CITY OF NEWARK
DELWARE
COUNCIL MEETING MINUTES
November 25, 2019

Those present at 6:30 p.m.:

Presiding: Mayor Jerry Clifton
District 1, James Horning
District 2, Sharon Hughes
District 3, Jen Wallace
District 5, Jason Lawhorn
Deputy Mayor Stu Markham, District 6

Absent: District 4, Chris Hamilton

Staff Members: City Manager Tom Coleman
City Secretary Renee Bensley
City Solicitor Paul Bilodeau
Chief Communications Officer Jayme Gravell
Assistant to the Manager Jeff Martindale
Planning and Development Director Mary Ellen Gray
Planner II Thomas Fruehstorfer
Public Works and Water Resources Director Tim Filasky

1. Mr. Clifton called the meeting to order at 6:30 p.m.

2. EXECUTIVE SESSION
   A. Executive Session pursuant to 29 Del. C. §10004 (b) (4) for the purposes of strategy
      sessions, including those involving legal advice or opinion from an attorney-at-law, with
      respect to pending or potential litigation, but only when an open meeting would have an
      adverse effect on the litigation position of the public body.

   MOTION BY MR. HORNING, SECONDED BY MS. WALLACE: THAT COUNCIL ENTER EXECUTIVE
   SESSION PURSUANT TO 29 DEL. C. § 10004 (B)(4) FOR THE PURPOSES OF STRATEGY SESSIONS,
   INCLUDING THOSE INVOLVING LEGAL ADVICE OR OPINION FROM AN ATTORNEY-AT-LAW, WITH
   RESPECT TO PENDING OR POTENTIAL LITIGATION, BUT ONLY WHEN AN OPEN MEETING WOULD
   HAVE AN ADVERSE EFFECT ON THE LITIGATION POSITION OF THE PUBLIC BODY.

   MOTION PASSED. VOTE 6 TO 0.

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

3. RETURN TO PUBLIC SESSION
   Mr. Clifton reported no action needed to be taken from the Executive Session.

4. SILENT MEDITATION & PLEDGE OF ALLEGIANCE
   Mr. Clifton asked for a moment of silence and the Pledge of Allegiance.

5. 1. ITEMS NOT ON PUBLISHED AGENDA
   A. Elected Officials who represent City of Newark residents or utility customers (2
      minutes)

   Representative Paul Baumbach addressed Bill 19-31 regarding alcohol and marijuana. He spoke
   with the UD student representative who raised the issue as something of concern to the University of the
   community. He would look closely at the bill passed by General Assembly: Senate Bill 45 as amended by
   Senate Amendment 1. Mr. Baumbach suggested Council consider more judicial discretion, specifically
   where the amount was being raised from $100 to $200, to permit the range of no less than $100 and no
   more than $200, to let the Alderman or judge take the full circumstances into account. He suggested the
same scenario where it went from $200 to $300. He remarked the work in Legislature was to move away from mandatory minimums and to give judges more discretion. He stated $200 was more than what the State put in with the Senate bill and was harsher than State levels. He understood there were reasons that a university was unique and there were times when it was appropriate, but he preferred that it not be unilateral and permit discretion. He thanked Mr. Horning, who had a Federal issue, where Mr. Baumbach was able to help work with a Federal delegate to remedy the situation. He encouraged any resident to reach out to him for any assistance needed.

Mr. Clifton asked Mr. Bilodeau about the discretionary issue with the Alderman. Mr. Bilodeau explained the reason for a $200 fine for the first offense was that under the current ordinance for underage consumption, the initial fine was between $200 and $250 so the City decided to keep it at $200 under the current ordinance and thought it was sending the wrong message to have an ordinance allowing a $100 fine for possessing marijuana but a higher fine for alcohol. He thought the figure should be the same. Mr. Clifton asked if the Alderman had discretion to suspend the fine if necessary and Mr. Bilodeau confirmed. Mr. Bilodeau explained fines for driving without insurance were sometimes reduced a significant amount as the fine was prohibitive. Mr. Baumbach asked if the Alderman had full discretion and asked if the fine was $0 or $1500 or anywhere in between. Mr. Baumbach asked if the fine was $200, did the Alderman have the discretion to go less. Mr. Bilodeau answered that the Alderman had the discretion to reduce fines and said the Council could change the fine to up to $200 in the statute and it would not be a substantial change.

6. 1-B. UNIVERSITY
(1) Administration (5 minutes per speaker) (3 minutes)

Caitlin Olsen, University of Delaware Administration, announced the new tenant on the STAR Campus. The Delaware Technology Park leased the land from UD so Ms. Olsen would not receive regular construction updates, but she could reach out with any questions. She noted it was scheduled for a 2021 opening. She stated December 10th was the annual Board of Trustees meeting and public comment sign ups started online on December 3rd. Ms. Olsen understood it began at 3pm but was unaware if the location was the Audion or Trabant and she would inform Council when the decision was finalized. She stated it was currently Thanksgiving break, classes ended December 5th, and finals ended December 14th.

Mr. Lawhorn attended the National League of Cities Conference and stated a main topic was the US Census. He explained that one discussion was about university students being one of the most difficult to capture in the census and he was curious what UD was doing to assist and what, if anything, the City should be doing to help. Ms. Olsen responded that she reached out to Student Life and had discussions with Ms. Gray, but she had not heard of any committees being organized but thought the plan was to figure out how it all worked. She had the contact information for the local census team and would address it. Mr. Lawhorn thought Council should consider addressing the issue because it could be as much as $1100 to $1500 per person in Federal funding that was impacted by lack of counting one single person and, if students were one of the more difficult populations to capture, the City should be interested. Ms. Olsen stated she would research what UD had done in the past.

Mr. Horning thanked Ms. Olsen for sending the press release about the STAR Campus early to keep Council informed.

7. 1-B-2. STUDENT BODY REPRESENTATIVE(S) (5 minutes) (2 minutes): None

8. 1-C. CITY MANAGER (2 minutes):

Mr. Coleman announced the Thanksgiving breakfast was on Thursday at the George Wilson Center from 8 am to 10:30 am. There was advanced registration available at $3 with $6 at the door but residents over 60 were free. He stated the next event was Winterfest on December 6th and believed the tree lighting was at 6 pm on the corner of Academy and Main. He confirmed that on-street parking would be available in the construction area starting at 5 pm on Fridays through 2 am on Mondays and had gone into effect earlier in November. He stated the gravel area in Lot 1 was active with another 25 parking spots and the City’s lots were added to the ParkMe Mobile app.

9. 1-D. COUNCIL MEMBERS (5 minutes):

Ms. Hughes:
• Returned from the National League of Cities held in Texas and thought the information was interesting and offered a different perspective from over 4,000 attendants from municipalities across the country. She noted it was interesting that cities with populations from 150,000 to 25,000 all struggled
with the same issues to a certain extent. She asked a few participants about issues with sharing areas with
a university. She explained one of the speakers strategized a vision for their Main Street and took more
control in the development as they had more of a vision with arts and culture. She thought it was a very
informative and helpful convention.

Mr. Markham:
- Reminded the Chair that there were a few items to add to the agenda.

