

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

August 23, 2021

Those present at 6:15 p.m.:

Presiding: Deputy Mayor, District 6, Travis McDermott
District 1, John Suchanec
District 2, Sharon Hughes
District 3, Jay Bancroft
District 4, Dwendolyn Creecy
District 5, Jason Lawhorn

Absent: Mayor Jerry Clifton

Staff Members: City Manager Tom Coleman
City Secretary Renee Bensley
City Solicitor Paul Bilodeau
Chief Communications Officer Jayme Gravell
Chief Purchasing & Personnel Officer Jeff Martindale
Finance Director David Del Grande
Deputy Finance Director Jill Hollander
Planning and Development Director Mary Ellen Gray

1. Mr. McDermott called the meeting to order at 6:15 p.m.

2. **EXECUTIVE SESSION**

A. Executive Session pursuant to 29 *Del. C.* §10004 (b) (3), (4) and (6) for the purposes of discussion of the activities of any law-enforcement agency in its efforts to collect information leading to criminal apprehension; 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; and discussion of the content of documents, excluded from the definition of “public record” in § 10002 of this title where such discussion may disclose the contents of such documents.

MOTION BY MR. LAWHORN, SECONDED BY DR. BANCROFT: THAT COUNCIL ENTER EXECUTIVE SESSION PURSUANT TO 29 *DEL. C.* §10004 (B) (3), (4) AND (6) FOR THE PURPOSES OF DISCUSSION OF THE ACTIVITIES OF ANY LAW-ENFORCEMENT AGENCY IN ITS EFFORTS TO COLLECT INFORMATION LEADING TO CRIMINAL APPREHENSION; 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; AND DISCUSSION OF THE CONTENT OF DOCUMENTS, EXCLUDED FROM THE DEFINITION OF “PUBLIC RECORD” IN § 10002 OF THIS TITLE WHERE SUCH DISCUSSION MAY DISCLOSE THE CONTENTS OF SUCH DOCUMENTS.

MOTION PASSED. VOTE: 6 to 0.

Aye – Suchanec, Hughes, Bancroft, Creecy, Lawhorn, McDermott.

Nay – 0.

Absent – Clifton.

3. **RETURN TO PUBLIC SESSION**

A. Potential vote regarding direction to the City Solicitor.

Council exited Executive Session at 7:00 p.m. No action was needed.

4. **SILENT MEDITATION & PLEDGE OF ALLEGIANCE**

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

Mr. McDermott informed that Council needed to add item 5D, Special Department Reports for Virtual Council meetings, to the agenda.

MOTION BY MR. LAWHORN, SECONDED BY MS. CREECY: TO ADD ITEM 5D TO THE AGENDA.

MOTION PASSED. VOTE: 5 to 0.

Aye – Suchanec, Hughes, Creecy, Lawhorn, McDermott.

Nay – 0.

Absent – Bancroft, Clifton.

5. 1. ITEMS NOT ON PUBLISHED AGENDA

- A.** Elected Officials who represent City of Newark residents or utility customers (2 minutes): None

6. 1-B. UNIVERSITY

- (1)** Administration (5 minutes per speaker) (10 minutes): None

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

8. 1-C. CITY MANAGER (10 minutes):

2:35

Mr. Coleman informed Council that the Private Gathering Ordinance was still on the books that would automatically come back into effect restricting private gatherings once Newark either hit 125 cases per 100,000 people or a 6% test positivity rate. He reported that the latest data available from last week was 3.1% and the City's cases were 47 per 100,000. He noted that the State-wide data reported a test positivity rate was already over 7% so if Newark was the same as the rest of the State, the private gathering restrictions would already be in place under the ordinance. His intent was to inform Council to determine if a discussion was necessary to discern whether Council wanted to reenact the restrictions if the City hit the levels, if Council desired a different set of numbers, or if Council wanted to shelve the discussion and return to it if necessary in the fall.

