

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

September 9, 2019

Those present at 7:00 p.m.:

Presiding: Mayor Jerry Clifton
Deputy Mayor Stu Markham
District 1, James Horning
District 2, Sharon Hughes
District 3, Jen Wallace
District 4, Chris Hamilton

Absent: District 5, Jason Lawhorn

Staff Members: City Manager Tom Coleman (arrived at 7:51 p.m.)
City Secretary Renee Bensley
City Solicitor Paul Bilodeau
Captain Michael Van Campen, NPD
Chief Communications Officer Kevin Liedel
Acting HR & Labor Relations Manager Mark Farrall
Assistant to the Manager Jeff Martindale
Finance Director David Del Grande
Parking Supervisor Courtney Mulvanity
Parks and Recreation Director Joe Spadafino
Planning and Development Director Mary Ellen Gray
Planner II Mike Fortner
Public Works and Water Resources Director Tim Filasky

1. Mr. Clifton called the meeting to order at 7:00 p.m. He asked for a moment of silence and the Pledge of Allegiance.

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

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

3. 1-B. **UNIVERSITY**

(1) Administration:

40

Caitlin Olsen reported the Blue and Gold Open House will be held Saturday, September 21st. It is intended for prospective students and usually draws several thousand people. An additional session will be held on Saturday, October 19th. She noted the last day of drop/add is September 10th. Following that date, more accurate student enrollment numbers will be available and relayed to Council. Ms. Olsen said the next home football game is Saturday, September 14th at 1:00 p.m. Parking lots open at 9:00 a.m. and seats are available at the games. She reported she had forwarded student housing information to Council and noted there are no students in hotels. She stated all UD students are housed in a living/learning model; meaning all the bio students are grouped together, engineers are together, etc. She noted that two engineers are never added to a bio floor and that would just remain open. They believe this model works well, so when the numbers are reviewed it does not necessarily mean all the rooms are full; it just means as the model is done that is how it adds up. The model also considers anything for ADA and any other specific needs. This issue will be discussed further when the Rental Housing Group comes forward.

Ms. Hughes reported she had a resident in her district that drives for DART. Recently, when driving one of her special needs passengers, the resident encountered difficulties when dropping off at the Bob Carpenter Center. The driver was not permitted to drive into the parking lot by UD and was instructed to park the vehicle on Rt. 896 and the person would have to make their way to their location. Ms. Hughes asked Ms. Olsen for a contact person at UD to grant an accommodation for the passenger. Ms. Olsen noted the parking services is contracted out for events, but that she will reach out to a staff member on the Athletics Team involved with facilities and parking. She will copy Ms. Hughes on this correspondence for a plan moving forward. Ms. Hughes thanked Ms. Olsen for her assistance.

Mr. Horning thanked Ms. Olsen for the data on student housing. He thanked UD student Alexis Carel, reporting for the UD Review for the article on parking and the upcoming changes. Mr. Horning appreciated the opportunity to speak directly with the students to convey the message on parking and other issues. He thanked Ms. Olsen for the continued work on West Newark with regards to working with Mr. Long and with the UD's vision for the area.

4. 1-B-2. STUDENT BODY REPRESENTATIVE(S) (5 minutes per speaker):

6:45

Megan Mullennix said she was glad to be back and looks forward to working with everyone on behalf of UD students.

5. 1-C. CITY MANAGER (3 minutes): None

6. 1-D. COUNCIL MEMBERS (7 minutes):

7:48

Mr. Hamilton:

- Asked Mr. Del Grande if the Register of Wills would hold a presentation in the City to provide detail on the services they offer. Mr. Del Grande indicated they would touch base again with the Register of Wills to schedule a time.

Mr. Horning:

- Announced there is an open community meeting scheduled with the developer for the Dickinson Dorm Facility. It will be held September 17th in Council Chamber at 7:00 p.m. and will discuss the latest plan submitted with changes made based upon the Planning Commission meeting to review the plan. He noted the Rodney underpass path on Forest Lane was closed over the previous weekend, but the path behind the Oaklands Pool remains open.
- Asked how the souvenir bricks from the Rodney Facility would be made available. Mr. Filasky noted staff has not made a determination how the process will work. He noted they will not be engraved and they cannot offer special requests for the bricks from certain buildings.

Mr. Clifton:

- Reminded all about Ovarian Cancer Awareness Month. The town was decorated with teal colored ribbons and other accessories. He wanted to remind all this was an important initiative to reflect on.
- Reported the Saturday of Labor Day weekend was the School Hill event at the George Wilson Center. It was a reunion of the traditional African American community but included much more. He estimated there were over 500 people there over the course of the day. Sylvester Wolford did a wonderful talk about Newark High School from the mid-1950's to mid-1970's. Mr. Clifton recalled the number of student athletes that came from Newark High School during this time. He thanked Ms. Olsen for her assistance and the Marriott Courtyard for their contributions of hot dogs and hamburgers to the event.
- Reminded all of the Patriot Day Remembrance ceremony for the 18th anniversary of the events that occurred on September 11th and it will be held at Olan Thomas Park at 9:00 a.m.

7. 1-E. PUBLIC COMMENT (5 minutes per speaker) (15 minutes):

15:09

Rob Gifford, District 3, spoke about a residential light pollution concern he has. He reported the streetlight bulb near his house was recently replaced with an LED version. He noted the light had been out for more than a year and had completely darkened his front yard. During that time, he enjoyed the night sky in the front yard of his home. Typically, he would have notified City staff about the outage but this time he was relieved about the reduction of glare into his home. Since the bulb was replaced the brightness in his front yard dramatically increased. Within a few days, he purchased room darkening curtains for two bedroom and he uses a patio umbrella to block the light at night if he wants to sit outside in the front yard. He has worked with the Electric Department on this issue and he noted Cenise Wright and staff worked quickly to reduce glare from this light. He thanked them for their response. However, no matter what method was used to improve this situation, the root of the issue is likely a light source that produces an overly bright and harsh light. He noted the fixtures in the Devon neighborhood are period style decorative fixtures and do not seem to be fully shielded. They send light in all directions. The Electric Department applied three shaded panes and a blackout pane facing his home, but the light output was approximately four times the output of the previous bulb style as measured with a light output application. While he would still like improvements made to his streetlight, he is concerned the rest of his neighborhood will be negatively affected by these lights, especially considering all these modifications that had to be applied to the light in front of his house. He noted there are already a few other lights with the new bulbs scattered throughout the neighborhood and they all have different levels of pane styles (i.e. frosted glass, shower door glass, etc.) While he understands there can be benefits from this style of

streetlights, he believes the bulbs seem too bright. He would like to request help from City staff our Council to reduce the brightness and harshness of residential streetlights at his location, the Devon neighborhood or for other neighborhoods that use these decorative style lights. He believes dimmer lights will create a more pleasant atmosphere and will likely reduce electricity costs.

Mr. Clifton requested Mr. Gifford email these concerns to Mr. Coleman and himself. Mr. Markham clarified these are different lights than the overhead lights previously used. Mr. Gifford stated in the past the gooseneck style was used and they are more shielded.

John Morgan, District 1, said he has been following the Dickinson project from a distance. He noted there were concerns expressed about increase in automobiles on Hillside Road particularly at various times of the day. He believes any proposal to have a couple of hundred UD students or other residents without greatly aggravating traffic problems will require that UD make a long standing commitment for several decades to have a good bus service running past that location. He would hope UD would be willing to make such a commitment. He hopes any bus service will include service to a decent grocery store if students will be using a bus rather than using cars.

He noted he has been continuing to make his spot checks of numbers of vacant parking spaces as indicated by the countdown signs in Lot 1 and sometimes Lot 3. He estimated that around 3:00 p.m. on September 5th he observed (according the countdown signs) 56 vacant parking spaces in Lot 1 and 146 vacant spaces in Lot 3. He did confirm this approximate vacancy in Lot 3 when he walked through. He also believes there seemed to be no progress on the Green Mansion development project when he believed it would start in June. Mr. Clifton noted it will start within the next 3-4 weeks to his knowledge. Dr. Morgan urged Council to take it slow before investing in a lot time and money in addressing a parking shortage in downtown Newark which may not actually exist.