MOTION BY MR. MARKHAM, SECONDED BY MS. WALLACE: TO ADD TO THE AGENDA ITEMS 2-J
FOR FIRST READING BILL 19-35, AN ORDINANCE AMENDING CHAPTER 25, SEWERS CODE IN CITY
OF NEWARK, DELAWARE, BY IMPLEMENTING A CUSTOMER CHARGE FOR SEWER EFFECTIVE
JANUARY 1, 2020, AND THE SECOND READING ON DECEMBER 9, 2019. AND ITEM 2-J, FIRST
READING OF BILL 19-36, AN ORDINANCE AMENDING CHAPTER 30 WATER CODE OF THE CITY OF
NEWARK, DELAWARE, BY IMPLEMENTING A CUSTOMER CHARGE FOR WATER EFFECTIVE
JANUARY 1, 2020, WITH A SECOND READING OF DECEMBER 9, 2019.

MOTION PASSED. VOTE 6 TO 0.

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

Ms. Wallace:
- Stated she had received some pushback from her constituents about the removal of the murals
and stated her preference was for the City to find a home for them inside the municipal building. She said
if they impacted Livestream viewing then it was important for them to be moved. She asked that staff
update Council with plans and relocate them elsewhere in the building. Mr. Coleman responded that staff
did not intend to take the murals down until there was another place to hang them and hoped to keep
them publicly visible in Newark.

Mr. Lawhorn:
- Noted he had conversations with residents about the parking kiosks, particularly seniors. He
thought that the kiosks were generally well-accepted but remarked on the technology barrier and stated
a resident suggested having a training session at the Senior Center where the Parking Department could
offer training to familiarize senior residents with how to use kiosks and parking app. He explained he gave
a list of minor technical issues to staff.

Mr. Clifton:
- Admitted he had to be guided through the app but stated the kiosk in Lot 1 was very simple to
use. He was glad that Mr. Lawhorn and Ms. Hughes were able to attend the National League of Cities. He
stated the City had met with the Rental Needs Assessment Committee and he remembered his first
leadership conference where he was seated with a councilman from Charleston, South Carolina, that had
adopted most of Newark’s Student Rental Ordinance. He explained there was a real opportunity to share
information and appreciated that the councilmembers represented Newark. Mr. Clifton congratulated the
drivers who came in second place at the Safety Rodeo.

10. 1-E. PUBLIC COMMENT:

Jean White, District 1, reiterated her previous preference that the murals stay in Council
Chambers. Ms. White was of the opinion that the murals provided “aesthetic richness, color, artistry and
meaning” for four decades. She disagreed with others that the murals were old fashioned and believed
the murals and their symbolism still held relevance after sixty years. She gave a brief history of the artist
once again and summarized an article in the Newark Post. She confessed that the murals needed to be
modified to add family in the second panel and to update other world religions as only Jewish, Protestants
and Catholics were included in the 1955 mural. She admitted that she never met the artist but thought he
would not have purposely excluded other religions as she saw him as a kind and caring person. She
explained her interpretation of the mural depicting energy and asked again that they not be removed
from Council Chambers.

Mr. Markham thought the murals could be moved around Chambers so they would not encumber
Livestream viewing. Mr. Clifton agreed and remarked at how difficult it was to discern a speaker on
Livestream with such a busy background. Mr. Coleman thought the murals would fit on the other walls.

11. 2. APPROVAL OF CONSENT AGENDA: (1 minute)
Ms. Bensley read the consent agenda into the record.

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

MOTION PASSED. VOTE:  6 to 0.
Aye – Clifton, Horning, Hughes, Lawhorn, Markham, Wallace.
Nay – 0.
Absent – Hamilton.

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

A. Reappointment of Christopher Rogers to an At-Large Position on the Board of Adjustment for a Four-Year Term to Expire September 15, 2023 (5 minutes)

Mr. Clifton thought Mr. Rogers was deserving of another term on the Board of Adjustment and thanked him for agreeing to another term.

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

There was no public comment.

MOTION BY MR. CLIFTON, SECONDED BY MR. LAWHORN: TO APPROVE CHRISTOPHER ROGERS TO THE BOARD OF ADJUSTMENT FOR A FOUR-YEAR TERM TO EXPIRE SEPTEMBER 15, 2023.

MOTION PASSED. VOTE:  6 to 0.
Aye – Clifton, Horning, Hughes, Lawhorn, Markham, Wallace.
Nay – 0.
Absent – Hamilton.

13. 3-B. REAPPOINTMENT OF SUSAN POLEY TO THE RESIDENT POSITION ON THE PENSION COMMITTEE FOR A TWO-YEAR TERM TO EXPIRE JUNE 30, 2021 (5 minutes)

Mr. Clifton stated Ms. Poley brought a unique perspective to the Committee and he had been long acquainted with her.

Mr. Markham asked Ms. Poley how she felt about the Pension Committee. Ms. Poley responded that she enjoyed being a part of it as she collected a pension but noted she was unable to cast a vote when a vote was called. She described her lack of voting as the only downside but enjoyed having input and hearing about issues. Mr. Markham asked if she enjoyed serving and Ms. Poley confirmed. Mr. Markham thought that sometimes Council reappointed but did not ask the appointees how they felt about their appointments.
The Chair opened the floor to public comment.

Representative Baumbach said Ms. Poley’s issue on not being able to vote came up with the Public Integrity Commission regarding another government body in the State. He explained that in the Legislature, if there was a vote that covered a class of people of which a legislature is part, they were not required to recuse themselves. He thought if there were questions about a class of people’s pension being affected by a vote, a member of the board should be able to vote for that consistent with those practices. He encouraged research to see if it was possible to allow the position to vote. Mr. Clifton said he would like to see the Legislation. Mr. Baumbach did not think it required legislative action but needed research to see whether it was permitted.

The Chair brought the discussion back to the table.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: TO REAPPOINT SUSAN POLEY TO THE RESIDENT POSITION ON THE PENSION COMMITTEE FOR A TWO-YEAR TERM TO EXPIRE JUNE 30, 2021.

MOTION PASSED. VOTE: 6 to 0.

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

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

15. 5. SPECIAL DEPARTMENT REPORTS:

A. Discussion and Direction to Staff Regarding a Path Forward for Contract No. 19-10 South Wellfield Water Treatment Plant Upgrades (30 minutes)

Mr. Filasky expressed his regret at not awarding a contract but intended to discuss funding for said contract. Bids for Contract 19-10 South Wellfield Water Treatment Plant Upgrades opened earlier in November and came back higher than staff hoped. He stated the memo outlined the plans to deal with the situation, but he wanted to address the reasons why staff thought the bids came in higher.

Project W1402 originally contemplated replacing the air stripper which removed water contaminants but as the project progressed, staff realized that more work needed to be done to bring more treatment capacity online. He noted the location of the stripper was not ideal and the raw and finished water tanks were covered in lead paint. He referred to the new permit necessary to sandblast the tanks and explained staff chose to remove them to replace them with one tank with a traditional clear well underneath the treatment facility. He explained the project evolved over seven years and staff now faced a more involved project. He stated staff began budgeting for the project during the referendum process in 2017 and was now three years removed. Staff looked at it in 2017 to get the 2018 referendum passed and then staff used the 2018 Referendum to budget for 2019. He said staff would put the budget together a year and a half to two years prior to the plans being developed.

Mr. Filasky noted a few reasons the estimates were low while the bids were high. He explained the original estimate for the engineering services was low and, when looking at the percentage of a project in which engineering services should cost, staff was historically low. He said that the City had two qualified on-call engineering firms and said Dave Athey, of AECOM, was available that evening for questions. AECOM was the City’s contracted engineer that generated the plans and specifications for the project.

