designs. They represent private utilities. He does not have any private developer projects currently and in the over twenty years he has been with AECOM he has had maybe one or two and they were in Pennsylvania.

Mr. Morehead asked about natural gas distribution companies. Mr. Rogers said maybe other offices may have some but the Newark office does not. If he was made aware of a gas project needing a variance or administrative he would recuse himself. Mr. Morehead said his concern was there the odd number of members on Board of Adjustment because when someone recuses themselves it makes it an even number which presents a problem. Mr. Morehead asked Mr. Rogers if he felt that working on a natural gas variance out of state would present a problem. Mr. Rogers said he probably would not be involved with it and secondly he does not see how it would be pertinent to his role as a Board of Adjustment member in Newark.

There was no public comment.

MOTION BY MS. WALLACE, SECONDED BY MR. MOREHEAD: TO APPOINT CHRISTOPHER ROGERS TO THE VACANT AT-LARGE POSITION ON THE BOARD OF ADJUSTMENT FOR A TERM TO EXPIRE SEPTEMBER 15, 2019.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Wallace.
Nay – 0.
Absent – Sierer.

18. 5-B. APPOINTMENT OF SUSAN POLEY TO THE VACANT RESIDENT POSITION ON THE PENSION COMMITTEE FOR A TERM TO EXPIRE JUNE 30, 2019

01:11:30

Mr. Markham noted the second appointment was for an opening on the Pension Committee. The applicant is Susan Poley, a long-time police officer. She is present at the meeting. She has completed an application and attached her resume.

Mr. Clifton said he has known Ms. Poley for a long time. He believes she brings a unique understanding of the City's finances and pension plans.

Mr. Hamilton thanked Ms. Poley for attending the meeting.

There was no public comment.

MOTION BY MR. CLIFTON, SECONDED BY MR. MOREHEAD: TO APPOINT SUSAN POLEY TO THE VACANT RESIDENT POSITION ON THE PENSION COMMITTEE FOR A TERM TO EXPIRE JUNE 30, 2019.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Wallace.
Nay – 0.
Absent – Sierer.

19. 6. <u>SPECIAL DEPARTMENTAL REPORTS:</u>

A. Resolution No. 18 __: A Resolution Authorizing Voluntary Participation in 457 Deferred Compensation Plan

01:13:40

Mr. Markham said he had requested this item be brought before Council and there was interest to do so.

Mr. Haines said this resolution provides the opportunity for Council to authorize itself as an eligible class within the existing deferred Compensation 457(b) the City has through the International City Managers Retirement Corporation. Contributions would be voluntary by members of Council. They will be exposed to the same rules active members of staff have and can only contribute dollars attributed to the stipend that comes from being on City Council. Therefore, no external dollars are permissive to be in the plan. Members can be active if they are on Council and once they are no longer on Council there will be full access. It is a self-driven plan and staff will be available to support Council or anyone that voluntary participates, which is no different than what is done today. However, there are full time staff members that ICMA receive to address the financial advisement pieces, as staff members are not financial advisors nor do they pretend to be.

Mr. Markham confirmed there is no cost to the City and no match.

Mr. Markham reminded Council of a comment that former Councilman Chapman said in that participating may lower the cost to other members because they will have more to invest.

Mr. Haines said Mr. Coleman will reach out to Council within several weeks after the plan amendments are completed. Enrollment will follow.

MOTION BY MR. CLIFTON, SECONDED BY MR. LAWHORN: TO APPROVE RESOLUTION NO. 18-__: A RESOLUTION AUTHORIZING VOLUNTARY PARTICIPATION IN 457 DEFERRED COMPENSATION PLAN.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Wallace.
Nay – 0.
Absent – Sierer.

(RESOLUTION NO. 18-D)

20. 6-B. <u>RESOLUTION NO. 18 ___: PROPOSING BOND AND CERTIFICATE ON INDEBTEDNESS REFERENDUM</u>

01:16:40

Mr. Markham noted he had a note to add an amendment to or bank loan after general obligation.

Mr. Coleman said in accordance with the charter requirements there must be a resolution passed setting the date and time and various other requirements outlined in the material to Council of a public hearing where the content of questions to be included in the referendum will be discussed as part of the public hearing. The date is May 14, 2018 and staff has identified another modification referencing an "approximate" in section (c). Mr. Coleman asked Mr. Bilodeau to suggest how to modify.

Mr. Bilodeau pointed out the word approximate did not have to do with the actual loan amounts and the clause basically says the project, for instance the Rodney Storm Water project, could be for more than $9 million and the City would have to allocate additional money from some other source. He believes the reference can remain.

Mr. Markham asked if there were any fundamentally different pieces versus the discussion that was held at the table several meetings ago. Mr. Coleman said in the Rodney state revolving loan fund amount staff designated $9 million rather than the $8.1 million which was discussed earlier. This was done to align with the loan application submitted to the state. If the referendum is approved for $9 million, they do not have to take out $9 million. If that amount is not authorized, it is off the table. If the project were to go over the amount or Council were to decide during the project construction they want to add some feature, the City would have to pay cash for the additional amount and would not be able to build it into the referendum. So, by asking for borrowing authorization up to $9 million, it will allow the City, if Council so chooses to utilize all the funding that has been allocated by the state at the 2% interest rate. In the general obligation bonds, he needs Mr. Del Grande's input.

Mr. Del Grande noted on the general obligation bond (GO bond) of $3 million that is going to be a general obligation bond or a bank loan. He said there a few things that need to fall into place. The first part would be if the City were receiving full funding on a state revolving loan for all the projects that are being requested that would bring the full amount of the GO bond or loan to $3 million. If they were not to receive approval on all the SRL projects, some of that money would have to go to GO bond, the total will not change but will be a matter of what method will be used to fund the project based on approval from the state. If everything falls into place the next step will be a $9 million authorization for Rodney with $15,625,000 state revolving loan authorization for other water and sewer projects and the remaining piece of $3 million would either be a GO bond or a bank loan. The reason why the two will be different is there is fixed cost going through to a bond process. There will be about $100,000-$150,000 going with the GO bond once all the bond is bond covered and all the costs associated with such. There is a lower rate with a GO bond. A bank note may have a slightly higher interest rate on the loan but there are less fees and are under $10,000. The delta is the higher interest rate and smaller fees versus lower interest rate and higher fees. Staff is trying to determine once all the dust settles with all these projects what will be the best avenue and least expensive option. For that reason, staff is suggesting to have GO bond or bank loan for the $3 million piece.