8. 2. APPROVAL OF CONSENT AGENDA:

- A. Approval of Council Meeting Minutes – August 19, 2019
- B. Approval of Council Meeting Minutes – August 26, 2019
- C. Receipt of Conservation Advisory Commission 2018 Annual Report
- D. Receipt of Green Building Code Work Group Minutes – May 21, 2019
- E. Receipt of Green Building Code Work Group Minutes – June 25, 2019
- F. Receipt of Planning Commission Minutes – July 30, 2019
- G. Receipt of Planning Commission Minutes – August 6, 2019
- H. Recommendations on RFP No. 19-01 – Pre-Qualification and Selection of ESCO for Energy Savings Performance Contracting of HVAC Upgrades
- I. **First Reading – Bill 19-23 – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Updating a Position Title – Second Reading – September 23, 2019**

23:44

Ms. Bensley read the consent agenda into the record.

MOTION BY MR. MARKHAM, SECONDED BY MS. WALLACE: TO APPROVE THE CONSENT AGENDA AS PRESENTED.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Horning, Hughes, Markham, Wallace.

Nay – 0.

Absent – Lawhorn.

9. 3. APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS:

- A. Appointment of Mark Morehead to the Vacant At-Large Position on the Board of Adjustment for a Term to Expire September 15, 2022

24:51

Mr. Clifton stated he had a candidate for the Board of Adjustment. He noted Mr. Morehead was a previous Council member. He said he has a lot of respect for the insight he brought to the table on reviewing plans and processes. Mr. Clifton reminded all the Board of Adjustment was a quasi-judicial board. He thinks the appointment will be a perfect fit.

Mr. Clifton opened the discussion to questions from the table.

Mr. Markham noted he believed that Mr. Morehead has great attention to detail. Mr. Morehead believed the position will be interesting and a good match with his skills.

Mr. Hamilton welcomed back Mr. Morehead if his appointment was approved.

Ms. Hughes said she is thrilled to see Mr. Morehead back.

Ms. Wallace thanked Mr. Morehead for being willing to serve again.

There was no public comment.

MOTION BY MR. HORNING, SECONDED BY MS. WALLACE: THAT COUNCIL APPROVE MARK MOREHEAD FOR THE POSITION ON THE BOARD OF ADJUSTMENT FOR THE CITY OF NEWARK.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Horning, Hughes, Markham, Wallace.

Nay – 0.

Absent – Lawhorn.

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

11. 5. **SPECIAL DEPARTMENT REPORTS:**

A. FY2020 Legislative Department Budget – City Secretary (20 Minutes)

29:17

Ms. Bensley noted most of the increases in the Legislative Department budget are in personnel services; and are increases that have already occurred, such as contractually obligated increases for next year for union employees and/or placeholders for the upcoming union contract negotiations. The same also applies to part-time wages. The increase of approximately \$10,000 can be attributed to overtime increase. She explained it was an actualized increase already being accrued. The current year's overtime budget was \$6,000 and year-to-date charges are \$8,000. It was a slightly larger increase due to the additional meetings that are anticipated for 2020.

The increases in benefits are primarily health insurance. Some employees changed family status this year; and it included the anticipated rate increase for next year that was built in for all departments. There was an also an increase in contributions for pension and OPEB for eligible employees.

There was a slight overall increase in supplies and materials. There was a decrease in IT supplies based on some completed projects for this year. For example, in 2019 there was a budgeted amount for the recording equipment replacement, which will not occur again. There was also a consideration for implementation of electronic Council packets by year end. That cost will also be reduced for 2020. There was a request in the supplies line due to the consideration for layout redesign in the City Secretary's Office. The existing floor plan is very open and not conducive to staff under headphones transcribing minutes and this was a significant part of their job. There are frequent noise disturbances and foot traffic that can impede the productivity of personnel. The hope was to re-design into a more cubical format for employees for privacy and ability to focus better without interruptions. To offset this increase, the training and continuing education has been reduced by the same amount so there was no net gain and therefore, cost neutral.

There was a decrease in contractual services that was largely due to accounting changes related to GASB; specifically, in how some of the IT contractual expenses are accounted for. There was however; an increase in the advertising line for the additional Council meetings as well an increase to the City Solicitor/Deputy City Solicitor's line to cover additional meetings. There was an increase in the building and grounds allocation which is calculated by Finance for every department. Ms. Bensley noted there was no request for additional staff.

Mr. Clifton opened the discussion to questions from the table.

Mr. Horning asked if Ms. Bensley was comfortable with the proposed decrease in the training and education in the budget. He wants to make sure the department was not getting short changed if there was a need. Ms. Bensley noted she was comfortable with decreasing as the monies that are for that line are not only for the Legislative Department staff but are also for Council. She said based on the amount that has been used for the last few years, she was comfortable with decreasing the amount for a year.

Mr. Horning asked if the redesign of Council Chamber was included in the Legislative Department budget. Ms. Bensley responded that would be included in the Administration budget and was a Facilities project.

In the near future, Mr. Horning would like to see and discuss the cost of living increase versus the merit increase. He believes the City wants to retain good employees and incentivize them. He added it was important to become competitive. Even though it is not the private sector the hope was to be somewhat close. He wants to make sure the increases are competitive but justified. Ms. Bensley referred to page 9 where it outlines the different position in the Legislative Department. She noted with regard to her salary and 4% of the 5.6% figure noted was an increase she was provided at the beginning of 2019. That increase was not in the approved budget for 2019 because Council sets her pay rate so staff does not presume to give an increase if they choose not to. She noted the large portion of the 5.6% was already given this year. She noted with regard to the other positions they are contractually obligated steps through CWA, so with a positive review, a staff member will get a 4% increase through the union.

Mr. Markham asked the Finance Director when solid healthcare numbers would be available. He believes this unknown can make a difference. Mr. Del Grande said the numbers are not typically available until late October.

Mr. Markham inquired about the Recodification project. Ms. Bensley said the hope was to have the project completed by the end of 2019 and she noted it was not included as an accomplishment because it has not been accomplished yet. She noted when speaking to the codifier the next set of proofs will be provided to them by November 15th. The codifier will then do a final set of proofs and then it will come to Council for approval. Mr. Markham reminded all this was an ongoing project and was essentially 40-50 years past due for updates.

Mr. Clifton noted in the past, the IT budget has been extrapolated amongst all the departments because in fact all the departments use the IT services. He stated the City Solicitor gets significant work from other departments. His belief that the City Solicitor budget should be divided equitably amongst the other departments; as the City Solicitor does a lot of work for other departments as well. Mr. Bilodeau confirmed this.

There was no public comment.

12. 5-B. RESOLUTION NO. 19-__ : VACATION OF A PORTION OF WASHINGTON STREET (30 MINUTES)

42:16

Ms. Bensley read the proposed Resolution into the record by title and provided notification details.

Mr. Markham asked for a reiteration of how the process worked as this was not something that is initiated by the City. Mr. Clifton confirmed same. Mr. Bilodeau explained the applicant or the petitioner will make a presentation as to why they believe the roadbed was designated years ago as Washington Street be vacated or abandoned because it may not ever be used as a road or thereabouts. He noted for the record when doing research, he uncovered that in 1982 there was an application to vacate this road and Council at that time, did not vote to vacate the road. It was a 3-4 vote but noted that was a very long time ago and the reasons may have changed in that time. He reminded all it is a two-step process and if Council does pass this Resolution, the petitioner will have to file a proceeding in Superior Court where this will be finalized and Superior Court will apportion whatever property is abandoned or vacated, usually among the adjacent property owners. At that time, there can be a proceeding for compensation for the City for the value of the property it was abandoning. Mr. Markham confirmed the City was under no obligation to do this under any circumstance. Mr. Bilodeau confirmed same.