Mr. Filasky explained staff took a system-wide approach and changed the goal. The lead tank precautions required staff to consider alternatives to replacing the air stripper. He stated staff did not design for future emerging contaminants but left space for them. It was not a change to the design, but staff had to pay for the contemplation. He stated staff relied on engineering estimates based on previous projects and bids. He explained it was a specialty project that most average contractors could not do, and the City competed with larger jobs that the contractors bid on. He noted that the City was not at the mercy of one contractor and was fortunate to get six bids for the project. The top five bids ranged from $3.1 million to $3.36 million, less than a 10% difference, and the sixth bid was not much higher. Mr. Filasky was confident the City got a reasonable price; it was just not what staff budgeted. He stated staff was researching where the estimates could have gone awry but needed direction to move forward because there was a project that needed to be completed in order to serve residents with high quality and code-compliant drinking water. He stated the City was $1 million short on the project and, after meeting with the Water Infrastructure Advisory Council (WIAC), the City was not able to transfer funds but would do a
Mr. Filasky said if staff got direction to move forward, the next step was to return to WIAC and request for the supplemental which could go on WIAC’s December 16 meeting. He anticipated a positive reaction from WIAC and requested to return to Council in January to do a budget amendment as well as the contract award. Mr. Coleman explained that it would not affect the principal and interest payment schedule and would be budget neutral in 2020 as staff would take committed money from the funding source and move it from one project to the next.

Mr. Markham asked if it was an internal estimate and Mr. Filasky answered that staff began with an estimate and came up with a budgeted number and then worked with AECOM to create a project budget. Mr. Markham asked if treatment capacity was part of the original plan. Mr. Filasky explained the original plan was to replace what was there and that was not enough to treat all the water that the City could get to the treatment facility. He said as the project progressed, it had to treat more water and staff had to add additional capacity. Mr. Markham asked if the capacity was needed at South Wellfield as the City had other sources of water. Mr. Filasky agreed but staff had a strategic plan to use a certain number of gallons from South Wellfield and some from another. He stated the City did not have wells and if the City had a pass-by requirement, staff went to the reservoir. He explained that having wells increased the resiliency available to the City. Mr. Markham understood. Mr. Filasky stated the City had the facility which should function at its peak. Mr. Markham understood but expressed his angst over delaying the water main replacement as it was a centerpiece of the referendum conversation. He understood if staff suggested delaying the last year after the water main was replaced. Mr. Filasky explained his proposal was to drop one off the end and, theoretically, that was what staff would do with WIAC but in order to make it budget neutral, staff had to drop 2020. He reported that staff had plans and a contract awarded to a contractor to start the water main replacement for 2019 but the contractor was going to start the work in 2020. Because staff was behind in getting the contract out, work would commence in 2020. Mr. Markham stated the 2019 work was being done in 2020 and Mr. Filasky confirmed and said that theoretically, work would be done in 2020, 2021, and 2022 but an extra $1 million could have been completed in 2020 if the issue had not come to light.

Mr. Markham understood that staff wanted to keep it budget neutral and Council had the ability to change budget and could move money if necessary. Mr. Markham did not want to incur a water main break because staff delayed a project in favor of being budget neutral. Mr. Filasky stated water main breaks would not cease with repairs but would be reduced. He said it was something staff could investigate, and he did not know the full funding. Mr. Coleman stated Mr. Del Grande calculated the amount at $70,000 for 2020 to have the principal and interest payment. Mr. Markham asked an emergency repair cost and Mr. Filasky said it depended on the emergency. Mr. Filasky revealed he was willing to do it if Mr. Coleman and Mr. Del Grande approved. Mr. Markham asked Mr. Filasky to carefully consider the issue because it was sold to the residents as a critical project.

Mr. Markham asked if staff was seeking approval to go to WIAC. Mr. Filasky confirmed and explained that he sent paperwork to WIAC because he needed to get it in, but he was seeking approval from Council to approach WIAC. Mr. Markham asked Mr. Filasky why he thought Council would not grant staff the approval aside from costing a little more to borrow more. Mr. Filasky confirmed and said that staff had to do a resolution for the original WIAC approval and required approval to return for another million dollars. Mr. Markham asked if staff got the $1 million, would they still need to pull $1 million for the water. Mr. Filasky replied yes because the City had a total debt limit that was approved through the referendum. He thought the water was $11.275 million and the City would be over the limit if it kept the other $1 million. Mr. Coleman interjected that the City’s borrowing authority was at the total cap so if any projects came in under budget, staff could reallocate the borrowing authorization to this project. Mr. Markham understood but was concerned that the estimate was significantly lower and was concerned about the water replacement process.

Ms. Wallace asked which water mains would not be addressed in 2020 and Mr. Filasky replied that everything would shift. The 2019 contract was completed, and staff had the plans and specifications written for 2020 which would be bid out in 2020 and would most likely draw better pricing because the
contractor could start in January. He stated staff would return in late 2020 to award the contract for 2021. He said there was one more year that staff had programmed and then would have to look for the next year. He did not know which mains would not be completed but noted that the mains planned for completion would be finished one year later. Ms. Wallace understood some of Mr. Markham’s concerns and wanted staff to capture referendum projects that came in under and put them into the water main. Mr. Filasky replied the water main contract came in at over $800,000 and pointed there was $200,000 staff had intended to spend which could be used later, he stated it would be worked out on the original budget amendment where staff did it for $800,000 instead of $1 million. He said staff did not have to borrow everything it asked for. Ms. Wallace said Council had to approve it to go to WIAC but noted it could look different when all said and done. Mr. Filasky explained when staff went to the State to request reimbursement, it was not necessary to get all of it back. Ms. Wallace was okay with the choice because the City was choosing to do the most critical work at the time.

Mr. Horning agreed with previous councilmember comments and reiterated for staff to return to Council if the budget had to be amended or funds needed to be reallocated for the water mains. He claimed the project was prioritized for an environmental issue.

Mr. Lawhorn asked if staff anticipated emerging contaminants or if it was matter of best practice. Mr. Filasky explained that staff did not design for them but there was space available should it be needed. He stated staff discussed including another layer of treatment in the project but did not need to treat for anything additional at the moment. He noted the technology could be stale by the time it was necessary to treat for something so staff did not want to add something that could be obsolete by the time it was necessary. Mr. Lawhorn stated there was no reason to believe there were other contaminants at this time and Mr. Filasky confirmed. Mr. Lawson asked if staff picked the cheapest bid and Mr. Filasky replied staff chose the cheapest responsible bid. He explained staff looked at all the bids but could only perform reference checks because all the bids were lump sum. He noted it was a local company. Mr. Lawhorn wanted to make sure that staff did not choose the least expensive bid with a less reputable company. Mr. Filasky stated there was only $50,000 between the top two bids.