Mr. Clifton asked Mr. Bilodeau what was allocator, the greater or lesser amount. He asked if that means if the referendum passes with the $27,625,000 they can exceed that amount and what did that mean to the people who are going to be voting on it. Mr. Bilodeau said it means the City is going to borrow that amount. Mr. Clifton said he understands that. Mr. Bilodeau said it also means these projects that are listed could cost than that amount. Mr. Clifton said if it costs more, as he thinks it was just stated, he interprets that the money must come from somewhere else. The City is borrowing money to cover that somewhere else, so he is not certain what this looks like and what this means is interpreted to the function of this. In other words, imagining it comes to $28,000,000 and that is $375,000 more. He asked where the $375,000 came from when the bond being requested is less and what did that look like when that somewhere else may be borrowed money. Mr. Coleman said the somewhere else would have to be cash from somewhere by Council authorizing a project in the budget that is not set to be funded with the referendum. For example, a project they were planning on paying cash for or if it is a smaller street program project, if it is general fund, or some other project is not done, or a water rate increase is authorized to pay the cash for a specific project. Ultimately, the method by which money is raised would depend on the fund that it is in. In the end it would be Council's decision.

The wording is such and the water and sewer projects and the general obligation bond or bank loan items contain several projects. Therefore, on the state revolving loan fund each project will be its own loan from the state revolving loan. If they get through the design phase and the project comes in under budget, there would be some extra borrowing authorization that was initially intended to put towards one project but not utilized for that project because it was not necessary. But due to the structure of the question, it is still available to be used for a different project and if the project ends up being more than expected, as long as the sum of the projects that are in the 2018-2022 water/sewer capital improvement projects that were approved, does not exceed $15,625,000. A new project cannot be added

that was not in the 2018-2022 and then if it is one of the projects approved in that CIP it would be eligible to use the $15,625,000.

Mr. Clifton said he is aware they budgeted conservatively because from time to time where there is $20,000 left over from something. He asked what was the number referenced in paragraph (f), 10% of the assessed valuation of the assessed impacts real estate in Newark. Mr. Del Grande said the taxable assessment is $857,000,000. Therefore, 10% of that would be $85,700,000.

Ms. Wallace referenced the 10% and the impact of any future debt the City wants to take on is in a sense limiting the amount of debt that they can take on until these projects are fully paid off. Mr. Del Grande said it is outstanding balance that is due based upon that.

Ms. Wallace wanted to clarify if Council approves this resolution and the referendum passes, all the projects still come back to Council for approval and input. Mr. Del Grande said Council if approves all these projects in 2018-2022 Capital Improvement Program, hypothetically if they were to go over any project, staff would come back to Council with that variance along with how much it would be and where they would recommend that money come from. If there were savings in another project, staff would recommend moving those funds over to the other project.

Ms. Wallace added if something happens and Council decides to shift projects, Council could remove projects from this but projects could not be added if Council decided they did not want to take on that much debt at that time due to other circumstances. Mr. Coleman agreed. He said this step does not tie Council's hands whatsoever. The extent on what dates and projects that exceeded a $25,000 threshold would have to come to Council for authorization initially. Council could decide three years from now to not use any more debt for these water projects for example and instead rather raise rates and pay for them in cash. Council can do that if they want to.

Ms. Wallace understands and is asking some of the questions because she wants to make sure the public understands. She asked if the design on the Rodney stormwater facility will be discussed on May 14. Mr. Coleman said they would be discussed at that meeting and to forward any questions or concerns to staff so they may prepare ahead of time. He added that since it is going to be a public hearing he would give a lot of the same presentation that was given at the last public town hall for individuals that may not have attended.

Ms. Wallace added that she has some concerns about some of the projects that were included, however going to the town hall was quite helpful for her. She said some of her questions were answered but she may have additional questions in the near future. She will try to get them to staff ahead of time so maybe they can be a part of the presentation.

Mr. Coleman said he and Mr. Del Grande were discussing the way the resolution was written and it appears like most of the concerns are related to the smaller projects slated for inclusion. The way this question is worded it could be any 2018-2022 Capital Improvement Project. If Council has concerns these small projects are not appropriate, there is still time to change which projects Council plans to use them for. He does believe some of the funds are parking fund specific and would not be eligible to move. But everything that is not within the parking fund would otherwise be general fund money and could be moved around.

Ms. Wallace said she wanted to clarify just by approving this resolution Council still has an opportunity to discuss these projects and are not getting locked in to anything at this point. Mr. Coleman said all this resolution does is it set the date for the public hearing to address the questions. Ms. Bensley said if the referendum is approved and the projects come back to Council, there is a step in between also where Council will need to approve the actual borrowing once the referendum is completed. That is another step that Council will have in the process to approve the final borrowing that is authorized by the voters, if it is. This will apply to each type of borrowing.

Mr. Hamilton asked for an approximate number of what kind of increases $27,625,000 would be to the residents. Mr. Del Grande said it is under $3.00 a month and approximately $2.70 a month and is for everything. Mr. Coleman said a lot of that is due to the way the project is being structured to come online. There is debt service that is falling off over the next five years. This will be detailed in the upcoming presentation. He added five years from now the debt service reduces dramatically for about $1.5 million. They have tried to structure the debt so the principle and interest payments come on towards the end of that five-year plan and they phase in as projects are completed. It does increase some and the debt is not added all in one day and that is one of the benefits of the state revolving loan fund and bank loans. They

can do it with bonds as well but it is a little more difficult. They can go interest only during the construction and then at the end of the construction phase it converts to fully amortized and principle and interest.