John Tracey, Young Conaway, Stargatt and Taylor, presented on behalf of the petitioner. Mr. Tracey noted the record was available for the previous attempt to vacate the road in 1982. He interprets the denial in 1982 to be the of the opinion of several Council members and noted there was an opportunity to actually have a roadway connection into Delaware Avenue or on towards the library. Since that has not happened in 40 years, he believes it was unlikely to occur. He noted the client was not actually proposing to do this. During considerations of doing a development project, Mr. Tracey suggested his client meet with the City before starting anything. During that suggested meeting, it was brought to their attention the City had some excess property in this vacated right-of-way they should consider incorporating into the project. This is what started this discussion. There were questions raised about the five petitioners and what gives them the right to ask for this road to be vacated. He noted the statute does not say it is five people in this community, it just says five residents of the City of Newark. He also noted the additional process of sending certified mailings and posting signs and taking out advertisements in the newspaper as part of the Superior Court process ensures that there was notice around the area. He also mentioned there has been additional conversations about the existing sidewalk connection which runs from the internal street to Delaware Avenue.

The applicant was told at the outset when the City suggested this to them as a potential resolution that the sidewalk would have to remain or be realigned. His client anticipated maintaining a connection between the internal street and Delaware Avenue. He recognizes this is probably something that is important as part of the bike/pedestrian project occurring in the area. This was something that would be approved by the City when the applicant returns with a proposed project that would incorporate this right-of-way or portions of this right-of-way (if there would be a need to relocate). He noted at least from looking at it from a ParcelView standpoint while reviewing the online maps, it was not completely clear that this sidewalk was all within the right-of-way. A portion may be on one or two of the neighboring properties as well.

He stated there had been recent conversations within the last week with the owner on the other side of the property and they expressed interest in interconnecting with what the applicant was doing but the applicant will be working to accomplish that as well. He reiterated this was step one. The next step was for the applicant to go to Superior Court and undertake the statutory process that was in Title 13 to actually complete the process and apportion the right-of-way.

Mr. Clifton opened the discussion to questions from the table.

Mr. Hamilton noted he had reviewed the 1982 minutes and was shocked the City would want to give away land and in this fashion. He would expect a petition from the nearby residents saying they would want the vacation and he does not see it and he finds it odd. He suggested putting the property for sale. Mr. Tracey said whether it was in New Castle County or other local jurisdictions, the process was the same. There was a required hearing where all these matters get fleshed out. Typically, the only people would have interest in this would be the people on either side of the property. He noted a 0.2-acre parcel of land was not going to be of much value to anybody who was not affiliated with one or both of those pieces of property. He did not believe the City could say they wanted to sell this piece of property; but rather the City itself would have to be the petitioner.

(Secretary's note: Mr. Coleman arrived at the meeting at this time -- 7:51 p.m.)

Mr. Bilodeau referred to an example of an orphan parcel that the City owns where there was no road. That is something the City can designate as surplus and put up for auction. He noted in this instance it is was a public roadbed and was different.

Mr. Hamilton asked Mr. Coleman why this would be suggested to the residents. Mr. Coleman reported there were a few right-of-way parcels similar to this in the City where in this case, a road will most likely never be built and a pedestrian path currently exists. He noted as per the agreement there was a restriction or requirement they would have to maintain a fifteen foot easement for that pedestrian path and if they want it moved, it is their responsibility. A complicating factor was that pedestrian path was being factored into the design for the Delaware Avenue Cycle Track Project that DelDOT was working on. If the applicant wants to move it, they will need to coordinate that relocation with DelDOT to ensure their project puts the crosswalk in the correct location. Otherwise, the sidewalk may come out of the right-of-way parcel that was vacated and it would not be in-line with the crosswalk. This was something that will need further determination. In his opinion, the only value this right-of-way provides to the City was the sidewalk access through there currently. Per the agreement, the City would maintain the sidewalk access and the property would see a more beneficial use as there would be something on it, buying utilities and generating tax revenue. He further added when he read back through the minutes, he was not certain the applicant has done what they did 37 years ago when this was proposed before. At that time, they polled all the neighbors and the neighbors wanted it to be vacated because they were not interested in another cut through in neighborhood.

Mr. Hamilton asked how wide this was. Mr. Tracey said he believed it was 50 feet and 0.2 acres of land in total. Mr. Coleman noted that all 50 feet would transfer ownership and the City would have a 15-foot easement that guarantees access.

Mr. Bilodeau noted with the Superior Court proceeding the City was entitled to apply for compensation for the fair market value of the property. Mr. Tracey noted during initial discussions there was an assumption there would be a cost associated with this. Typically, the court will be appointed to take a look at the property and return with a value. However, in his opinion he believes it was better for the parties involved to engage an appraiser to determine the value.

Mr. Hamilton asked if there was something the City could do creatively do to make a nice wide bike path or something similar. He also noted he was hesitant to approve something when he has not heard any input from any of the neighbors.

Mr. Markham believes in the past similar instances the property was a dead-end, very small or an alleyway. He believes this was a more significant piece of property. He understands this would enhance the development prospects for some of the properties, but he would rather see it remain the park like area it currently looks like now.

Ms. Wallace asked about the notification process and inquired if any of the neighbors were notified. Mr. Tracey notification was not necessary to vacate the roadway and the applicant went with the City's requirement, which was a certified mailing to the adjoining property owners. He reminded all of the second part of the process requires newspaper advertising and signs on the actual roadway to be vacated. Ms. Wallace said she shared some of the concerns of the previous Council members. She believed the City would be potentially losing out by vacating this property. It is not as insignificant as it seems.

Mr. Horning said his thoughts are similar to his fellow Council members including the analogy of his predecessor on Council 37 years ago in that during that time it was a fairly dynamic area with the construction of the shopping center and noted the College Square Shopping Center was being redeveloped which draws additional pedestrians through that area. He also noted the chance of proposed updates to the Newark Library. He expressed the same reservations from 1982 to current as being somewhat the same. He would prefer to leave the options open. He asked if there were additional concerns from City concerning maintenance (snow removal, etc.). Mr. Coleman noted the only difference was the City was technically responsible for mowing the grass 22.5 feet outside of the sidewalk, whereas everywhere else the City just plows the snow. He was not certain the City was cutting the grass, but if one of the adjacent properties decided to not cut the grass anymore, it would be the City's responsible to maintain the landscaping and property as well.

Mr. Clifton noted when looking at Code, he believed George Read Village was the only place per Code that does not require sidewalks. He noted in the area of Delaware Avenue there are residents to the south side, but he stated a lot of the property to the side (when referring to park space) was not City property to make into park space and was therefore, privately owned. Mr. Clifton asked if it was premature to ask what the development value would be to the developer to have this vacated.

Mr. Tracey said the applicant has not looked that far in advance. Clearly there was a value but there have been no appraisals done to date. Mr. Clifton noted even to this day the walkway that exits to Delaware Avenue but no street that exits to Delaware Avenue; and that would be at DeIDOT's discretion to do so. Mr. Tracey noted that DeIDOT would have to permit the interconnection with Delaware Avenue.

Mr. Clifton opened the discussion to public comment.

Jean White, District 1, stated that George Read Village has always been one of her favorite places in the City. She reported she recently walked the area and has some questions. She said if the 50 feet wide access was vacated by the City, she asked if there was a plan to consider at that point; particularly would it be a home, and if so, she believes a two story home would be out of character for the area. She asked if the applicants would maintain the sidewalks and cut the grass if the property were vacated. She noted the existing sidewalk was a straight access from Delaware Circle to Delaware Avenue. She further noted Newark High School was directly across the street. In the past, students from NHS have walked that sidewalk to get into George Read Village and it was a very good accessway. She also noted a DART pickup area exists in that vicinity as well. She believes these access ways are very important. She would be against the possibility of realigning the existing sidewalk. She stated she was against Council vacating this 50-foot-wide area between Delaware Circle and Delaware Avenue.