Mr. Lawhorn had the same concerns about not doing water main work and asked if it would cost more money in the long run just doing preventative maintenance. He asked about the current condition of the water main and the difference between not doing the work and completing the work. Mr. Coleman replied that staff was not cancelling the project, but the issue was that it could not be paid for with referendum-related debt financing because the City would have hit the debt ceiling. He explained year five could be cash financed and include any funds leftover from previous projects. Mr. Coleman reiterated that the project would still happen and stated that 50% of the City’s water mains were set to expire in the next fifteen years. Mr. Filasky explained there were various reasons staff went out for water main breaks such as actual water main breaks, water quality, and capacity issues. He explained that the City could experience water main breaks even with repairs, but the trend would be downward. Mr. Lawhorn declared he was even more in favor of doing the work sooner and thought Mr. Filasky said the City could do $1 million more worth of work in 2020 if it was funded. Mr. Filasky explained that if it were funded, the City had the manpower and had the plans ready to hit capacity. Mr. Lawhorn said he would have been fine with funding the project, especially since Council passed the budget where it was decided to use $700,000 of reserves to balance the budget. He stated he would rather see the money go to repairing the infrastructure. Mr. Filasky stated the decision did not have to be made that evening and staff just needed direction and Mr. Coleman confirmed. Mr. Lawhorn agreed that it could be balanced in the future.

Ms. Hughes wanted clarification on the $3.1 million bid and Mr. Filasky responded staff intended to award the contract pending references. Ms. Hughes asked Mr. Filasky to repeat the timeframe for the water main work. Mr. Filasky explained staff had an approved contract and a pre-construction meeting where it was determined the contractor would start the 2019 water main contract in January 2020. He stated staff had another set of plans ready for bid in early 2020 and, if approved, the work could start in mid to late 2020 with completion in 2020. He reported the project could be postponed to early 2021.

Mr. Clifton had the same concerns as other councilmembers but agreed with Ms. Wallace that the City was doing higher priority work and thought it was an important distinction. Mr. Coleman spoke to Mr. Del Grande and stated if staff were to do next year’s water main project in addition to the Wellfield, $1 million of principal and interest needed to be added to expense in 2020, and would add roughly $25,000 in interest payments in 2020 that would increase to $70,000 in 2021 when principal landed. Mr. Filasky clarified the WIAC was relevant whether work was done in 2020 or 2021 as the debt ceiling was not a concern for funding approval.

There was no public comment.
MOTION BY MR. MARKHAM, SECONDED BY MR. HORNING: TO APPROVE MOVING FORWARD WITH THE APPLICATION TO THE WIAC FOR THE $1,000,000 SUPPLEMENTAL WITH THE UNDERSTANDING THAT THE CITY WOULD ELIMINATE ONE YEAR 2020 FROM W9308, WATER MAIN REPLACEMENT, THEREBY REDUCING W9308 BY $1,000,000.

MOTION PASSED. VOTE: 6 to 0.

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

16. 6. RECOMMENDATIONS ON CONTRACTS & BIDS OVER $75,000: None

17. 7. ORDINANCES FOR SECOND READING & PUBLIC HEARING:

A. Bill 19–28 – An Ordinance Amending Chapter 27, Subdivisions, Code of the City of Newark, Delaware, To Update the Provisions Regarding Liens for Unpaid Fines (30 minutes)

Ms. Bensley read the title of Bill 19-28 into the record.

MOTION BY MR. MARKHAM, SECONDED BY MS. WALLACE: FOR SECOND READING AND PUBLIC HEARING.

Ms. Gray presented the proposed amendment to Chapter 27 regarding Sediment and Storm Water Management, Section V, for Enforcement and Penalties. Ms. Gray explained the City had an occurrence where it desired to issue a fine via the penalty section of the Sediment and Storm Water Ordinance of the City but was unable because the language of the ordinance did not allow for it. Public Works asked Planning to investigate the ordinance and Planning worked with Mr. Bilodeau to model the process after the amendments to the Property Maintenance Code. Ms. Gray explained that the Property Maintenance Code allowed for the right to appeal and the ability to add fines to the Property Maintenance part of the ordinance. The proposed changes to the section of the ordinance included adding fines, either by the Alderman or the city official of Public Works and Water Resources Department as an enforcement for the Sediment and Storm Water Section, to add fines to a lien, and to allow related fees and expenses to be added to the lien.

Mr. Markham asked if there was a description of the issue Ms. Gray referred to and she deferred to Mr. Filasky. Mr. Filasky responded when staff put the Sediment and Storm Water Program into code, staff had the ability to fine for non-compliance but was not able to uphold the fine. He stated the most common issues were oil spills, trash leaks, and washing commercial cooking grates into storm drains. He explained the issues were typically dealt with through education and clean up but if there were multiple instances that resulted in a fine, there was no way to uphold the fine. Mr. Markham asked if staff could issue fines, but the Alderman’s Court could not uphold them, and Mr. Filasky confirmed. Mr. Coleman explained it was a due process issue. Mr. Bilodeau confirmed.

Mr. Horning thanked staff for closing the loophole.

There were no public comments.

MOTION BY MS. WALLACE, SECONDED BY MR. LAWHORN: TO APPROVE AN ORDINANCE AMENDING CHAPTER 27, SUBDIVISIONS, CODE OF THE CITY OF NEWARK, DELAWARE, TO UPDATE THE PROVISIONS REGARDING LIENS FOR UNPAID FINES.

MOTION PASSED. VOTE: 6 to 0.

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

(ORDINANCE NO. 19-28)

18. 7-B. BILL 19-29 – AN ORDINANCE AMENDING THE COMPREHENSIVE DEVELOPMENT PLAN BY CHANGING THE DESIGNATION OF PROPERTY LOCATED AT 287 EAST MAIN STREET (65 MINUTES FOR ITEMS 7-B, 7-C AND 8-A)
Ms. Bensley read the proposed bills into the record.

MOTION BY MS. WALLACE, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR AGENDA ITEMS 7-B, 7-C, 8-A AND 8-B.

Ms. Gray presented the land use application as a request for a major subdivision, a rezoning, a Comprehensive Development Plan amendment, and a special use permit for the property which was 1.135 acres located at 287 East Main Street. The proposed plan requested approval to demolish the existing single-story bank structure to build a three-story, mixed-use building with parking that included 6,000 square feet of commercial space and 8,480 square feet of parking which had 28 spaces on the ground floor, and 30 apartment units, 16 two-bedroom and 14 three-bedroom, on the second and third floor for a total of 74 bedrooms. The plan included a total of 57 uncovered spaces behind the structure parking lot with five off-site parking spaces. Ms. Gray detailed the information provided to Council on October 28, November 11, and November 25.

Ms. Gray explained the property currently included a single-story concrete structure occupied by Fulton Bank. The existing zoning for the property was listed as Business Limited or BL and applicant requested a change of zoning to BB or Central Business District. The proposed mixed-use building with commercial space on the ground floor and apartments on the upper floors was not an approved use in the BL district but was in the BB district. The zoning regulations for residential units in the BB zoning district indicated a maximum number of dwelling units for the parcel was 41 units and the density was 30 units and was in compliance with density.

As indicated on the plan, the parking circulation for the 3,400 square feet of retail with two employees was fourteen spaces and for 2,600 square feet of the bank with three employees was sixteen spaces. For the apartments, the parking calculation was sixty spaces. The total parking requirements was ninety spaces, of which the plan showed eighty-five on the site and five off-site located at 299 East Main Street. The code allowed for off-street parking to be located off-premises if the parking spaces were within 500 feet of the use or building. Given that 299 East Main Street was 115 feet from the edge of each of the buildings, the proposal complied with the code.

The proposed development met all requirements detailed in the Municipal Code of Newark. The proposed plan did not conform with the Comprehensive Development Plan V (CDP V) and required a Comprehensive Development Plan amendment (CDPA) to change the designation for use form commercial to mixed urban. The plan presented met the Comp Plan recommended use for mixed urban. The project included two uses which required special use permit approval in the BB district. One was the drive-in and curb service for other than an eating establishment and the second was for apartments. The existing bank had a drive-through, therefore the drive-through component was grandfathered so the special use permit request was for the apartments.