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

3:54

Mr. Suchanec:

- Informed that he spoke to Mr. Coleman on enhancing the tree replenishment program and acknowledged the City was part of Tree USA. He believed the City was losing trees through disease and was concerned there was no program to replenish the trees. He wanted a rule that if a tree was removed, it would be replaced.
- Supported reinstating the gathering ordinance if the City hit the numbers.

Ms. Hughes:

- Asked if the numbers had reversed enough to eliminate the program. Mr. Coleman replied that there was one week, June 13-19, where both numbers were zero, but the City had since trended upwards. He noted the end of July was 4.4% and the number was currently 3% but he assumed more people were testing because the cases per 100,000 had continually increased. Ms. Hughes asked if Mr. Coleman thought the current trend was alarming or if it should be watched. Mr. Coleman wanted to monitor and reminded that the City was able to use an emergency ordinance to put the gathering restrictions in place but were unable to use an emergency ordinance to take them out. He clarified that if the ordinance went into effect and Council realized it was unwanted, it would be in effect for a month before it could be removed. He noted there were significant differences between this fall and last: UD had a vaccine mandate for students and while the City's vaccination rates were lower than the State, the numbers were considerably better than the State. He reiterated that while there would be a huge influx of students, nearly all would be vaccinated. He admitted the Delta variant was much different and thought it was inevitable that the percentage would reach 6% considering the situation in Delaware and neighboring states. He thought it was likely that the ordinance would be in effect at some point in the fall, the question was whether Council wanted it to happen.

Dr. Bancroft:

- Commended the City's environmental and vaccine efforts. He thought incentives could be positive and that the \$30,000 from the American Rescue Plan Act (ARPA) could be well-spent. He noted ARPA could not be spent on environmental issues.
- Was pleased there would be action that evening on bird die off.

- Was pleased the City was discussing transport and development planning but was alarmed at the volume of development the City was expecting as routine in the near future.
- Had no insight or direction to offer on Mr. Coleman’s point.

Ms. Creecy:

- Asked if the discussion was that vaccination rate would increase in the fall. Mr. Coleman confirmed and said he was unsure if the State would update the numbers with new residents coming from other areas, but the current rate was 50% with 20,000 residents and 15,000 students would soon come to the area with a nearly 100% vaccination rate. He reiterated that the vaccination rate of the student body would exceed that of the general public. Ms. Creecy suggested shelving the discussion until the rate was 6% and then reenact.

Mr. Lawhorn:

- Reminded the ordinance was enacted far ahead of the creation of the vaccine. He wanted to eliminate the existing ordinance and reevaluate if Council wanted to do something different with more information. He noted the ordinance was more aggressive than the rest of the State.

Mr. McDermott:

- Noted that when Council enacted the ordinance, it was under a State of Emergency enacted by the Governor and pointed that the ordinance stated “during a COVID State of Emergency” which had been amended to a public health emergency. He asked Mr. Bilodeau if the ordinance was still in effect and acknowledged ruling from the Attorney General’s Office that public health emergencies could be construed or ruled as a State of Emergency. He agreed with Mr. Lawhorn that the ordinance should be dissolved and revisited based upon the current situation at Council’s discretion. He asked Mr. Bilodeau to investigate whether the ordinance was still valid.

Mr. Bilodeau wanted to review the language of the ordinance and agreed that the Attorney General’s office was making interpretations that seemed like the State of Emergency had returned. He would report back to Mr. McDermott. Mr. McDermott noted the Attorney General’s opinion was not law and assumed the interpretation could be tested in court. He preferred to craft another ordinance to be on the right side of law than to try to fight when losing was a possibility.