Mr. Horning asked the applicant if there were any plans currently being considered. Mr. Tracey said there were multiple lots on the east side of Delaware Avenue that were part of this proposal so there would be demolition of some older structures and consideration of some newer structures. He noted they would not be similar to the structures on Benny Street and Chapel Street, but rather consistent with what was in George Read Village. However, he reiterated that plan was fluid depending upon what happened.

Ms. Bensley noted to dispense with the Resolution there should be a motion and it should be voted up or down to approve or disapprove. If it was not voted on, it remains an active Resolution.

Mr. Markham asked if this was similar to zoning where it was restricted; or could the applicant return to Council for two years. Mr. Bilodeau had not researched it; but believed it would not be restricted.

MOTION BY MR. MARKHAM, SECONDED BY MR. HAMILTON: THAT COUNCIL APPROVE THE RESOLUTION FOR THE VACATION OF A PORTION OF WASHINGTON STREET.

MOTION FAILED. VOTE: 1 to 5.

Aye – Hughes.

Nay – Clifton, Hamilton, Horning, Markham, Wallace.

Absent – Lawhorn.

13. 5-C. RESOLUTION NO. 19-__ : A RESOLUTION TO SUBMIT A REQUEST FOR A WASTEWATER PLANNING GRANT TO THE WATER INFRASTRUCURE ADVISORY COUNCIL FOR MATCHING FUNDS TO FINANCE SEWER PLANNING STUDY PHASE III – SILVERBROOK PUMPING STATION BASIN ENHANCEMENTS (10 MINUTES)

01:18:56

Ms. Bensley read the proposed Resolution into the record by title.

Mr. Filasky noted the grant had been applied for and granted in past and this was no different in that it was a one to one match with \$50,000 of City funds to get \$50,000 of state funds and was indeed a grant that does not have to reimbursed. He further noted this was one of the projects that was approved by the referendum and the intent was to continue working on the project (\$1.3 million per year loan) and he added this amount equates to about a 1 ½ years-worth of interest and was worth noting.

Mr. Clifton opened the discussion to questions from the table.

Mr. Horning asked if there are any specific conditions associated with the grant. Mr. Filasky noted the only stipulations are the ones already agreed to with the state revolving loans and no additional special restrictions.

Mr. Clifton opened the discussion to public comment.

James Creque, District 3, asked if any of the grant money or any of this money be used to reduce the balance or would it just make the interest less. Mr. Filasky said this was not intended to reduce the amount of interest but was money to go towards the project to plan the next phase of the project. He just used the interest savings as an example of how much the grant means to the City. Mr. Coleman added it will allow the City to do more with the same amount of money.

MOTION BY MR. MARKHAM, SECONDED BY MS. WALLACE: THAT COUNCIL APPROVE A RESOLUTION TO SUBMIT A REQUEST FOR A WASTEWATER PLANNING GRANT TO THE WATER INFRASTRUCTURE ADVISORY COUNCIL FOR MATCHING FUNDS TO FINANCE SEWER PLANNING STUDY PHASE 3 WHICH IS THE SILVERBROOK PUMPING STATION BASE AND ENHANCEMENTS.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Horning, Hughes, Markham, Wallace.

Nay – 0.

Absent – Lawhorn.

(RESOLUTION NO. 19-DD)

14. 5-D. RECOMMENDATION FOR APPROVAL OF FY2019 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT APPLICATION – POLICE DEPARTMENT (10 MINUTES)

01:23:06

Captain Van Campen reported the Police Department was eligible for \$17,377.00 from the Edward Byrne Memorial Justice Grant. This grant was the leading source to federal justice aid to state and local jurisdictions. As in the past several years, NPD intends to use the grant money to provide supplemental patrols to identified areas. Most often they are foot patrols and high visibility patrols. The intention was posted on the department's website on August 12 to use the award to fund the overtime details. To date there have been no responses received.

Mr. Horning thanked Captain Van Campen for a job well done. He asked why the amount listed was a specific dollar amount. Captain Van Campen reported they are notified by the Department of Justice what amount they are eligible for. He noted this partly based on Part 1 crimes reported and noted, fortunately, the numbers are trended downward, and the amounts are reduced.

There was no public comment.

MOTION BY MS. WALLACE, SECONDED BY MR. HORNING: THAT COUNCIL APPROVE FOR FY2019 THE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT APPLICATION.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Horning, Hughes, Lawhorn, Markham, Wallace.

Nay – 0.

15. 5-E. DISCUSSION AND DIRECTION TO STAFF REGARDING POTENTIAL CHANGES TO DEPOSITS FOR ELECTRIC ACCOUNTS – FINANCE DIRECTOR (30 MINUTES)

01:25:50

Mr. Del Grande was present to ask Council to consider some revisions to Section 11-16 of Code regarding electric deposits. He noted with the pending utility billing system upgrade, the ability to charge two different deposit amounts on electric accounts will be eliminated. The new system will only allow one amount to be charged for each type of electric classification. This directly impacted how and what the City charges for deposits on residential non-owner-occupied dwellings. As a reminder, the City does not require deposits for residential owner-occupied properties and the majority of the impacted non-owner-occupied utility accounts were temporary residents of the City.

While reviewing the section, staff also noted some pertinent edits. They are:

1) Section 11-16(a)(2) stated that customers changing residences from one Newark to another whose deposits at the previous location have refunded shall require no deposit for electric service. Staff would like to add the following: "If the customer's account was in good standing and has not had any late payments over the past 12 months." Staff recommends this qualifier be added to the City Code in order to provide parameters for securing a deposit from an existing customer account who was moving to a new location and required a new electric. Current residents who are in good standing on their current electric bills should not need to pay another deposit if they move to a new location.

2) Section 11-16 (a)(3)(4) current language provided two different deposit amounts that a non-owner-occupied dwelling was subject to pay depending upon whether their property has electric heat. Staff was recommending removing this variable and make the deposit amount required the same regardless of whether the property used electric to run their HVAC system. Staff was proposing to change the deposit to \$300 from \$100 with no electric heat and \$150 heat to electric heat respectively. The belief was that moving to a \$300 deposit ensured a higher probability of collecting all fees that are due from temporary customers when they close their accounts. Currently, the City has 2,743 closed accounts with a total balance outstanding \$555,000. Therefore, if there had been a \$300 deposit requirement when these accounts were first established, the City would have collected an additional \$274,000 and closed 1,801 of these accounts. This would have reduced the outstanding account number by 66% and reduced the outstanding open balance by nearly 50%. This proposed change would have reduced the average outstanding balance from \$203.00 to \$103.00.

3) Section 11-16(c). Currently all new accounts and transfers of existing accounts to a new connection are charged an application fee of \$30.00. This fee is not recovering the costs of adding new service accounts or transferring existing account from some situations. Not all accounts can be activated from City Hall and some cases require technician to be dispatched to energize the property. The City currently does not charge a fee for this service nor a fee added for same day service. Staff recommends maintaining the \$30.00 application fee and suggests adding a \$50.00 service fee in the event a technician is dispatched to energize the property. In addition, if requests are made for the same day staff proposes an additional fee of \$50.00.

Mr. Clifton opened the discussion to questions from the table.

Mr. Horning thanked Mr. Del Grande for his presentation and added he was glad to see this effort going into changing the structure. He asked if the transient customers were typically student residents. Mr. Del Grande confirmed this. Mr. Horning was concerned the proposed \$300 would be cost prohibitive to some residents. Mr. Del Grande said there are provisions in place where they can take those situations into consideration. He also reported over 70% of the accounts that are closed are from students that have moved out with a balance and the deposit left was not enough to cover the balance. Mr. Horning asked if backup paperwork was available for the service connection fee to support same. Mr. Del Grande stated the remainder of the meters are remote disconnect; however, there were a few accounts that an Electric Department technician has to visit the site to energize the location. In some cases, the City was getting last minute, same day requests and complying requires the City to use existing committed staff in the field and sometimes requires overtime to be paid in order to accommodate the customers.