The Planning and Development Department staff recommended approval of the proposal for the CDPA, rezoning, major subdivision, and special use permit. Because the plan was compliant with City code with the Subdivision Advisory Committee comments, it should not have a negative impact on the adjacent and nearby properties and because the proposed use did not conflict with the development pattern in the nearby area. The land use plan was reviewed by the Planning Commission at the October 1 Planning Commission meeting and Ms. Gray relayed that most public comments focused on security, lighting, and buffers between the project and Tyre Avenue neighborhood, as well as drainage and property maintenance. Ms. Gray explained that Mr. Locke indicated he would follow up with neighbors to address concerns and he would speak to the issues in his presentation. At the October 1 meeting, the Planning Commission recommended approval for the CDPA, the rezoning, major subdivision and special use permit for the apartments and the vote was 4-0.
Mr. Markham referred to the report under Fiscal Impact that stated there would be a loss for first year build-out and asked if it was because of the loss of taxes for the current building being reassessed or if it was the necessity of Council needing to adjust fees. Ms. Gray replied that there would not be a building at the location and would therefore have no electric, water, or any other services payable to the City. Mr. Markham asked the history of the building. Ms. Gray described it as a bunker and Mr. Markham asked when it was built and if it had always been a bank. Ms. Gray deferred to the applicant and Mr. Markham said he would hold his questions.

Mr. Markham asked how the five spaces off-site would be enforced. Ms. Gray replied that they would be designated and signed as parking for the property. Mr. Markham could not think of a way for the City to enforce it because staff would have no way of knowing if cars parked in those spots belonged there. Ms. Gray agreed but said it would be the same as parking on the site and claimed the City did not police private sites. Mr. Markham agreed.

Mr. Horning noted one concern raised by the Newark Housing Authority and asked if Ms. Gray had any information on the Rental Housing Workgroup findings. Ms. Gray stated she could not speak for the commenter but understood that Mr. Locke had a conversation with the representative of the Newark Housing Authority regarding the issue.

Mr. Lawhorn noted the report stated in the future, the property would be a net revenue gain following the first year of $25,000 per year and asked how that was calculated. He asked if the number included stormwater, electric, and reassessment minus whatever cost and Ms. Gray confirmed and stressed it was a spreadsheet analysis done by the Planning Department which looked at refuse, street maintenance, Police costs, Parks & Recreation costs, electric revenue, water and sewer revenues, property taxes, real estate transfer tax, other revenue, and total revenue estimates. Mr. Lawhorn asked if reassessment was included and Ms. Gray repeated Mr. Fruehstorfer’s answer that the reassessments were included in the fiscal analysis. Mr. Lawhorn asked if any project should be a net improvement in storm water per code requirements and Ms. Gray confirmed.

Mr. Clifton asked about page three of the agreement where the developer agreed to locate the building no closer than ten feet to the City electric power lines on Main Street and said the conditions of approval in the Planning Department Report stated the building was to be no closer than 12.5 feet. Ms. Gray admitted there was discussion on the issue during the Subdivision Agreement and Mr. Patel, of the Electric Department, indicated the change. Mr. Coleman said in Section 16a, the applicants agreed to ten feet with all the extra conditions. Mr. Clifton noted there was no impact on building setback or any other code requirements.

Mr. Locke, General Counsel and Senior Vice President of Lang Development, Newark resident in District 1, introduced Alissa Cirillo, Development Director, John Mascari of Karins and Associates, and Zack Nasseh of Lang Development. Mr. Locke reiterated the project address, described the current building design, and stated the current condition of the property was one building with a parking lot. He noted the lack of stormwater management practices with the building in place. He stated Fulton Bank contacted Lang Development to redevelop the property with the objectives of enhancing branch appeal, having a better brand presence in the City, and maximizing property value.

Mr. Locke described the inspiration for the architecture as a historical perspective of the City and explained that the firm combined various designs from prominent Newark buildings. The firm considered tying into the residential area, Main Street Rehabilitation Program, and current zoning when designing the building. He noted the site was a large site for Main Street development at 1.135 acres. He explained the original design had the building at four stories, but the firm thought it was not conducive to the area and redesigned it to a three-story building of 35 feet high. He illustrated the design had red and dark bricks as well as stucco to give the building a 1920’s architectural perspective.

Mr. Locke stated the firm revised the building to make sure the property was complimentary to the surrounding areas and wanted to consider site plan approval versus code compliance. He thought site plan approval should be used for unique properties and did not feel the proposed property was a candidate. He stated the design brought the building from four-stories to three-stories as well as decreasing the units from 42 to 30 and went from a 27-car waiver to a 0 waiver.

Mr. Locke reiterated the project was zoned BL and the applicants proposed the zoning to be changed to BB because it was a downtown area and most of the properties on Main Street were BB zoned. He explained there would be 6,000 square feet of commercial space; Fulton Bank would take up 3,000 feet and the applicants were considering one commercial tenant at 3,000 feet or two tenants at 1,500
Mr. Locke illustrated the elevations and explained the firm intentionally kept the density low. He stated the window designs were inspired by 125 and 129 East Main Street as well as the Newark Opera House. He stated the underground parking would be used for commercial tenants, noted the drive-through was grandfathered in, and showed the parking in back. He explained the substantial amount of landscaping and said the firm spoke to the Planning Commission and the two homes closest to the property. He explained that one home had installed a white wall and the firm intended to include landscaping to promote privacy. He said the firm was sensitive to lighting and would install shields on the lighting to make sure they shined on the parking lot and did not interfere with other residents.

Mr. Locke thought the site was ideal for specialty shops and hoped to bring retail tenants to the area of downtown. He noted the recent redevelopment in the area and said it was not the same as the redevelopment from Chapel to South Main and the firm thought the project would kickstart the process of extending Main Street from Library Avenue to South Main. He stated the firm spoke to various business owners who were supportive of the project. He repeated the summary of the project and stated there were thirty commercial and sixty residential parking spaces on-site with an additional five spaces taken from Brian Ferry’s property. He referred to Mr. Markham’s question about parking enforcement and answered that the firm was happy to show the firm had the spaces on an annual basis. He declared the project was code compliant for parking and noted the addition of landscaping and bushes and natural buffers for the residential aspect.

Mr. Locke described the benefit to the community was that as Main Street lost a few long-term tenants, the proposed project kept a commercial tenant. He hoped the project would bring new businesses to Main Street. He stated the increased tax base was at least $25,000 with 30 units and calculated the average utilities for an apartment at $200 a month. He did not know how the analysis was calculated for the year of construction but explained the firm would be using electric to build the building and estimated the construction would use more electric than the bank from 9 to 5, Monday through Friday.

Regarding the Newark Housing Authority letter, Mr. Locke spoke to Don Gouge, the solicitor, and explained he personally served on the board for three years and was part of the team that performed the redevelopment on East Cleveland Avenue. He summarized the letter as requesting more affordable housing in the City.