10. 1-E. PUBLIC COMMENT (5 minutes per speaker) (10 minutes): None

11. 2. APPROVAL OF CONSENT AGENDA: (1 minute)

- A.** Approval of Council Meeting Minutes – August 9, 2021
- B.** Receipt of Alderman’s Report – August 9, 2021
- C.** ***First Reading – Bill 21-25 – An Ordinance Annexing and Zoning to BC (General Business) and SFHA (Special Flood Hazard Area) 6.05 Acres Located at 1105 Elkton Road – *Second Reading – September 27, 2021****
- D.** Recommendation for a Budget Amendment Relative to COVID-19 Vaccination Incentives for City Staff

14:00

Ms. Bensley read the consent agenda into the record.

MOTION BY MR. LAWHORN, SECONDED BY MS. CREECY: TO APPROVE THE CONSENT AGENDA AS PRESENTED.

MOTION PASSED. VOTE: 6 to 0.

Aye – Suchanec, Hughes, Bancroft, Creecy, Lawhorn, McDermott.

Nay – 0.

Absent – Clifton.

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

- A.** Reappointment of Willard Hurd to the District 2 Position on the Planning Commission for a Three-Year Term to Expire September 15, 2024 (5 minutes)

14:53

Ms. Hughes noted that Mr. Hurd had unselfishly and consistently served the City in various capacities with his broad base of experience. She credited Mr. Hurd for his willingness to offer his knowledge to improve the lives of Newark residents and recommended him to the Planning Commission once again.

The Deputy Mayor opened the table to Council comments.

Mr. Lawhorn valued Mr. Hurd's comments and opinions and held them in high regard just from his background and experience. He thought it was particularly valuable for the Planning Commission to have Mr. Hurd's knowledge because planning was one of the more complex concepts to grasp.

Ms. Creecy thanked Mr. Hurd for his service and reiterated his wealth of knowledge.

Dr. Bancroft agreed with previous Council comments.

Mr. Suchanec welcomed Mr. Hurd.

Mr. McDermott thanked Mr. Hurd and was pleased the Planning Commission would continue to have a member with so much experience.

Mr. Hurd acknowledged that he had served on the Planning Commission for many years and looked forward to serving at least one more term. He was still enjoying his service and thought there were a number of items that the Commission could address.

There was no public comment and the Deputy Mayor returned the discussion to the table.

MOTION BY MS. HUGHES, SECONDED BY MR. LAWHORN: THAT COUNCIL REAPPOINT WILLARD HURD TO THE DISTRICT 2 POSITION ON THE PLANNING COMMISSION FOR A THREE-YEAR TERM TO EXPIRE SEPTEMBER 15, 2024

MOTION PASSED. VOTE: 6 to 0.

Aye – Suchanec, Hughes, Bancroft, Creecy, Lawhorn, McDermott.

Nay – 0.

Absent – Clifton.

13. 3-B. APPOINTMENT OF MARK SERVA TO THE DISTRICT 4 POSITION ON THE PLANNING COMMISSION FOR A THREE-YEAR TERM TO EXPIRE SEPTEMBER 15, 2024 (5 MINUTES)

20:19

Ms. Creecy explained that met Mr. Serva during her campaign. She found him to be an outstanding individual whose wife was very concerned with education and shared that Mr. Serva held a PhD and was a member of the Financial Review Board for Appoquinimink School District and the Rectors for the Cancer Care Connection. She continued that as a relatively new resident of the City, Mr. Serva was concerned about the growth in the area, especially in rental properties. He wanted to learn more about the process and play a role in effective and responsible growth. She welcomed Mr. Serva and thanked him for his willingness to serve.

Mr. Serva looked forward to serving on the Planning Commission. He noted his relatively recent move to Newark and his desire to serve the community.

The Deputy Mayor opened the table to Council comment.

Mr. Suchanec did not personally know Mr. Serva but welcomed him to the Commission.

Mr. Lawhorn thanked Mr. Serva for his service and for taking the time to work on the Commission given his numerous activities within the City.

Dr. Bancroft thanked Mr. Serva for his willingness to serve and looked forward to ideas on conserving habitat in Newark.

Ms. Hughes thanked Mr. Serva for his willingness to serve and said that his willingness to share his knowledge with the City was a testament to his character.