Mr. Coleman asked if the properties that require a technician's visit were considered for a swap out for a remote disconnect meter at that time. Mr. Del Grande said if possible, they will do so.

Ms. Wallace asked when the customer gets the deposit returned. Mr. Del Grande believes the customer gets a credit to their bill in 36 months. Ms. Wallace also asked if the City requires the bill to be paid in full. Mr. Del Grande said the payment is required in full. However, he added he has the discretion to allow special arrangements as needed. Ms. Wallace inquired about the number of properties still requiring on site hookups and why do they still exist. Mr. Coleman noted there was not enough money in the Smart Meter project to do remote disconnects everywhere; and added it did not make financial sense to do them everywhere. Mr. Del Grande reiterated they are being completed as they come up as there are additional funds in the Electric budget to put in more remote meters at this time. He also mentioned there was approximately a year delay in the manufacturer of the meters and the City has received a shipment recently. He also added with the addition of Thorn Flats that took a good amount of the supply of meters currently available. Additional meters are being ordered as needed. Ms. Wallace asked if it was single family rental type properties that do not have the reconnect. Mr. Del Grande said it was mostly apartment complexes. Mr. Coleman added staff tried to focus the installation of the remote disconnect meters in the locations that typically need annual reconnections.

Mr. Markham asked why electric does not run with the land. Mr. Del Grande said it is in State Code. Mr. Markham did not believe Recommendation #1 would necessarily be effective as someone can just get the account in their roommate's name if they owe from a previous location. Mr. Markham asked what the delinquency trend is currently. Mr. Del Grande said it was fairly consistent. Mr. Markham noted with reference to Recommendation #3 the issue should gradually go away. Mr. Del Grande confirmed same. Mr. Markham reminded Mr. Del Grande the fees need to reflect the actual cost. Mr. Del Grande confirmed the program averages out to something close. Mr. Del Grande suggested waiving the fee if they are permitted to swap out to a remote meter. He noted that ultimately the goal was to ensure the control of the Electric account as the customers do not pay. Mr. Coleman said he would be nervous doing this for after hours as he believes an after-hours charge would probably cost \$200 rather than the \$50 fee.

Ms. Hughes said she was not thrilled with the recommendation of going from \$100 to \$300 on a deposit. She believes it to be more of a band aid. She asked how is it that so many of these electric accounts are not paid by renters. Mr. Del Grande said there was always a large amount of accounts that go unpaid during the move out period. There was only so much staff to track the people down and he believed students tend to figure this out. The hope was to get the deposit funds up front and holding the amount until the accounts are closed helped tremendously. His intent was to have the tools necessary to collect everything the City was due.

Ms. Hughes believed it shows an inability to pay the electric bill, whether it was because they do not care or because they have a financial issue. Mr. Del Grande noted most of these accounts are students and they have the assistance of their parents as well.

Mr. Coleman noted the best tool for getting people to pay their bills before they move out was to turn their electric off near finals. Remote disconnects are done quickly, but realistically the ability to take phone calls and deal with 30-80 per week is cumbersome. Ms. Hughes said she likes Mr. Coleman's idea. Mr. Coleman stated there are about 1500 accounts that turn over every May. Typically, there could be 200 accounts disconnected. Mr. Del Grande noted if they are turned off there is a \$100 fee and he stated he would rather collect the deposit up front. Ms. Hughes stated if the customer was going to be disconnected and pay \$100.00 that is her point; \$300.00 versus \$100.00.

Mr. Markham asked when the electric was turned off, was the property considered uninhabitable at the point or was that with water shutoff. Mr. Del Grande said that is only water shutoff.

Mr. Clifton asked how many residents in the rental community pay by credit card. Mr. Del Grande said approximately 1/3 of all customers. Mr. Clifton said this has been a concern for many years and he believes most of the students have the means to pay. He wants the burden placed where it really needs to be. He believes it to be a good idea.

The Chair opened the discussion to questions from the table.

James Creque, District 3, said more than half of his payments that he sends in are rejected, whether a check in the mail that is routed through Philadelphia, a check mailed directly to City Hall and through electronic payment through his bank. He wondered how many students are experiencing the same thing. Mr. Del Grande said he would look into this and Mr. Clifton suggested he make an appointment and research the forensics of this issue.

John Morgan, District 1, never encountered any issues when paying his bills and he has been paying Newark utility bills for over 35 years. He noted there have been system changes and said in the past several years he typically drops his payments off in the drop box and has not had any problems. He was shocked to hear about the \$500,000 or so in unpaid electric bills. He felt this was a serious problem the City needs to address. He thinks that for undergraduates from out of state whose parents are capable of paying \$30,000 in tuition plus living expenses, \$300.00 should not be regarded as a lot of money. He would suggest this could be made a little more palatable if the City would pay a modest amount of interest on the money being held. He wondered if there should be an incentive for early payment.

Rob Gifford, District 3, asked if all the monies owed are sent to collections or just some of them based on dollar amount. Mr. Coleman said they are all sent to collections once they get a past certain age; but they are not all necessarily collected. On what is actually collected, the City will receive \$0.80 back on a dollar. Mr. Gifford noted even with the proposed \$300 fee the City will still actually be out \$270,000 so the problem still exists and is still significant. Mr. Coleman noted the amount that was written off was a loss in the bad debt expense line in the expense budget. Mr. Gifford believes there needs to be some more creative solutions to get the rest of the money.

Mr. Del Grande mentioned staff will be coming to Council with an RFP for a consultant to handle the electric collections. The remaining \$270,000 will go to that company to be collected. Mr. Clifton asked if that company will purchase the \$270,000 bad debt. Mr. Del Grande reported they do not. He also thanked Mr. Del Grande for addressing this issue that has been in existence for a long time.

Mr. Del Grande wanted to note there are only 68 commercial accounts totaling \$36,000 compared to the 2,700 residential accounts and noted the issue lies with the residential non-owner-occupied accounts. Mr. Coleman noted the bad debt expense for 2014 was \$91,000, in 2015 was \$303,000, in 2016 was \$12,000 and in 2017 was \$190,000.

Ms. Wallace noted she and Mr. Del Grande have discussed this matter during their regular meetings. She asked for a comparison among other municipalities in the area charged for deposits. She believes that Middletown charges \$300 for a deposit. Mr. Del Grande noted Delmarva Power was lower, but he noted the City of Newark population base was slightly different with the transient community of renters and more risk was involved. Ms. Wallace agreed and appreciated Mr. Del Grande being creative in finding ways to plug the holes. She wondered if \$200 might be a fairer number to start with. She has heard from individuals they want to move into Newark but they are renters and the rental market was higher in the City. She noted this was a concern of hers and she believes the City wants to attract these potential residents. She reiterated \$200 may be a good place to start and see what happens with the collection efforts and then return to Council next year or so.

Ms. Hughes asked Mr. Del Grande asked if there was ever the situation where a student returns. Mr. Del Grande stated if they do return the balance was transferred to their new account.

Mr. Coleman reported in response to Dr. Morgan's inquiry that Delmarva Power does provide interest on deposits. The amount of the deposit is up to 2/12ths of the estimated annual revenue. If they are a delivery customer only, the delivery revenue only; if they are delivery and supply it would be both.

Mr. Clifton reminded all that during conversations with Mr. Del Grande he does have a lot of latitude and Mr. Clifton reported he does know Mr. Del Grande exercises that right.

Ms. Wallace asked Ms. Bensley if a motion should be on the recommendations as whole and then make an amendment. Ms. Bensley reported since this matter was not an ordinance or a resolution, and Council was not actually approving the final item currently; there does not have to be a formal amendment and the motion can be made as what she would like the motion to be.