Mr. Lawhorn asked when the construction would start if the project was approved and Mr. Locke estimated the start date near summer. He stated the project was unique because the firm would have to build trailers and set them up for the bank to continue operations on-site. Mr. Lawhorn asked if the retail would be off Main Street and Mr. Locke replied it would have frontage on Main Street. Mr. Lawhorn asked for an example of a 1,500 square foot building and Mr. Locke answered that Roots Kitchen was 2,500 square feet, Jimmy John’s was 1,500, Bloom was 1,500, and Formal Affairs was around 2,300. Mr. Lawhorn thought the biggest barrier to affordable housing was the student housing demand and noted the project helped get students downtown to reduce traffic. He thought developing downtown should be done in a respectful manner and thought the project met those needs. During the National League of Cities Conference, Mr. Lawhorn learned of many towns trying to encourage downtown development and noted that Newark was restaurant-heavy and needed different retail options.

Mr. Horning referred to the 0 Paper Mill Road Project and explained the applicant property was different as it was downtown with infrastructure already in place. He asked if the building was historic and Mr. Locke replied that it was not. Mr. Horning asked if the applicants considered continuing demand in student housing and Mr. Locke confirmed. Mr. Locke stated the Delaware Population Consortium estimated the population of the City was 49.8% students so of the 34,000 residents, 17,000 were students. The DPC expected the City to be around 41,000 by 2050 and the student population to be 20,000 so the percentage stayed the same. He described the DPC as a reliable source that considered many data points and claimed the firm was comfortable with the numbers for the next thirty years. Mr. Horning asked if UD had a decline in enrollment, was the property adaptable to senior housing. Mr. Locke answered there were always population changes in cities and his firm’s buildings were steel erected and constructed which allowed for moving walls and redesigning apartments. He pointed out the apartments did not have six bedrooms.

Mr. Horning referred to security concerns from residents and explained Lang Development properties had cameras. He did not know if there were City-owned cameras in the area and remarked that recent projects allowed City-owned cameras that were monitored by Police. Mr. Locke thought there
was a camera at the end of Tyre Avenue and Main Street. He stated his firm had cameras and cooperated
with the City if access was needed for investigations. Mr. Horning understood that student housing did
not typically meet the parameters for a traffic study but asked about the impact of the bank drive-through
and Mr. Locke replied that drive-through was existing and did not impact the numbers. Mr. Horning
recalled a recommendation to cut down trees if there were too many of one type and Mr. Locke answered
that his firm tried to keep as many trees as possible but noted there were a few in the middle of the
parking lot that would have to be removed.

Ms. Wallace thought the three-story design blended better with the neighborhood and thought
the smaller bedroom sizes would appeal to non-students. Mr. Locke agreed and thought it was helpful to
the community. Ms. Wallace wanted to see the drive-through removed and Mr. Locke explained it was
necessary for the bank. She appreciated the design for specialty retail shops and Mr. Locke stated the area
was promising for retail shops because rent was lower on that side of the City.

Mr. Markham was glad to learn the bank was staying and asked about the trailers. Mr. Locke
explained the bank would be moved to secure trailers to allow for the continuance of business, the old
building would be demolished, and then construction would begin on the new building. Mr. Markham
asked if the trailers were on-site and Mr. Locke confirmed. Mr. Markham asked if any of the homes near
the property were rental units. Mr. Locke responded that two of the three houses were privately-owned,
but he could not contact residents of the third home and did not know. Mr. Markham asked about the
grass in the lower section of the property and Mr. Locke stated that grass was a loose term and described
it as swampy. Mr. Markham stated it was not paved and Mr. Locke confirmed. Mr. Markham did not recall
any Police comment regarding gatherings or parties. Mr. Locke asked if he was referring to the houses or
the open space and Mr. Markham responded that any open space could serve. Mr. Locke noted that 257
had issues with homeless citizens and he did not know if the proposed property had the same experience.
Mr. Markham said it was the bank’s issue and Mr. Locke confirmed. Mr. Markham wanted to make sure
the issue was controlled for the sake of permanent residents and Mr. Locke agreed. Mr. Markham asked
if Mr. Locke was digging up Main Street. Mr. Mascari responded that the current egress from the drive-
through would be slightly relocated so there were plans for modification of the sidewalk and the curbing
to Main Street. He noted that all the utilities were proposed on Tyre Avenue. Mr. Locke stated the plans
would involve the street. Mr. Markham said to keep the construction equipment off Main Street and Mr.
Locke agreed. Mr. Locke commented that having parking on Main Street over the weekends helped local
merchants during the construction phase and stated he was sensitive to the issue.

Ms. Hughes liked the design in relation to Affordable Housing and Mr. Locke repeated the design
called for 16 two-bedrooms and 14 three-bedrooms. Ms. Hughes reiterated the attraction of the location
and asked if the firm intended to commit any of the units to low-income. Mr. Locke responded that
affordable housing was not in the code and the units were market-rate apartments. Mr. Locke reiterated
that his firm did not construct student housing but instead rented apartments. He explained it was a
violation of federal law to say the units were student housing and stated the way to get affordable housing
was to have a diverse stock of residential units. Ms. Hughes asked about Section 8 housing. Mr. Locke
explained that college students could apply for Section 8 Housing and the reason location was a HUD Zone
was due to the amount of college students. He clarified by deeming the project as affordable housing
would attract students. Ms. Hughes asked if the construction would create more traffic on Tyre Avenue
and Mr. Locke did not think it would as students tended to use their cars on the weekend instead. He
noted a potential increase with the commercial tenants. Ms. Hughes asked if there had been community
meetings to discuss traffic and Mr. Locke stated they had only spoken to the adjoining properties.

Mr. Clifton asked Mr. Bilodeau if the plan was approved that evening, would it be subjected to
the 2012 International Building Code guidelines even though Council had plans to discuss the 2018 IBC.
Mr. Bilodeau confirmed the plans would be under the 2012 IBC if approved that evening. Mr. Clifton asked
about transfer tax and Mr. Locke confirmed there would be a transfer tax. Mr. Clifton asked about the
parking numbers with a reduction from 42 units to 30 units and decrease of 27 parking spaces. Mr. Locke
answered the plan had some four-bedroom units which were not included in the current plan. Mr. Clifton
asked about the remote parking and Mr. Locke answered the spots were at Brian Ferry’s law office. Mr.
Clifton referred to the required amount of parking for a specific business use and asked how taking four
spaces from Mr. Ferry would impact the business. Mr. Locke replied that it would not impact the business
as the lot was large and Mr. Ferry was semi-retired. Mr. Clifton asked why the area was not considered
remote parking for business use with the aim to keep apartment parking on-site. Mr. Locke replied the intent
was to have the retail employees use the off-site parking to allow for customer parking on-site.

Mr. Clifton addressed the issue of population. He noted that UD was a State institution and would
always be in high demand as such. He understood the decline in nuclear family reproduction rates but
stated the upcoming census could report that Delaware increased from 900,000 residents to 1 million. He
said the upside was that the State would get a second representative in Congress but if that was the case, the State was not attracting retirees. He asked Mr. Locke if there were any numbers that suggested younger families were coming to Delaware who had not yet had children. Mr. Locke said when he moved to the area, there were roughly 600,000 people in the State of Delaware. He stated the Wall Street Journal reported a shift in higher education but noted the shift would be in the D2 and D3 levels and larger state institutions understood how to recruit. He said that UD had 26,000 applicants and would have the same the next year. He acknowledged that the trend was changing but was sure UD would remain. Mr. Clifton liked the idea of two and three bedrooms because they were marketable to different demographics. Mr. Locke agreed and stated the downtown rental market called for smaller units.