Mr. Hamilton said when talking about the City's debt falling off he said he was in full support of the beautiful reservoir. Water rates were raised, but they are paying off that debt. So, he kind of expected a 20-year increase and then it would be decreased after that and then no more increases. He said it seemed like staff was already dovetailing that $1.5 million in. Mr. Coleman said that was true. Mr. Hamilton said that is an interesting way to pass the resolution. He just wanted to make sure if they are intending on doing that this time that they say they are borrowing this money but they do not ever intend to, once the bonds are paid off, lower rates. Mr. Coleman said that topic came up at the town hall meeting last Monday and he made it very clear that he will make no promises that whoever is in this role 20 years from now will give any of the money back because realistically 20 years from now they are going to have something else that needs to get done or has not been done. One of the big takeaways he tried to stress through the presentation was that they have this mountain of infrastructure work that they need to do over the next 20 years as things start to wear out for the first time. So even if they do everything that they say they are going to do, they will be further behind five years from now than they are today. So, realistically they are probably going to end up getting in some sort of cycle where they must continue to take on debt and eventually it will get to a point when the first debt obligation will fall off as the next one is added and it is rolled forwarded.

Mr. Coleman said that is a larger discussion and nothing done at this meeting will lock in any obligations for taking on debt in the future but he does not want anyone to think that in 20 or 30 years depending on what it is, that their rates are going to go back down. Because realistically it is less painful to take that money when its available and repurpose it for something that needs to get done, than to give it back and then ask for it again the next year.

Mr. Hamilton asked if this on top of the $1.4 million that was just authorized for the storm water fee. Mr. Coleman said most of the change is related to the increase in the storm water fee for the Rodney project. If that is removed, he noted the whole thing is 1%.

Mr. Markham said he the conversation is moving into the public meeting discussion on May 14.

Ms. Wallace said the presentation being discussed will be at the George Wilson Center and she recommends anyone who has not seen it to watch it ahead of the May 14 meeting, so any questions may be answered in the presentation or the presentation may lead to more questions. She said this is for all the viewing public as well as Council members. She said she found it very helpful so just wanted to put that out there. It is available on the City's website right now for viewing.

Mr. Morehead asked relative to item (f) if the $857 million was the 1983 assessments. Mr. Del Grande said they were. He said they are New Castle County's certified assessment. Mr. Morehead said that would not be called market value.

Mr. Morehead asked about statement (i), the intention of Council to calculate the level annual repayments. He asked what the intention and what does it mean. Mr. Coleman said he believes it says the City will set the rates as necessary to pay back the debt that they take on. Mr. Del Grande said that is interpretation as well and Mr. Bilodeau would agree.

Mr. Markham said when they go to referendum or go to bond, they must pledge tax money because that is their bond money to pay but in each case, they have the option to pay with something else. He believes the reservoir was paid with the water rate, even though the full credit of the City is pledged to pay the bonds back.

Mr. Coleman agreed and said if it was a revenue bond then it would revenue from that specific utility. But these are bank loans, general obligation loans and state revolving loan fund.

Mr. Del Grande said they are permitted to build that cost into their annual rate structure. So, basically, they are promising to pay back what they are borrowing.

Mr. Morehead noted that the question that Mr. Hamilton asked about what does this cost, according to the public presentation that Ms. Wallace mentioned that everybody should look at, it is $2.70 a month for 2019. Mr. Del Grande confirmed this. Mr. Morehead said however the rates are going to increase in 2019-2022 varying amounts between sewer, water, and tax, electric was outside of this because they pay their own projects and do not need borrowing. So that answer is correct for 2019. Mr.

Del Grande said going beyond into 2022, he believes each utility is between 1 and 2 1/2%. Mr. Morehead said 2.6% is the highest. Mr. Coleman said the slide will be updated on the May 14.

Mr. Morehead asked if those four years was the total change that would be required to cover the debt service. Mr. Del Grande said that was true and at the end of the four years they are paying full principle and interest of each of the items so that will get them to the height of where they need to be.

Mr. Markham said he is certain there will be spirited conversation on May 14. He said this is strictly a step in getting the referendum scheduled and announced.

The Chair opened the discussion to public comment.

Katie Gifford, District 3, confirmed the May 14 meeting is where the actual questions are going to be ironed out and she hopes to be more informed about what the detailed projects are and each component. She asked if it is possible since there may not be all the exact projects that staff has proposed for inclusion at that meeting. She asked if it is possible to leave a dollar amount off this announcement of that meeting and say something like "for borrowing a sum of money for constructing the Rodney stormwater.

Mr. Markham said he believes they must specify an amount of money.

Ms. Gifford said Mr. Coleman was quoted in the Newark Post as saying he envisions this being a five-year cycle where every fifth-year staff returns to Council to authorize another round of borrowing for the next five years. She is interpreting to mean this is a referendum to borrow money to be paid over the course of 20 years, but they envision that in 5 years there would be a new set of borrowed money which would also need to be considered. She thinks things may start to add up in terms of fees on the residents so that might need to be part of the discussion in a proactive way, if they already anticipate that, so that people are fully informed not only about this but the anticipated asks in a few years.

Mr. Coleman said this topic will be covered at the May 14 meeting as well.

Mr. Morehead asked if the language in item (c) could be cleaned up. He asked if there was something specifically saying this will be paid back in 20 years because he sees it will be paid back in 25 years. Mr. Coleman said ultimately it will depend on the item and how they are packaged together. The state revolving loan fund will not allow applicants to finance something longer than the asset's life. For paving generally, they try and do it over ten years. Unless they have bucketed it together with projects that might last 50 years, then the combined total could be stretched out to 20 years. Ultimately, it will depend on the instrument and what is in the project. Technically the Rodney project would have been eligible for 30-year financing but they were authorized for 20-year financing from the state. The state revolving loan is up to 20 years. The revolving loan fund for clean water, which is storm water is up to 30 years technically, but they like to keep them 20 years or under. Most of the bond financing will probably be 20 years or less.

Mr. Morehead asked when they will know if the City does not get approved for the $15,625,000 and they may need more than the $3 million. Mr. Coleman said that answer will not be known until the project application is in. That is one of the issues with these, is that the state revolving loan fund applications are competitive. There is a bucket of money at the state and an applicant applies and judged on merit but also against the other applications that year. They may not get funded for it that year but next year they get a new capitalization grant from the EPA and that kicks off more money being available. Ultimately, if the state revolving loan fund says "the City is never get money for this", at that point it would be too late because they would be past the referendum. The $3,000,000 cap if that is the number set, with the existing wording and unable to get money with the state revolving loan fund for the projects listed which have been accepted as a notice of intent so far and this not anticipated to happen. If this happened, the City would have to find some other way to finance them or maybe go after another referendum to look for a different funding source for that project specifically.