Mr. Horning noted they had discussed waiving one of the fees when switching out the remote system. He asked if that referred to the \$50 connect fee.

Mr. Del Grande said as the Finance Director he does have the ability to make judgement calls on items like this, even though it is noted in Code. If Council were comfortable leaving it to the discretion of the City Manager and Finance Director, they could handle this on a case by case basis.

MOTION BY MS. WALLACE, SECONDED BY MS. HUGHES: THAT COUNCIL APPROVE THE RECOMMENDATIONS OUTLINED IN THE MEMORANDUM FROM THE FINANCE DIRECTOR DATED AUGUST 29, 2019 WITH THE EXCEPTION OF RECOMMENDATION #2 WHICH SHE PROPOSES TO CHANGE TO A DEPOSIT OF \$200.00.

MOTION FAILED. VOTE: 2 to 4.

Aye – Hughes, Wallace

Nay – Clifton, Hamilton, Horning, Markham.

Absent – Lawhorn.

MOTION BY MS. HUGHES, SECONDED BY MR. HAMILTON: THAT COUNCIL DIRECT STAFF TO PREPARE AN ORDINANCE TO MODIFY SECTION 11-16 OF CITY CODE AS DESCRIBED IN THE AUGUST 29, 2019 MEMORANDUM.

MOTION PASSED. VOTE: 5 to 1.

Aye – Clifton, Hamilton, Hughes, Horning, Markham.

Nay – Wallace.

Absent – Lawhorn.

16. 6. RECOMMENDATIONS ON CONTRACTS & BIDS OVER \$75,000:

- A.** Recommendation to Award RFP No. 19-02 – Newark Downtown Parking Plan (15 minutes)

02:04:50

Ms. Gray reported Frank McIntosh, Chair and Will Hurd, Vice Chair of the Parking Subcommittee, staff member Mike Fortner, Planner II and Parking Supervisor Courtney Mulvanity were present to answer any questions regarding the recommendation, if necessary. In addition, Brian Bartholomew, Project Manager, and Mike O'Connor, Deputy Project Manager, consultants from Kimley Horn and Associates, Inc. were present as well. Ms. Gray provided a brief description on the proposed recommendation which was included in the memorandum dated August 30, 2019. Ms. Gray offered further details of the bid process also provided on the memorandum dated August 30, 2019. She noted the review team used a scoring rubric and Kimley Horn and Associates, Inc. came in substantially higher than Fitzgerald and Holiday. Ms. Gray stated she included an additional handout to Council on the dais that was the budget proposal for Kimley Horn and Associates, Inc. She also reminded all that the Comprehensive Parking Solution that was presented by the Parking Subcommittee and approved by Council on June 25, 2018 was also described in the Bold New Future for Newark and the Parking Policy Matrix was also included in Council Packet Item 6A.

Ms. Gray said the RFP funding was through the Planning & Development Department contractual services budget. The funding encompassed two fiscal years. \$52,850 will be encumbered in 2019 for Phase I and was in the approved Operating Budget. The balance of \$50,000 has been requested for consideration by Council for the 2020 budget. She also noted there had been a number of public meetings and discussions on this matter of parking and reminded all that staff was not present to discuss the topic of a parking garage. While the Parking Subcommittee did discuss a parking garage she would like to emphasize as stated in the Bold New Future for Newark, the Comprehensive Parking Solution on page 59, that a parking garage was recommended for consideration after all parking management strategies zoning changes and increased access parking. She further reported increased access proposals supplement have been implemented. A parking garage has been considered for Phase III, which was not part of this RFP.

With approval, there was an opportunity to move forward with the plan the Parking Subcommittee had set in motion supporting the City's vision for a downtown and the surrounding area to a vibrant place that creates a sense of place and attracts residents and visitors alike to promote walkability and biking and healthy living with a high quality of life.

Mr. Coleman noted this RFP covered hiring the consultant to implement the plan that Council approved with staff moving forward with implementing at the March 26, 2019 meeting. Mr. Coleman noted on Phase I at the bottom of the matrix provided in the packet item, the Parking Consultant was noted in the budget and Phase II at the bottom of the matrix was noted as well. Mr. Coleman added the budget proposal portion has been distributed by task and the individual line was broken out.

Mr. Clifton opened the discussion to questions from Council.

Mr. Horning said he has received some questions from residents with regards to consultants and some fatigue on consultant expenditures on parking over the years and even over the last decade. He believes it was a dynamic situation and noted one of the questions/concerns he received was does the contract begin and will they be considering the Hyatt Hotel on Main Street as well as the proposed Danneman Hotel. Ms. Gray reported the hotels would not be included and the scope was Phase I and Phase II was outlined and detailed on the Parking Policy Matrix.

Mr. Horning asked if there will communication relayed with some of the changes that staff was in the process of implementing with the T2 kiosks. Ms. Gray noted they can be incorporated as well. She also noted a key component was public outreach and developing a Parking Subcommittee II; which would be a larger group and to do public outreach on looking at changing the culture of parking and working with the community on developing strategies on education and parking updates.

Mr. Horning said outreach was critical as some of the comments he received include skepticism with regard to decoupling of parking and if that would be successful; also, whether a consultant that does not live and work can have valuable input. However, he believes that has been addressed by the multiple community meetings and focus groups. Ms. Gray agreed and noted this was a strength with this consultant as they have worked in a number of college towns and what has worked in these other communities.

Mr. Hamilton said he was not certain the whole entire plan was approved on March 26, 2019 or that Council actually approved it or rather it would be forwarded to the Planning Department for review and return to Council with recommendations. Ms. Gray stated in June, Council approved the strategy that was presented by the Parking Subcommittee and directed staff to develop a technical analysis, timeline and workplan. Staff returned to Council with this information in March and Council approved the timeline and the technical analysis, which was a 59-page report. Mr. Hamilton asked for bid detail. Ms. Gray mentioned the bid from Kimley Horn and Associates, Inc., was attached. Mr. Coleman interjected and stated the reason why the bids were not listed was because it was a qualifications-based selection (professional services) and was therefore, different than a construction bid. He explained a construction bid was the lowest bid and a Quality Based Selection was picked based upon pricing and proposal. The firm was picked based on overall based qualifications. The funding documents are opened later and unless it was something unreasonable than that company was picked. Ms. Gray said for Phase I estimates are \$45,000 plus \$35,000 and for Phase II the request was for \$50,000 in 2020 budget. Mr. Hamilton asked for a list of the towns the consultants have worked in. Mr. O'Connor said they worked in Newark, DE in 2006. They had also worked in Oxford, MS; Williamsburg, VA; and Fredericksburg, VA. They were currently working in State College, PA and College Park, MD. He noted there are numerous other towns as well. They can supply a more exhaustive list if necessary. Mr. Hamilton said he would appreciate this.

Mr. Clifton relayed a story where one of his friends stated they do not come to Newark because there was no parking available. He stated he said that was not true and provided details of why this was not so. Mr. Clifton reiterated a better outreach program was necessary

Mr. Clifton opened the discussion to public comment.