Mr. McDermott thanked Mr. Serva and considered the Planning Commission one of the City's most important Commissions.

There was no public comment and the Deputy Mayor returned the conversation to the table.

MOTION BY MS. CREECY, SECONDED BY MR. LAWHORN: THAT COUNCIL APPOINT MARK SERVA TO THE DISTRICT 4 POSITION ON THE PLANNING COMMISSION FOR A THREE-YEAR TERM TO EXPIRE SEPTEMBER 15, 2024.

MOTION PASSED. VOTE: 6 to 0.

Aye – Suchanec, Hughes, Bancroft, Creecy, Lawhorn, McDermott.

Nay – 0.

Absent – Clifton.

14. 3-C. APPOINTMENT OF STU MARKHAM TO THE DISTRICT 6 POSITION ON THE REAPPORTIONMENT COMMITTEE FOR A TERM TO EXPIRE UPON COMPLETION OF THE 2021 REAPPORTIONMENT (5 MINUTES)

25:00

Mr. McDermott informed that Mr. Markham was a previous Deputy Mayor and served on City Council for 14 years. Mr. McDermott felt that Mr. Markham knew the district boundaries and needs very well and appreciated his willingness to represent District 6 once more.

Mr. Markham was pleased to assist and offered Ms. Bensley documents from the last reapportionment.

The Deputy Mayor opened the table to Council comments.

Mr. Suchanec welcomed Mr. Markham and thanked him for his efforts.

Mr. Lawhorn welcomed Mr. Markham and agreed that he had the knowledge and ability. He credited Mr. Markham for his talent in conflict resolution.

Mr. Suchanec revealed that he had confused Districts 1 and 6 and actually campaigned in the wrong district. He believed that continuity needed to be applied to reapportionment because it seemed like there was zigzagging to accomplish certain goals. He thought it would be better to consider what constituted a neighborhood. Mr. Markham suggested that Mr. Suchanec review older documentation because the directions were to keep the boundaries as close as possible, keep the district representatives in the districts, and a few other directives. He continued that it was necessary to minimize change without created a disproportionate population in one district.

Dr. Bancroft thanked Mr. Markham for his service.

Ms. Hughes knew that Mr. Markham would do an excellent job and thanked him for taking on the challenge.

Ms. Creecy thanked Mr. Markham for offering his expertise.

There was no public comment and the Deputy Mayor returned the discussion to the table.

MOTION BY MR. LAWHORN, SECONDED BY MS. CREECY: THAT COUNCIL APPOINT STU MARKHAM TO THE DISTRICT 6 POSITION ON THE REAPPORTIONMENT COMMITTEE FOR A TERM TO EXPIRE UPON COMPLETION OF THE 2021 REAPPORTIONMENT.

MOTION PASSED. VOTE: 6 to 0.

Aye – Suchanec, Hughes, Bancroft, Creecy, Lawhorn, McDermott.

Nay – 0.

Absent – Clifton.

15. 3-D. APPOINTMENT OF JAMES CREQUE TO THE DISTRICT 4 POSITION ON THE BOARD OF ETHICS FOR A FIVE-YEAR TERM TO EXPIRE FEBRUARY 15, 2026 (5 MINUTES)

30:15

Ms. Creecy informed Council that Mr. Creque had served ten years on various parent associations, lived in New York for six years and served six years on a community organization in the Bronx, served with Bronx District Attorney ADA Training, and was an excellent listener who had broad experience in dealing with matters of integrity and ethics, and was usually able to deescalate conflict.

Mr. Creque had been a resident for nearly nine years and enjoyed the area. He hoped that he was able to contribute something significant to the service with those who ran the City.

The Deputy Mayor opened the table to Council comments.

Ms. Hughes and Dr. Bancroft had no questions and thanked Mr. Creque for his service.

Mr. Lawhorn noted that prior to the pandemic, Mr. Creque attended many Council meetings offered interesting and helpful insight.