Mr. Morehead said wording would not be included in this for example to make the one cap $27,625,000. Mr. Coleman said that would be a question for Mr. Bilodeau. However, he believes the charter requires that an amount be set for each funding source. Mr. Bilodeau agreed and said that was the discussion in January. Mr. Coleman asked if the cap could be set to be a math equation instead of a fixed number. For example, the sum no greater than a combination, where the sum is no greater than $18,625,000. Mr. Bilodeau said the charter basically says shall state the amount of money to be borrowed. So, he does not think that should be in the form of an equation.

Mr. Coleman said confusing voters would not be a good idea. He said all the projects have been submitted for notice of intent with the state and have been accepted so he does not anticipate having a problem at least getting them funded eventually through the state revolving loan fund. They have a significant amount of money and Newark is planning to do these projects over several years so he thinks there will not be an issue.

Mr. Markham said he has a request from staff to have an amendment to the resolution on item (b). At the end instead of "general obligation bond)" to add "for bank loans)".

MOTION BY MR. MOREHEAD, SECONDED BY MS. WALLACE: TO AMEND AS FOLLOWS: TO ADD "FOR BANK LOANS" AT THE END OF ITEM (B).

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Wallace.
Nay – 0.
Absent – Sierer.

MOTION BY MR. MOREHEAD, SECONDED BY MR. HAMILTON: TO CLEAN UP ITEM (C) TO READ AS FOLLOWS: "ALTHOUGH THE AMOUNT TO BE BORROWED AS SET FORTH IN SECTION B) IS A FIXED SUM OF $27,625,000, IT IS UNDERSTOOD THAT THESE PROJECTS MAY ACTUALLY COST MORE OR LESS THAN THAT AMOUNT AND THIS SHALL NOT BE CONSTRUED TO LIMIT THE RIGHT OF COUNCIL AND THAT THE COUNCIL CAN OBLIGATE EITHER MORE OR LESS MONEY TO FUND THOSE PROJECTS AS APPROPRIATE."

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Wallace.
Nay – 0.
Absent – Sierer.

MOTION BY MR. MOREHEAD, SECONDED BY MS. WALLACE: TO APPROVE THE PROPOSED BOND AND CERTIFICATE INDEBTEDNESS REFERENDUM AS AMENDED.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Wallace.
Nay – 0.
Absent – Sierer.

(RESOLUTION NO. 18-E)

21. 7. <u>RECOMMENDATIONS ON CONTRACTS & BIDS:</u>

A. Recommendation on Change Order for Contract No. 16-12 – Windy Hills to Red Mill Road Water Main Extension

01:51:55

Mr. Filasky presented a recommendation on a change order for Contract Number 16-12, the Windy Hills to Red Mill Road water main extension. In 2017, a $460,000 project was approved to cross the White Clay Creek from the Windy Hills subdivision over to Red Mill Road to provide redundancy and additional fire flow and water quality on that area which is outside City limits. During construction on South Dillwyn Drive, an existing gas main was discovered and they were prompted by the contractor on what they would like to do to deal with the gas main. Staff instructed them to move forward and keep track of the amount of funds it was going to take to finish the project. They received the change order after several rounds of negotiation.

They have settled on the price of $65,701.86. The work included was additional sidewalk and curb because they had to move the waterline four feet away from the road. Driveway aprons, additional water and gas service restoration, additional road restoration, and rock excavation occurred. Workers came across a large drainage pipe that was draining part of the property underneath the road and workers hit that and they needed to deal with it so they did. The contractor dealt with it and it is priced accordingly. He invites any questions but recommended Council authorize the change order in the amount of $65,701.86 to Eastern States Construction Service.

There were no questions and no public comment.

MOTION BY MS. WALLACE, SECONDED BY MR. HAMILTON: TO APPROVE THE RECOMMENDATION ON CHANGE ORDER FOR CONTRCT 16-12 – WINDY HILLS TO RED MILL ROAD WATER MAIN EXTENSION TO EASTERN STATES CONSTRUCTION SERVICE INC. OF WILMINGTON, DELAWARE IN THE AMOUNT OF $65,701.86.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Wallace.
Nay – 0.
Absent – Sierer.

20. 7-B. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO A CONTRACT RELATED TO YARD RESTORATION WORK AT 576 CAPITOL TRAIL

01:55:00

Mr. Filasky said this recommendation is for authorization for the City Manager to enter into a direct contract related to yard restoration work at 576 Capitol Trail which is adjacent to the Windy Hills water tank, which was subject to painting and repairs about two years ago. As all are aware, there was a containment breach and lead paint was deposited onto an adjacent property. After initial round of cleaning, there was additional tests done and the test indicated that there was lead present in the areas that they had the release so in working with the homeowner, who is present at the meeting, the City has identified a scope. City staff have talked to DNREC and they did not believe that it fell under their purview but they continued and worked with the homeowner to come up with a plan that was agreeable, and the City has authorization to enter the property to do the work that is outlined in this recommendation.

The recommendation is to remove the grass and 2 inches of topsoil and replace that with soil and sod over essentially the backyard of the property; in addition to doing some work on the actual Windy Hills tank property to reduce the possibility of anything running from City property on to the neighboring property. The City has found an environmental contractor who does work for DNREC and is certified to do this type of work. Mr. Filasky said he does not have a time schedule currently, other than to say they can start on the tree work because there are a few trees that need removal but they have a contract with Asplundh through the Electric Department that allows the City to utilize them to take down the trees. Once the sod is complete, part of the plan would be to provide water for the sod. Obviously, they do not want the sod to die once it is planted, so the homeowner will be provided with the hose and sprinklers and water that is necessary to water the lawn.

Mr. Filasky noted there is an environmental contractor and a sod contractor to get started. He will provide the schedule to Council and work with the homeowner when they get that schedule. The project needs funding of up to $30,000 to complete it. There is an estimate that is less than $30,000, but they would like authorization up to $30,000 for contingency so they can get the project completed.

Mr. Morehead said there must be several quotes from other vendors as well. Mr. Filasky said that Asplundh is under contract with the City already so they will most likely use that contract that is already paid for. The sod contractor is a sub-contractor to the environmental contractor. Whenever the environmental contractor is prepared, the sod company needs to be prepared right after them so there is not open excavation.