John Morgan, District 1, endorsed Mr. Clifton's comments about a false perception of a shortage of parking. He noted the City took some big steps in the right direction in the last couple of years with the countdown signs that display the number of vacant spaces. He believes an arrangement with UD should be made to put its countdown sign with available spaces out on or near Main Street where it was visible rather than 100 feet set back. He also noted the Trabant Center frequently has several hundred vacant spaces. He said he attended most of the Parking Subcommittee in the Fall of 2017. He supported all of the recommendations in Phase I and most of the recommendations in Phase II. He had serious reservations about the proposals to reduce or eliminate Zoning Code mandated parking requirements in the downtown area for commercial business. He recalled some of the issues that have come up with the Lang Group hotel project where they acquired the land which previously had been owned by smaller businesses and was used for parking by many of their clients; with the City administering the lots. The City had only a year-to-year lease on those properties and when the owner of the property decided it was more beneficial to develop it, there was nothing the City could do to prevent it. He believes the biggest winners from decoupling parking requirements from the use of the properties in the downtown area are going to be owners of the land. He would urge a look at who was going to benefit from the proposals about decoupling parking requirements and reducing or eliminating the mandatory minimum parking requirements. He has a terrible fear if that is done in the next few years, there will be business owners returning and saying the patrons of their businesses cannot find a place to park and the City needs to build a downtown parking garage. The only way he believes that will be financially feasible without the taxpayers having to pay a lot of money is if the cost to park is raised well above \$1.00 per hour. He noted in West Chester, PA it was \$1.50 a few years ago and they built parking garages. He believes that would mean the parking rates in Newark would be \$2.00 and then business owners will say the parking was too expensive and people will not come to Newark to patronize businesses. He reminded all they are irreversible steps.

Jim Jones, District 5, he said he attended the majority of the Parking Committee meetings. He believes Mr. Markham's comment comes closest to his own in that this was the next step in a process that was well thought out. As a previous member of West Chester, PA's Parking Subcommittee he noted he was very heavily involved in the process. He believes this was the next step in a logical process.

Rob Gifford, District 3, said he had difficulty determining what Council was set to approve. He noted upon approval of the original report but when looking at the RFP, it mentioned the marketing strategy during Phase I with detail on page 38. He asked if Council has actually seen the proposal of what the consultant was going to do. He noted it was not available to the public and asked for clarification. He does not see any reference to a previously discussed item of developing an application. He believes this is one of the more unclear items to approve than he has ever seen, and he believes there to be a lot of good information in the parking report.

Frank McIntosh, District 6, chaired the Parking Subcommittee and said the diverse group of people believed the most obvious issue was the public perception of parking in Newark and that was that parking was an issue. However, that was not true and what needs to be done and the whole purpose of bringing in outside marketing experts was to create a plan that will address that. He believes that will change public perception that extends not only locally but to an extended area to PA, NJ that parking is available in Newark. He also noted the plan was designed to address things in layers and this was done in hopes that it provides a sense to people that this was working and was a good thing. He believes without a doubt that the proposed consultant read the request for proposal and they responded to it in a way that the other group did not. He was pleased with their background, their experience and their focus.

Mr. Clifton returned the discussion for further discussion from the table.

Ms. Wallace asked for additional copies for the public and an update to the City's website with the other parking packet materials if needed. Ms. Wallace spoke to Mr. Gifford's inquiry about the app, that this was not included, and an additional consultant will produce an app for the public. She noted she was not completely sold on some of the items in these first two phases but agrees that this is the next step to determining whether the public agrees with them or not. She did review the consultant's website and also agrees they do have a deep bench and that was what has been missing in this process.

Mr. Horning said he believes this was a profit center in terms of revenue. Mr. Coleman confirmed this and noted with the City running fairly lean in terms of personnel, he believes the scope of this work is really not manageable. Mr. Coleman noted the proposal noted 468 hours of staff time and they are professionals that do this every day. He also noted with the consolidation of the Communications position from two to one there was a savings of \$89,000 and marketing takes the place of this.

Mr. Hamilton asked where the funding is coming from. Mr. Coleman said the funding was coming from the Planning budget. Ms. Gray noted the department was approved for consulting money in the 2019 budget. The Planning Department has asked for additional money for consulting in 2020. Mr. Coleman said most of the work in Phase I was Zoning Code related. This includes Zoning Code review, Zoning Code Workshop and an Impediment Report.

MOTION BY MR. MARKHAM, SECONDED BY MR. HORNING: THAT COUNCIL AWARD CONTRACT NO. 19-02 TO KIMLEY HORN AND ASSOCIATES, INC.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Horning, Hughes, Markham, Wallace.
Nay – 0.
Absent – Lawhorn.

17. 7. **ORDINANCES FOR SECOND READING & PUBLIC HEARING:** None

18. 8. **RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING AND DEVELOPMENT DEPARTMENT:**

A. Request of the Frogtown, LLC for the Minor Subdivision of 1.0006 Acres in Order to Demolish the Existing Five Apartment Units and Construct Four Four-Bedroom Townhouse Apartments and Associated Parking at the Property Located 18 North Street Known as White Clay Vista ***(Agreement and Resolution Attached) (30 Minutes)***

2:43:17

Ms. Bensley read the resolution into the record by title.

(Secretary's note: There was a short break and the meeting reconvened at 2:46:24)

Ms. Gray said the applicant was seeking a minor subdivision for slightly over one acre at the property at 18 North Street. Ms. Gray gave a brief overview of the project and the documents detailing

the proposed plan. She noted most of the parcels surrounding the property are generally apartments zoned RM, which was a multi-family dwelling of garden apartments in BLR, which was limited business residential. She added there are commercial properties to the south across North Street zoned BC, which was general business. The north side of the property was bordered by the Pomeroy Trail. The zoning for the proposed project was RM. With a total of nine units on this property with this proposal, it complies with 16 units per acre allowed density. This proposed development includes several zoning code variances which were granted by the Board of Adjustment on October 19, 2017. The variances are listed on the plans and they include a variance on setbacks from the street; 14 feet from the west and 16 feet from the north. Also approved was a rear yard variance of 6 feet, a side yard variance of 9 feet and a building height variance of 6 inches. She added the subdivision agreement includes a fee in lieu for open space of \$450.00 per unit or \$1,800.00 for this application. This was per Chapter 27, Appendix VI. The Planning and Development Department staff recommends approval of this minor subdivision based on findings that this proposed plan meets the City Code with the Subdivision Advisory Conditions as described in the June 25, 2019 report and revised on August 16th. The proposed plan should not have a negative impact on adjacent and nearby properties and does not conflict with the development pattern of the nearby area. Planning Commission unanimously approved the project on July 30, 2019 with a vote of 7-0.

Mr. Clifton asked if there were any questions from Council of the Planning Director.

Mr. Markham asked about the reference to five staff comments on the August 16, 2019 memorandum and if there were any needed amendments to include any of these comments or had they been addressed.

Ms. Gray said the revisions are on the staff report and the revisions have been incorporated.

Mr. Horning asked about a reference in the subdivision agreement in the first paragraph to a site plan approval. Ms. Gray noted it was a typo and it should be a minor subdivision.

Mr. Horning asked if there would be notification sent to neighboring residents providing details about the pre-demolition and pre-construction meetings. Ms. Gray reported it was not required by Code to provide notification but if Council would like staff to do so, staff would be happy to do so. Mr. Horning stated the general plan was fine and the added fencing was sufficient.

Todd Ladutko, Managing Manager of Frogtown LLC, gave a brief description of the proposed plan with detail about the amenities included. He noted the structure in the front, a two-bedroom cinderblock frame was present when he purchased the property many years ago and then he added four one-bedroom apartments in the back of the property. He noted the proposed plan asked for Council approval to build four more units similar to the existing units in the existing footprint. The proposed project was 45% less density than the Code allows in terms of units (16 are allowed, the project requests 9, reducing it from 10). The Code requires three spaces per unit and the project was proposing four.

Mr. Clifton opened the discussion to questions from Council.

Mr. Markham asked about an NPD concern about parties in that area. Mr. Ladutko said he contacted NPD and spoke with Sgt. Bryda and asked him to provide a number of citations and arrests that have been conducted on that site for the last two years. He noted there have been four events. He also reported he notifies the parents of the citations as well. Mr. Markham stressed he hoped there were no problems in the future. He asked Mr. Ladutko what steps and what processes he will put in place. Mr. Ladutko stated his lease states that no more than ten people can attend an event on the premise without his permission. He planned to install cameras in the area and the exterior would be as well.