Mr. Clifton asked if the location had internal cameras and Mr. Locke replied there were internal and external cameras. He stated cameras were pointed at the parking lot, the interior parking lot, and the hallways of the apartment building and the stairwells. Mr. Clifton remarked on the cameras catching a package thief at another location and Mr. Locke agreed that the cameras were an effective management tool. Mr. Clifton noted that any building or trailer in place over six months must have sprinklers and Mr. Locke was aware. Mr. Clifton understood the firm planned to save as many trees as possible and asked what other buffer was planned. Mr. Locke stated they often used Knock Out rose bushes to deter cut throughs but would also use crepe myrtle and poplars and spent significantly on landscaping. Mr. Clifton explained certain types of trees had a greater propensity in noise reduction.

Mr. Clifton invited the public to address any of the four agenda items as a second reading.

Tina Jackson, District 2, said she had great respect for the developers. She asked why there were three places for the outside bank tellers in the presentation and if it was an indication of more business. Mr. Locke explained the third one was for traffic to go through. Ms. Jackson noted the traffic could exit on Tyre Avenue and expressed her displeasure at Tyre Avenue becoming commercial. She did not understand why the empty lane could not be eliminated unless it was a fire lane and was concerned with the amount of traffic the property was attracting. Mr. Locke explained the plans reflected requests from the Building Department. Ms. Jackson was not looking forward to that end of Main Street becoming a sea of restaurants and party places because it was historically residential. She noted the retail spaces could become any type of business because there were no deed restrictions. She stated when Lang developed the Main Street Courtyard, the community asked to have it deed restricted from the sale of alcohol. She feared if the property became a bar, traffic would increase at all hours. She wanted to see the building and any further properties deed restrict the sale of alcohol. She admitted she was concerned about traffic. She reported the traffic light on Delaware favored Delaware Avenue, not Tyre Avenue, and traffic backed up considerably.

Paul Tillman, District 2, stated he was a new resident of Newark but had lived in Ellicott City, Maryland. He referred to the flooding issue in Ellicott City and reported one of the factors in the flooding was development covering permeable grassy areas. He hoped that Council kept developers to code and illustrated the potential dangers of flooding.

Jean White, District 1, admitted she did not live on Tyre Avenue but had driven on it before. She preferred a two-story building but thought a three-story building was acceptable on Main Street. She was concerned with the part of the building on Tyre Avenue and thought people would be shocked at how the building would tower over the street but then described the law building across Tyre as only two and a half stories. She then referred to the three-story proposed building as massively tall. Ms. White described the current setback of the building as pleasant. She commented the current property followed the plan under BB zoning and did not have to be set back as much as central business but thought the building should be set back more on Tyre Avenue. She referred to comments from Will Hurd at the Planning Commission meeting on October 1 who expressed a desire for a setback. She presumed on the operating hours of the bank and wondered if the available spots could be used for visitors to apartment residents. She noted the increased parking and hoped the speed limit would be enforced.

Mr. Clifton returned the discussion to the table.

Mr. Locke responded the drive-through was required by code and explained that it served as another access point for people exit on Main Street as opposed to sitting at the light on Tyre Avenue. He revealed that the State required any redevelopment to improve storm water management of the property by fifteen percent. Mr. Locke informed Ms. White that the three-story design was code complaint and that Mr. Hurd voted in favor of the project. He noted the sidewalks would be expanded and reported that the sidewalks on Main Street were currently five feet and most of the frontage would be sixteen feet. He revealed the corner portion of Tyre Avenue would be around fourteen feet wide and would decrease to a residential sidewalk of five feet.
Mr. Clifton asked Mr. Locke regarding the alcohol issue. Mr. Locke explained the firm tended to not deed restrict business uses because it was not favorable to banks. Mr. Clifton asked why it was a concern to banks and Mr. Locke responded that banks cared about the flexibility of leasing commercial space. He believed the retail area would be for a specialty store but could not agree to a deed restriction. Mr. Bilodeau interjected that businesses would need a special use permit for an alcohol license and Ms. Gray confirmed that it would require a separate hearing. Mr. Locke also noted a restaurant would have to meet parking requirements. Mr. Clifton said Council controlled alcohol permits through zoning beginning in the late 1990's.

Mr. Horning asked if customers could enter the bank from Main Street and Mr. Locke confirmed. Mr. Horning asked about the retail customer and Mr. Locke answered it was to be determined. Mr. Horning asked if there was UD bus service for the area and Mr. Locke explained his firm contracted with UD to stop at other properties and was more than happy to speak to UD about creating an additional stop. Mr. Horning asked about the back up on Delaware Avenue and the intersection on South College. Mr. Coleman admitted it backed up on Delaware and asked Mr. Horning if he meant Library Avenue. Mr. Horning meant Library Avenue. Mr. Horning noted considerable back up during peak hours and explained that employees would be leaving the bank at 5 pm and would not be drawing clients in at that time and banks generally opened late and would therefore miss peak morning hours. He thought if the property became student housing, the residents would use alternative transportation and expected mid-day, evening, and weekend traffic. Mr. Coleman was not concerned the property would aggravate peak traffic issues on Delaware Avenue. Mr. Horning asked if Tyre Avenue was a DelDOT road and Mr. Coleman answered it was maintained by the City but DelDOT operated the light. Mr. Horning informed Ms. Jackson if Tyre Avenue had issues with the light, it might be possible to work with DelDOT on retiming the light. Mr. Coleman confirmed and believed DelDOT was reconfiguring all the signal timing on Delaware Avenue as part of the Cycle Track Project to allow for improved bike speed and reduce delay in the opposite direction. He said the timing on Delaware Avenue was limited by the signal cabinets in most places and updating offered more flexibility. Mr. Horning asked if the special use permit was giving the applicants apartments as opposed to office space and Mr. Locke confirmed.

Ms. Wallace asked about bicycle parking and Mr. Locke informed City code required bike spaces. Ms. Wallace asked how many and Mr. Clifton said there were eighteen indicated on the plan.

Mr. Clifton informed Council would vote in the order of 7B, 7C, 8A, and 8B, and only 8A was a non-individual vote where the rest were individual votes.

MOTION BY MS. HUGHES, SECONDED BY MR. HORNING: TO APPROVE BILL 19-29 TO AMEND THE COMPREHENSIVE PLAN AND FOR REASONS SET FORTH IN THE PLANNING DEPARTMENT’S REPORT PLUS BECAUSE THE COMPREHENSIVE PLAN DESIGNATES THE PROPERTY AS BEING RECOMMENDED FOR TRANSITION TO MIXED-URBAN.

Ms. Hughes voted in favor for the reasons set forth in the motion.

Mr. Markham supported the changes to the Comprehensive Plan because it should not have a negative impact on adjacent and nearby properties and because the proposed use did not conflict with the development pattern in the nearby area.

Ms. Wallace supported the changes for reasons stated by Mr. Markham.

Mr. Horning supported the changes for the reasons stated by Mr. Markham.

Mr. Lawhorn supported the changes for the reasons stated by Mr. Markham.

Mr. Clifton voted in favor for the reasons previously stated by Mr. Markham.

MOTION PASSED. VOTE:  6 to 0.

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

(ORDINANCE NO. 19-29)

20.  7-C.  BILL 19-30 – AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE BY REZONING FROM BL (BUSINESS LIMITED) TO BB (CENTRAL BUSINESS
DISTRICT) 1.135 ACRES LOCATED AT 287 EAST MAIN STREET (SEE ITEMS 7-B, 8-A AND 8-B)

2:27:37

MOTION BY MS. WALLACE, SECONDED BY MR. MARKHAM: TO APPROVE BILL 19-30, AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE, BY REZONING FROM BL (BUSINESS LIMITED) TO BB (CENTRAL BUSINESS DISTRICT) FOR THE PROPERTY AT 287 EAST MAIN STREET.