Mr. Morehead said he would be expecting staff to bring a waive on the normal bid process for this to choose the environmental. Mr. Filasky said City staff reached out to a few and this was the recommendation from a contractor.

Mr. Clifton asked if the homeowner was going to be compensated for water usage by reviewing history reports. Mr. Filasky said to make it simple the City will cover the bill for the month. He added that City staff will make sure the sod gets adequate water and the timeframe of one month can be extended if necessary.

The Chair opened the discussion to public comment.

Sarah Bucic, Wilmington resident, said she wanted to echo Dr. Roe's concerns earlier this evening where the City stands on the outstanding action items that were to be addressed after the September 25, 2017 Council meeting. There were some action items decided upon at that meeting, and she wanted an update. She noted on the meeting agenda, the remediation project at Windy Hills Water Tower is stated to be restoration work, and, according to the National Oceanic Atmospheric Association, remediation is the process of stopping or reducing pollution that threatens people. She believes that is what is being

done with this project and while restoration is done after contamination is cleaned up to return the environment to what it was. She wanted to say the agenda stated this is restoration and she believes this to be a remediation project. She felt the lack of distinction of this project as remediation on the agenda is a critical one because she believes it underscores how she believes Newark has minimized this issue. She thinks it is problematic that this issue has required numerous FOIAs, state regulators, citizen science by the homeowner, repeated newspaper articles in the News Journal, the secretary of DNREC along with intense citizen advocacy to eventually have the City of Newark do what she thinks should have been done on day one, April 14, 2016, for a Newark family. She thinks on day one there should have also been public health involvement as there are no safe levels of lead and this is a medical fact, echoed by the World Health Organization and to date there has not been Department of Public Health involvement in this situation. The two-year lag time for cleanup is completely unacceptable in a place where people live and children play. She thinks while it is great and she is thrilled that remediation is finally occurring, as of last October, Mr. Coleman, in an email stated that they still have not advised homeowners to have blood tests taken. She thinks the City of Newark has continuously minimized this problem and she would like to know with upcoming tank sandblasting projects this year for potential removal, what is Newark going to do to prevent this situation from happening again?

Mr. Markham asked if Ms. Bucic had any issues with the contract itself. Ms. Bucic said she has not seen it in its final form. Mr. Markham said the executive session concluded at 7:00 p.m. so it is now public and will be posted.

MOTION BY MR. CLIFTON, SECONDED BY MR. MOREHEAD: TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT WITH LEWIS ENVIRONMENTAL NOT TO EXCEED $30,000 FOR YARD RESTORATION WORK AT 576 CAPITOL TRAIL.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Wallace.
Nay – 0.
Absent – Sierer.

21. 7-C. RECOMMENDATION ON THE AWARD OF CONTRACT NO. 17-05 – CURTIS WATER TREATMENT PLANT IMPROVEMENTS AND TO WAIVE THE BID PROCESS IN ACCORDANCE WITH CITY CODE FOR THE PURCHASE OF CHEMICAL STORAGE TANKS AND FEEDS SYSTEMS ASSOCIATED WITH CONTRACT 17-05

02:04:25

Mr. Filasky said this is Capital Project W0002. Not long after the Curtis Water Treatment Plant came online, there was a push to change the gaseous chlorine to a sodium hypochlorite to change the chlorination type at the water plant. It has been pushed from year to year from capital projects, and since the year 2000 when this project was first proposed, they are looking now at building renovations and some interior and HVAC upgrades in order to make the plant a little more modern and actually stop rain from raining on the pumps when it rains. The roof and the walls need repair.

He also noted as time went on things were added things to this project which obviously increases the cost of how they get the project done. When looking inside at the ventilation system and the backwash system where they do their business, right now they have walls of drywall in a very wet environment. They did have an industrial hygiene study done, and there were no negative health effects. However, they realize that it is not ideal to have drywall in a very wet environment. So, this is a very important project for them and staff wanted to make sure that they do it right and there was a lot of discussion in the recommendation about where the funding was coming from.

This was one of the projects that they looked at in the 2018 budget and figured this could be done relatively quickly or at least hopefully get it done in 2018. In the 2018 budget, staff asked to deauthorize funding on a lot of other smaller projects that were looked at and either they were smaller projects or they were completed and they had additional monies left over. As part of the bid documents there were five interested parties at a pre-bid meeting. Two bids were received back and they were relatively close to one another, but both over budget.

Mr. Markham asked if Mr. Filasky would like to add any additional information that was not included in the report. He wanted to clarify there are two recommendations with one recommendation to award the contract and two additional recommendations for waive bid because staff was going to purchase some of the material to provide to the contractor to save on mark-up costs.

Mr. Clifton asked if the second bidder was aware that staff was going to purchase equipment and did they have the chance to respond to the additional information and that change. Mr. Filasky said staff did not. They conferred with Mr. Bilodeau to make sure that any way they sliced the bid based on what they wanted to remove from the contract and what they left in the contract, the low bidder was the low bidder, no matter how they sliced it. Now they were different bids but any way that they changed it would make the low bidder still the low bidder so they continued to negotiate with the low bidder on some of the items that they wanted to remove and purchase. Mr. Coleman said the bid documents were clear that they planned to modify the scope to match the available budget. That was explicitly said at the pre-bid meeting he believes and it is referenced in the contract documents that Council has the authority to revise the scope as necessary for the benefit of the citizens of Newark or something along those lines. Mr. Filasky said staff knew going into it the estimate was higher than the budget available, so they structured the contract in that way to make those modifications. Mr. Clifton said the answer is it is unknown how that could have impacted the second bidder. Mr. Filasky agreed.

Mr. Markham said he believes that Mr. Clifton had the information sent out previously explaining how the contract worked so he would make sure in the future that that information is available because the contract did say it was variable, could pick and choose the items if he remembers correctly. He asked the information to be made readily available prior to the same day as last day distribution of information may not reach every Council member. Mr. Morehead said he had a similar question or along that same lines but the verbiage in the explanation was missing just a couple little standing points like that.

Mr. Morehead asked if they had a water quality lab here now. Mr. Filasky said there is a simple lab. Mr. Morehead asked if they were adding more equipment or did they just move the lab. Mr. Filasky said they are moving most of the equipment but the old lab looked like it was repurposed from a high school lab. It is very outdated, so most of the actual monitoring equipment is being relocated or purchased new if the relocation ends up costing more. Mr. Coleman said a lot of the equipment in the lab is obsolete now due to modern testing equipment so what used to take a lot of equipment now is more normal benchtop hoc unit so the equipment and space will be significantly smaller.