Mr. Markham asked if Mr. Ladutko planned to fill in the open area with trees and landscaping. Mr. Ladutko noted on the site a percentage of the ground was behind the existing units and was sloped down to the Pomeroy Trail. He noted in the front of the property, which was very visible from the road, was well lit and about fifteen feet. The rest of the property did not have a lot of open space. He noted there was not a large grassy area to congregate.

Mr. Hamilton asked if the beds in the proposed units will be less as well. Mr. Ladutko said they would not be reduced and would be four-bedroom and four-bathroom units. Mr. Hamilton asked if owners would allow NPD to hook into the cameras. Mr. Coleman said getting live access to a camera would be complicated. He noted he has spoken with Captain Van Campen and Deputy Chief Farrall and their preference would a City owned and maintained camera on North Street at the entrance on the utility pole and on the south side of the road. Visibility to the back of the existing townhomes would then be possible. A multi-lens camera could be utilized to enable visibility on either way on North Street as well.

He reported he had reviewed the police reports back to 2016 and noted there were eight incidents but there were quite a few on North Street immediately adjacent to this property on either side. Mr. Hamilton asked if a large enough disturbance occurred would Mr. Ladutko permit the City to have access to his cameras. Mr. Ladutko said he would allow the City access to the cameras. Mr. Hamilton said he agreed with Mr. Markham when there are locations with more people there could be a potential for more problems and as long as it can be monitored and everyone understands they are on camera, typically people behave better.

Ms. Hughes asked how Mr. Ladutko know if a tenant broke the 10 person per event rule. Mr. Ladutko noted it would largely be a police report or a neighborhood complaint. He said if they were aware of the incident at the time it was happening, it would be addressed. He also reiterated it was mentioned in the lease agreement and was listed on all his properties. He further noted there are times when it was violated and there are also times when a tenant will ask permission.

Mr. Horning asked for clarification on the cash in lieu of open space reference in the agreement. Ms. Gray noted that fee in lieu of open space was in the agreement for a total of \$1,800.00. There was more than enough open area (an area that does not have any buildings or structures). Open space was required for an area for passive or active recreation. That was the requirement the proposed project was short on. Mr. Horning asked if the area was a residential permitted area. Ms. Gray said she does not believe it is; however, noted there are four parking spaces per unit, which was ample. Mr. Horning thought there may be an option to restrict guest passes and permits. Mr. Coleman noted that Kristen's Way was a private right of way; therefore, it was not a residential parking permitted area. Mr. Horning asked how many additional people this project would include. Mr. Ladutko said it would be about 8-10 more people. He preferred not to advocate for six or seven seven-bedroom houses and he believes that a four-bedroom house was a manageable size. Mr. Ladutko said he makes his new tenants aware of the new Unruly Gathering Ordinance when they apply on the lease application. Mr. Horning inquired about the two parking spots located between the buildings and the bike rack path that do not meet the minimum size requirement. Mr. Ladutko said it was resolved and the bike rack remains. Mr. Horning said his primary concern was around safety and he asked if there was a policy with regards to manning cameras on new streets. He asked if the developer pays for these on a new application. Mr. Coleman does not believe that has been required specifically yet; however, he does not believe there was nothing indicating the City could not as long as the developer was agreeable to it. Mr. Coleman noted North Street was a Special Residential Zone and he was not certain how that request would be applied.

Mr. Markham believed the residents of the apartments on New Street were denied residential parking permits because parking was provided at the apartments. Therefore, he would think the same would apply in this circumstance. Mr. Coleman noted that denial specifically has been rethought elsewhere and whether or not that was appropriate per the Code. Mr. Horning asked if the applicant would consider adding the residents cannot apply for a residential parking permits for the on-street or guest passes. Mr. Ladutko said he was agreeable but had never had a request for this. Mr. Clifton noted that would be considered an amendment. Mr. Horning asked if anyone was monitoring the cameras or was it more of a reactive. Mr. Ladutko noted the system currently in existence on Elkton Road was on videotape and was available for review if needed. Mr. Horning asked there be a live feed from North Street and he asked Mr. Ladutko if he would pay the cost of \$2,000. Mr. Ladutko agreed to do so.

Mr. Clifton opened the discussion to public comment.

Jean White, District 1, mentioned documents from NPD stating the only concern with this project was Kristen's Way was a known party location and they regularly respond to large parties with noise violations and litter on the property. The concern was that this will add to that property problem in the vicinity. She also noted the applicant's response that site lighting will be added for safety. However, Ms. White does not believe lighting in itself prevents this. In response, she noted the applicant said at the Planning Commission meeting they would add surveillance as well. However, she did not believe that was preventative. Ms. White asked about the 10-person limit and whether that applied to each unit or cumulative. She said was glad to hear the applicant notified the parents when something happens. She asked where the parties happen that the police are referencing.

Mr. Ladutko noted the leases are for individual units and one party cannot be responsible for the party next door. Additionally, he noted there have been no trash citations on this property. After an event, they do patrol on the weekends.

Mr. Clifton returned the discussion to the table.

Mr. Hamilton asked the total number of units on the property. Mr. Hamilton asked the Code requirement for having on-site management. Ms. Gray responded the requirement is 16.

Mr. Horning asked if the applicant would consider allowing NPD to patrol the parking lot. Mr. Ladutko agreed. Mr. Horning thanked the applicant for working with the City to address the safety concerns.

Mr. Bilodeau asked how short the applicant was on open space. Matt Brickley, Bakhsh Land Surveyors and Ms. Gray addressed the question. Ms. Gray noted 12% is required for the proposed plan. Therefore, the plan had less than 12%.

MOTION BY MR. HORNING, SECONDED BY MS. WALLACE: TO ADD THE FOLLOWING AMENDMENTS TO THE SUBDIVISION AGREEMENT:

- SECOND PARAGRAPH TO CHANGE SITE PLAN APPROVAL TO MINOR SUBDIVISION.
- ADD NOTIFICATION THAT THE TENANTS HAVE TO NOTIFY THE LANDLORD OF A GATHERING OF TEN OR MORE PERSONS PER THEIR LEASE AGREEMENT
- THE LANDLORD WILL PROVIDE PARENTAL NOTIFICATION OF ANY CITATIONS ON THE PROPERTY PER THE LEASE TERMS.
- THE APPROVAL OF THIS PROJECT IS CONDITIONAL UPON THE APPLICANT PAYING THE COST TO INSTALL CITY CAMERA ON NORTH STREET UP TO THE COST OF \$2,000.
- THE APPLICANT ALLOWS THE NDP TO PATROL THE PARKING LOT OF THE PROPERTY.
- THE RESIDENTS OF THE PROPERTY WILL NOT BE ALLOWED TO OBTAIN RESIDENT PERMITTED PARKING ON THE STREETS NOR THEIR GUESTS.

Mr. Markham wanted to ensure that these items were permitted in the agreement regarding the lease and the notification. Mr. Bilodeau said he believed they would stand up in court.

Mr. Horning suggested getting the language from the lease and incorporate that explicitly as a standalone language and not reference a lease. Ms. Bensley said the agreement has to be approved this evening and could not be altered with additional language after approval.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Hamilton, Horning, Hughes, Markham, Wallace.

Nay – 0.

Absent – Lawhorn.

MOTION BY MR. MARKHAM, SECONDED BY MS. HAMILTON: THAT COUNCIL APPROVE THE 18 NORTH STREET MINOR SUBDIVISION PLAN AS SHOWN ON THE MINOR SUBDIVISION PLAN DATED AUGUST 21, 2017 REVISED MARCH 28, 2019 WITH THE SUBDIVISION ADVISORY COMMITTEE'S ADDITIONS AS AMENDED TONIGHT.

MOTION PASSED. VOTE: 6 to 0.

Aye – Clifton, Horning, Hughes, Lawhorn, Markham, Wallace.

Nay – 0

Absent – Hamilton

(RESOLUTION NO. 19-EE)

19. Meeting adjourned at 10:28 p.m.

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

/tas