Ms. Wallace voted in favor of the bill for the reasons outlined in the Planning Department’s memo.

Mr. Horning approved the change for the reasons stated by Ms. Wallace.

Mr. Lawhorn supported the ordinance for reasons outlined in the Planning Department’s memo.

Mr. Markham supported the zoning change for the reasons stated by Ms. Wallace.

Ms. Hughes supported the motion based on the comments by Ms. Wallace.

Mr. Clifton supported the motion based on the comments by Ms. Wallace.

MOTION PASSED. VOTE: 6 to 0.

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

Nay – 0.

Absent – Hamilton.

(ORDINANCE NO. 19-30)

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

A. Request of Lang Development Group for a Major Subdivision of 1.135 +/- Acres to Demolish the Existing Single-Story Bank Structure and Constructing a Three-Story Mixed-Use Building with Parking and 6,000 Square Feet of Commercial Space on the First Floor and 16 Two-Bedroom and 14 Three-Bedroom Units for a Total of 30 Apartments on the Second and Third Floors at the Property Located at 287 East Main Street (Agreement and Resolution Attached) (See Items 7-B, 7-C and 8-B)

2:29:43

MOTION BY MS. HUGHES, SECONDED BY MR. LAWHORN: TO APPROVE THE MAJOR SUBDIVISION FOR REASONS SET FORTH IN THE PLANNING DEPARTMENT REPORT AND FOR REASONS OF THE PRESENTATION BY LANG DEVELOPMENT GROUP FOR A MAJOR SUBDIVISION OF 1.135 +/- ACRES TO DEMOLISH THE EXISTING SINGLE- STORY BANK STRUCTURE AND CONSTRUCTING A THREE-STORY MIXED-USE BUILDING WITH PARKING AND 6,000 SQUARE FEET OF COMMERCIAL SPACE ON THE FIRST FLOOR AND 16 TWO-BEDROOM AND 14 THREE-BEDROOM UNITS FOR A TOTAL OF 30 APARTMENTS ON THE SECOND AND THIRD FLOORS AT THE PROPERTY LOCATED AT 287 EAST MAIN STREET.

MOTION PASSED. VOTE: 6 to 0.

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

Nay – 0.

Absent – Hamilton.

(RESOLUTION NO. 19-JJ)

22. 8-B. REQUEST OF LANG DEVELOPMENT FOR A SPECIAL USE PERMIT FOR 30 APARTMENTS IN THE BB DISTRICT AT THE PROPERTY LOCATED AT 287 EAST MAIN STREET

2:31:03

MOTION BY MS. HUGHES, SECONDED BY MR. LAWHORN: TO APPROVE THE REQUEST OF LANG DEVELOPMENT FOR THE SPECIAL USE PERMIT FOR 30 APARTMENTS IN THE BB DISTRICT AT THE PROPERTY LOCATED AT 287 EAST MAIN STREET.

Ms. Hughes voted in favor for the following reasons: the plan did not adversely affect the health or safety of persons residing or working within the City or within one mile of Newark boundaries and
within the State of Delaware, it was not detrimental to public welfare or injurious to property or improvements within the City of Newark boundaries or within one mile of Newark boundaries and within the State of Delaware, and it was not in conflict with the purposes of the Comprehensive Development Plan of the City.

Mr. Markham voted in favor based on reasons stated by Ms. Hughes.
Ms. Wallace voted in favor based on reasons stated by Ms. Hughes.
Mr. Horning voted in favor based on reasons stated by Ms. Hughes.
Mr. Lawhorn voted in favor based on reasons stated by Ms. Hughes.
Mr. Clifton voted in favor based on reasons stated by Ms. Hughes.

MOTION PASSED. VOTE:  6 to 0.
Aye – Clifton, Horning, Hughes, Lawhorn, Markham, Wallace.
Nay – 0.
Absent – Hamilton.

23.  7-D. BILL 19-31 – AN ORDINANCE AMENDING CHAPTER 19, MINORS, AND CHAPTER 22, POLICE OFFENSES, CODE OF THE CITY OF NEWARK, DELAWARE, TO UPDATE ALCOHOL AND MARIJUANA CITATIONS FOR INDIVIDUALS UNDER THE AGE OF 21 TO CIVIL CITATIONS FOR THE FIRST TWO OFFENSES TO MATCH DELAWARE STATE CODE (20 MINUTES)

2:33:26
Ms. Bensley read the proposed bill into the record.

MOTION BY MS. WALLACE, SECONDED BY MR. LAWHORN: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR BILL 19-31.

Mr. Bilodeau explained the State Legislature passed legislation that decriminalized underage possession of alcohol so that the first two offenses for a person between 18 and 21 was now a civil violation. He reported the marijuana laws were also changed where before the law was one civil violation between 18 and 21 and was now two civil violations. He stated the proposed amendment was to bring the City in line with the State statute. Mr. Clifton asked if it was a house-keeping ordinance and Mr. Bilodeau confirmed.

Mr. Lawhorn was in support of the concept and commented the judge did have flexibility so that fines could be reduced or increased to set limits. Mr. Bilodeau advised the language to be amended to state “up to” where the wording was “no less than”. Mr. Lawhorn claimed he supported the change.

Mr. Horning also supported the language change to “up to” and reiterated the City was conforming to the State code. Mr. Bilodeau stated UD police were citing people civilly under State code whereas Newark Police could only cite criminally and explained people in the City were getting different treatment depending on the arresting officer.

Ms. Wallace agreed and would make an amendment to add the language of “up to” where necessary.

Mr. Markham had no objections to the change in language but believed the Alderman had discretion.

Ms. Hughes had no objections.

Mr. Clifton supported with the proposed language change.

The Chair opened the floor to public comment.

Caitlin Olsen, UD representative, checked with the Office of Student Conduct and Newark Police Department, and reported UD was able to get the list of civil citations from the City so they could be put through the system at UD.
The Chair brought the discussion back to the table.

Ms. Wallace wanted to clarify that changing the language to “up to” was not a substantial change and Mr. Bilodeau did not feel it was a substantial change because the Alderman had the discretion already.

MOTION BY MS. WALLACE, SECONDED BY MR. LAWHORN: TO AMEND CHANGE THE LANGUAGE TO “UP TO” IN THE FIVE PLACES WHEREVER DOLLAR AMOUNTS ARE LOCATED.

MOTION PASSED. VOTE: 6 to 0.

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

MOTION BY MS. WALLACE, SECONDED BY MR. LAWHORN: TO APPROVE AN ORDINANCE AMENDING CHAPTER 19, MINORS, AND CHAPTER 22, POLICE OFFENSES, CODE OF THE CITY OF NEWARK, DELAWARE, TO UPDATE ALCOHOL AND MARIJUANA CITATIONS FOR INDIVIDUALS UNDER THE AGE OF 21 TO CIVIL CITATIONS FOR THE FIRST TWO OFFENSES TO MATCH DELAWARE STATE CODE.

MOTION PASSED. VOTE: 6 to 0.

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

(ORDINANCE NO. 19-31)

24. Meeting adjourned at 9:40 p.m.

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

/ns