MOTION BY MR. MOREHEAD, SECONDED BY MR. HAMILTON: TO AWARD CONTRACT 17-05 – CURTIS WATER TREATMENT PLANT IMPROVEMENTS TO NOWLAND ASSOCIATES INC. OF NEWARK, DELWARE IN THE AMOUNT OF $1,308,404 AND COUNCIL WAIVE THE BID PROCESS TO AUTHORIZED THE PURCHASE OF CHEMICAL STORAGE TANKS FROM POLY PROCESSING FOR $85,750 AND THE CHEMICAL FEEDS SYSTEMS FROM PRYZ WATER SUPPLY CO. INC FOR $43,970.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Wallace.
Nay – 0.
Absent – Sierer.

22. 8. <u>FINANCIAL STATEMENT</u>: *(Ending January 31, 2018)*
02:13:49

Mr. Del Grande said last week the January monthly financial report was submitted for review. The monthly report presented at this meeting only includes activity through the first 30 days of the year and assumptions are based off that activity. The financial report changed a little in appearance from 2017 to provide information that is clear and valuable to the reader of the documents. All the changes revolve around utility revenues and expenditures and as discussed and approved during the 2018 budget process, they are now including electric purchases from DEMEC and sewer purchases from New Castle County as expenses verses netting them against the revenue. The prior year columns have been restated around the monthly reports to provide a better comparison and overall it looks like the budget increased dramatically from years past but the difference is due to the way they are now presenting utility purchases. About utilities, he found that the new heat charts introduced from 2017 on page 16 contain a lot of information but were a bit difficult to read. Starting this year, they updated the charts to show what the three-year trend has been each month and they are now comparing a high and low range for each month to the current budget verses actual activity. He is hoping that will provide a year at a glance status of where they are in each month. As they progress, they will be able to see if they are on track or not. Moving on to the financials themselves, the total operating expenses are above budget through January. All spending trends with seasonality are reflecting a $246,000 deficit. This is only due to the first month of the year and the figures in the attached report are not an indication of what to expect to see by December 31. Large electric purchases in January caused the operating expenses to present a deficit spending outcome and the potential need to purchase more electric from DEMEC to meet demand is offset by revenue generated from those electric sales. This figure will adjust as the year goes on. Departments are showing small deficits based on seasonality and are not anticipated to carry deficits throughout the year.

Spending is closely reviewed and Finance works directly with the department directors on any potential issues as they arise. Utility sales for electric, water and sewer, and stormwater now, all exceed the budgeted estimates for January by $673,000, which encompass most of the overall positive revenue of $892,000 in January. January was much colder than anticipated, and it resulted in electric sales exceeding budget by 16%, generating an additional $336,000 in revenue. The rate stabilization adjustment process will ensure than any over allocation of electric revenue is considered annually by Council.

Mr. Morehead asked if Mr. Del Grande was referencing metered sales or collected sales. Mr. Del Grande said it is metered sales. Mr. Markham asked if there was one-month lag in the billing. Mr. Del Grande said that was correct.

Mr. Markham asked about the County as he seems to remember a sewer increase. Mr. Del Grande said they are anticipating an increase of 12% effective July 1, 2018 and rates will automatically change to reflect any change per City ordinance. He is not convinced that rate will stick at 12% and be quite that high. They will know more information in June.

23. 9. <u>ORDINANCES FOR SECOND READING & PUBLIC HEARING:</u>

A. Bill 18-08 – An Ordinance Amending the Comprehensive Development Plan by Changing the Designation of Property Located at 24 and 30 Benny Street

2:21:00

Mr. Markham said items 9A, 9B and 10A would be discussed simultaneously.

Ms. Bensley read the items into the record.

MOTION BY MR. MOREHEAD, SECONDED BY MS. WALLACE: TO DISCUSS ITEMS, 9-A, 9-B AND 10-A SIMULATANEOUSLY:

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Wallace.
Nay – 0.
Absent – Sierer.

Ms. Gray reported the Planning Commission recommended approval of the Comprehensive Development Plan Amendment for 24 and 30 Benny Street and was approved 7-0 for the rezoning of the properties at the meeting held February 6, 2018. The Planning Commission continued approval of the major subdivision site plan approval to allow the applicant to provide additional documentation relating to concerns raised during that meeting. At the meeting on March 6, 2018, the Planning Commission recommended approval by the vote of 6-0 on the major subdivision with site plan approval for 24 and 30 Benny Street and 155 South Chapel Street. The Planning Commission added the condition of a 240-volt outlet be added to each garage for electric vehicle charging purposes.

Mr. Morehead asked why there was site plan approval. Ms. Gray noted that the applicant chose to go through site plan approval because some of the bulk and area standards needed variances. So, they went the route of site plan approval, which is an option for them.

Mr. Markham reminded the presenters that comments are to be directed to the Chair and not to individual Council members and discussion will remain with comments on the development plans only.

John Tracey, Young Conaway Stargatt & Taylor, LLP, presented on behalf of the property owners, Nick and Chris Baldini of English Creek LLC. He noted Roger Brickley from Clifton Bakhsh and Associates who are the engineers and Brant Hauser, from CDG Architects for the project.

He noted Ms. Gray provided the summary of the Planning Commission meetings. He noted the presentation will be like a project that Council approved in December 2017 at 36 Benny Street. He noted this project is little smaller and does not need as much relief as that project. His PowerPoint presentation contained various aspects of what was included in the department's reports. He reported the combined acreage of the two parcels is 0.85 acres. He noted in the vicinity of the project there has been a gradual transition to more student housing of the design proposed with this project as opposed to the classic, old school, houses that have been often used for student rentals here. The application for 36 Benny Street was similar in that it sought removal of the duplex structure for seven townhouse apartments with six rooms each. There are some non-residential uses in the far eastern portion of the vicinity, however nearby this proposed project there are similar projects to what is being proposed with this project. As the

department's report notes, the vast majority of the properties on Benny Street are used as student rentals. Many which would, if zoned today, would qualify as RM, based on how they are divided into duplexes or bigger. There are only one or two owner occupied out of the 22 houses on Benny Street.

He noted there has been a transition of zoning in the area to include Chamber and Lovett Streets with the presence of RM or higher zoning classifications on Benny Street. Mr. Tracey said the existing property on Chapel Street has a large lot next to it. In addition, the existing Benny Street has detached garage as well as a house that is a student rental.

Mr. Tracey said there has been many projects that have been coming before Council in the last five or six years that augment what has been occurring in this area. There have been many applications which have gradually taken properties from lower and sometimes higher densities with a non-residential classification and moved them to residential zoning classifications for student housing. Mr. Tracey noted several other similar townhouse projects in the vicinity that have been recently approved and these are the kind of projects that are in the area and have replaced over time as the older structures get removed and replaced with larger structures and, as part of the site plan process, incorporate architectural elements that are not in the older structures around town.

The proposal includes five three-story townhouses with single access off South Chapel Street. There would be no inner connection through to Benny Street. There would be a single room on the first level. There would be a single bedroom on the second level with common areas, kitchen, TV room and four bedrooms on the top floor. Unlike the application for 36 Benny Street, this proposal did not have a bedroom in a loft or attic area.

The proposal includes sufficient parking. The requirement for both Benny and Chapel Streets was 33 parking spaces but this proposal has 44 parking spaces with two spaces in the garage and two spaces in front of the garage. In addition, there will be fire lanes so there will be no parking in the parking area beyond the parking spaces that those would need to remain clear for access. There will be bicycle parking.

On Benny Street, they are proposing six townhouse units, similar size, similar design, similar parking requirements. There is one unit less than what was approved for the 36 Benny Street property. In the middle of the property there will be on site storm water management with a bio-retention facility in between the properties with the roof drainage would be tying into that and it will be designed to handle the storms typically addressed by these structures. The design will resemble a park-like setting with landscaping denoting that. The Planning Department suggested incorporating a bench among some of the other plants and items shown on the plan.

Mr. Tracey said the proposal includes a variety of architectural features in terms of colors and in terms of materials. The intent is to continue the architectural treatments around to the sides of the project that will face South Chapel and Benny Streets. This suggestion came because of communications with the Planning Commission throughout the process. The architectural treatment has continued around to the rear of the building even though there are limited views progressing down both streets.

Mr. Tracey noted with suggestions from the Planning Commission, they could raise the LEED points from 40 to 51. Commissioner Firestone suggested installing an outlet in the garages to accommodate electric vehicles. He said Mr. Baldini was in the process of having that installed at his house, so when Mr. Firestone suggested that, Mr. Baldini said it was not difficult to accommodate and they will put a charging outlet in each of the garages so that if somebody coming to school is fortunate enough to have an electric car, they would have a place to charge the car in the garage overnight.

There will also be a fence between the properties on both sides except between side with the Heights project. That is going to be done in concert with both of those properties with the owner, Mr. Prettyman, and they do not anticipate any issues with this proposal going forward.

He reiterated this is a site plan approval. They reviewed things with the Planning Commission and the Planning Department. By comparison, the neighbors to the south when they went before Council, they were seeking approval of eight deviations as part of the Code. He noted this applicant is seeking five, three of which are like theirs and are simply matching the setbacks that were approved on the Benny Street side of the property. This project has a bigger site area and is almost double. In addition, this proposal has 50% more open area. This proposal meets the open space requirements and the rear yard back set variance because they are combining these properties as one.

The Chair opened the discussion to questions from Council.

Mr. Clifton asked when the term deed restricted is used, he asked if the applicant was referring to a recordable instrument not just a restricted contract between the owner and the tenant. Mr. Tracey said that was correct and the deed restriction would have both limit to one person per bedroom and it would also have the prohibition against receiving residential parking permits. It is a separate document the City has to review and approve and it gets recorded prior to the issuance of the building permit.

Mr. Clifton confirmed the property will have a sprinkler system. Mr. Tracey said the project would have a sprinkler system and meet all the current City requirements for the Fire Code.

Ms. Wallace said she understands the proposed project has an abundance of parking by Code. However, there will be six bedrooms, one person per bedroom, and if all people bring their cars, there is not enough parking. She asked how they will enforce people parking illegally in the fire lane. Mr. Tracey said the police would have carte blanche to come on the property if there was a violation of somebody parking there. It can also be enforced through the leases and the landlord can come on the property as well if illegal parking is observed. The applicant will be installing perimeter cameras on the outside of the property as he has done with Kershaw Commons which will include the common areas as well as the parking area. Therefore, if there are issues they will be documented and they can be fixed immediately.

Ms. Wallace said she appreciates the fact the police can come onto the property to issue tickets but she is a bit uncomfortable with that because that puts the onus on the police rather than the property owner. Mr. Tracey said the property owner can use the perimeter cameras to enforce any issues as well as use the lease agreement to enforce it.

Mr. Morehead asked Ms. Gray if any amendments are needed to the documentation to capture all the various recommendations from the different documents. Ms. Gray said she is not aware of any. She noted the deed restrictions are detailed in the subdivision agreement. The charging stations is a condition of approval. Mr. Markham said he had previously discussed this with City Secretary and this is included in the subdivision agreement.

Mr. Morehead appreciated the one person per bedroom restriction and the sufficient parking. The City has parking challenges and he thinks it is important for the developers to understand this serious challenge for the City and the residents because it is quite possible that the residents will be stuck with the bill to accommodate this issue. It does not make sense to him to enhance the problem.

Mr. Morehead asked if the bio retention is in the middle of the property and is above ground and appears to be a pond. Mr. Brickley said it is a bio-infiltration area, where the surface run-off will go in the top and will infiltrate down. There are chambers underneath for storage, and there is an outflow pipe if it overflows that goes out to Benny Street.

Mr. Morehead confirmed the property will not be separated again in the future. Mr. Brickley said it will not be separated in the future.

Ms. Wallace said this area she would call a rain garden with some drainage is an open space there which is a good thing. She asked if this is going to sufficient to keep students from congregating in large groups. She noted there are problems in that area already with large parties. Mr. Brickley said when looking at bio-retention facilities in general, it is not going to be a pond. There will not be a concern with people perhaps misbehaving after enjoying a few libations, but it is a storm water area that will be wet and landscaped with the plantings approximately 18 inches high. Some of the shrubs will be higher. Someone would not want to walk in that area and during a rain event it will be wet.

Mr. Tracey said because of the investment being made in the property and the investment in constructing, the applicant will be keeping an eye on it as well. It will be very expensive from a design standpoint and the plants will have to flourish in there because that is part of the whole process. The landscaping in the middle has a very specific purpose. The combination of both properties was decided upon during commentary with the Planning Department in going through the site design that they kind of flipped the building from being parallel to the road and now they are perpendicular which afforded the ability to combine the properties and allow for the storm water feature to be there which also precludes any physical interconnection between the properties.

Mr. Morehead wanted to make sure the garage doors will be installed per the design. Mr. Tracey said he was taken aback that had happened before and assured Mr. Morehead the garage doors will be installed.

The Chair opened the discussion to public comment.

Jean White, District 1, said the five units on the S. Chapel Street side with six students per bedroom equated to 30 students. She asked if the applicant sees those students going down South Chapel Street to Lovett Street to get to UD or taking a shortcut and just going across the natural area to get through. She asked if the developer will maintain the area and will there be a little path. Mr. Brickley said the bio retention area does not take up that whole center portion of the property. If students want to visit next door neighbors or if there is a shorter path there is a way to get through. If Council thinks it appropriate, they could include a small walking path in that area that just connects the two parking spots. It could easily be added.

Mr. Markham noted a few housekeeping items such including some typos and they were modified on the floor.

MOTION BY MR. CLIFTON, SECONDED BY MR. HAMILTON: TO CHANGE THE AGREEMENT ON PAGE 5, ITEM 20 AND REFERENCE ITEM 18 AND ON PAGE 4 OF THE RESOLUTION ITEM R TO BE CHANGED TO THE REFERENCE TO ITEM P.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Wallace.
Nay – 0.
Absent – Sierer.

MOTION BY MR. CLIFTON SECONDED BY MR. MOREHEAD: TO APPROVE ITEM 9-A, AN ORDINANCE AMENDING THE COMPREHENSIVE DEVELOPMENT BY CHANGING THE DESIGNATION OF PROPERTY LOCATED AT 24 AND 30 BENNY STREET.

Mr. Clifton said he is in full support of this as it matches the character of the neighborhood and fits the Comprehensive Land Use Plan. This assists the City in cutting down on the amount of traffic in the City by clustering residents like this. He thinks this project makes sense.

Mr. Morehead said he will be supporting this project and does not believe it does not adversely affect the surrounding properties and for some of the other reasons mentioned by Mr. Clifton.

Ms. Wallace said she will be supporting the Comprehensive Development Plan change for reasons previously stated.

Mr. Hamilton said he will be supporting the Comprehensive Development Plan change for the reasons already stated.

Mr. Lawhorn said he will also be supporting the amendment for reasons previously been stated.

Mr. Markham said he will also be supporting this change in the Comprehensive Development Plan, as he believes it does not have a negative impact on the nearby properties.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Wallace.
Nay – 0.
Absent – Sierer.

(ORDINANCE NO. 18-08)

24. 9-B. BILL 18-09 – AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE, BY REZONING FROM RD (ONE-FAMILY SEMIDETACHED RESIDENTIAL) TO RM (MULTI-FAMILY RESIDENTIAL/GARDEN APARTMENTS) 0.44 ACRES LOCATED AT 24 AND 30 BENNY STREET

2:58:11

MOTION BY MR. CLIFTON SECONDED BY MR. LAWHORN: TO APPROVE ITEM 9-B, AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE BY REZONING FROM RD TO RM 0.44 ACRES LOCATED AT 24 AND 30 BENNY STREET.

Mr. Clifton said he will be supporting this because it does not adversely affect anything in this community. He thinks this project fits the mold of the community and again as he previously has stated he thinks it assists the City in making this a more walkable community.

Mr. Morehead said he will be supporting this for reasons previously mentioned.

Ms. Wallace said she will be supporting this zoning change for reasons previously stated.

Mr. Hamilton said he will be supporting this amendment for the reasons previously stated by Mr. Clifton.

Mr. Lawhorn said he will be supporting this for the reasons previously stated. He wanted to add that residents have been concerned about students renting houses in their neighborhoods specifically, Fairfield and Fairfield Crest. He thinks projects like this are specifically those that should be supported that take locations in the City that are already heavily populated by students taking older houses and replacing them with new more attractive housing with higher density, which is of economic value to the City. This also this is a step toward solving some issues they have with the high demand in student housing.

Mr. Markham said he will be supporting this based on reasons previously stated and it does not conflict with the zoning pattern in nearby area.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Wallace.
Nay – 0.
Absent – Sierer.

(ORDINANCE NO. 18-09)

25. 10. RECOMMENDATION FROM THE PLANNING COMMISSION AND/OR PLANNING & <u>DEVELOPMENT DEPARTMENT:</u>

A. Request of English Creek, LLC for a Major Subdivision with Site Plan Approval In Order to Demolish the Three Existing Structures and Construct 11 Six-Bedroom Townhouse-Style Apartments with Associated Parking on 0.85 Acres Located at 24 and 30 Benny Street and 155 South Chapel ***(Subdivision Agreement and Resolution Attached) (See 9-A and 9-B)***

3:00:19

MOTION BY MR. CLIFTON, SECONDED BY MR. MOREHEAD: TO APPROVE ITEM 10-A AS AMENDED, THE RESOLUTION FOR A MAJOR SUBDIVISION OF 24 AND 30 BENNY AND 155 S. CHAPEL STREETS.

Ms. Wallace said while she supports the Comprehensive Development Plan and the rezoning. She does have concerns about the plan approval and.

Mr. Morehead confirmed the developer agrees to pay $4,000 to remedy issues associated with mitigating problem interference with the smart meters. He believes the developers are asked to pay all costs. Mr. Coleman said this goes back a long time and ironically enough, this has been determined this is a situation that will not happen.

MOTION PASSED. VOTE: 5 to 1.

Aye – Clifton, Hamilton, Lawhorn, Markham, Morehead, Wallace.
Nay – Wallace.
Absent – Sierer.

(RESOLUTION NO. 18-F)

26. 11-B. Others: None

27. Meeting adjourned at 10:08 p.m.

Renee K. Bensley, CMC
Director of Legislative Services
City Secretary

/tas