Mr. Suchanec appreciated Mr. Creque's time and thanked him for helping the City.

Mr. McDermott echoed previous Council comments.

There was no public comment and the Deputy Mayor returned the discussion to the table.

MOTION BY MS. CREECY, SECONDED BY MR. LAWHORN: THAT COUNCIL APPOINT JAMES CREQUE TO THE DISTRICT 4 POSITION ON THE BOARD OF ETHICS FOR A FIVE-YEAR TERM TO EXPIRE FEBRUARY 15, 2026.

MOTION PASSED. VOTE: 6 to 0.

Aye – Suchanec, Hughes, Bancroft, Creecy, Lawhorn, McDermott.

Nay – 0.

Absent – Clifton.

16. 3-E. APPOINTMENT OF SCOTT BRADLEY TO THE DISTRICT 3 POSITION ON THE REAPPORTIONMENT COMMITTEE FOR A TERM TO EXPIRE UPON COMPLETION OF THE 2021 REAPPORTIONMENT (5 MINUTES)

33:41

Dr. Bancroft noted that Mr. Bradley had a background in STEM and no conflicts of interest. He checked all of Mr. Bradley's references and considered him to be a great candidate.

Mr. Bradley looked forward to working with the members and learning about the Committee.

The Deputy Mayor opened the table to Council comments.

Mr. Suchanec, Mr. Lawhorn, Ms. Hughes, Ms. Creecy, and Mr. McDermott thanked Mr. Bradley for his service

There was no public comment and the Deputy Mayor returned the discussion to the table.

MOTION BY DR. BANCROFT, SECONDED BY MR. LAWHORN: THAT COUNCIL APPOINT SCOTT BRADLEY TO THE DISTRICT 3 POSITION ON THE REAPPORTIONMENT COMMITTEE FOR A TERM TO EXPIRE UPON COMPLETION OF THE 2021 REAPPORTIONMENT.

MOTION PASSED. VOTE: 6 to 0.

Aye – Suchanec, Hughes, Bancroft, Creecy, Lawhorn, McDermott.

Nay – 0.

Absent – Clifton.

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

18. 5. SPECIAL DEPARTMENT REPORTS:

- A. FY2020 Annual Comprehensive Financial Report Presentation – Finance Director/CliftonLarsenAllen (30 minutes)**

35:58

Mr. Del Grande presented the 2020 Annual Comprehensive Financial Report which was published to comply with the provisions of Section 807 of the City Charter and intended to provide financial data to the tax and utility payers, bond holders, Federal and State agencies, and the financial community at large. He explained that the financial statements had been audited by CliftonLarsenAllen LLP (CLA), an independent firm of certified public accountants. CLA provided an unmodified opinion, which was the preferred outcome of an independent audit, on the City's financial statements for the year ended 2020.

He thanked Deputy Director Jill Hollander for leading the team in the preparation of the financial statements, and the rest of the accounting staff for all their hard work in the day-to-day operations of the Finance Department. He introduced Bill Early, Principal of CLA, to discuss the 2020 audit results.

Mr. Early credited Ms. Hollander for being a workhorse on their first virtual audit. He admitted it was more difficult than the normal audit and reported that CLA was able to provide the issue before June 30th so staff could submit it to the Governor's Finance Officer Association for a certificate of excellence. He continued that Alex Walther assisted in the audit as well as CLA's IT management team and a core government services team located in Timonium, Maryland. He confirmed that the group specialized in government audits.

Mr. Early informed that CLA used an integrated team of IT and government auditors to review the books and records to perform a risk-based analysis. The team considered risk assessment standard requirements which meant they assessed high risk areas and transactions over the materiality threshold but did not review every number. He continued that the team had frequent formal status updates with finance, Councilmembers, the City Manager, and the Mayor to address any concerns. He shared that the team incorporated the use of data analytics by reviewing trend analysis year to year but noted the year's spending was different given the pandemic which was considered in the testing.

Mr. Early repeated that the City received an unmodified opinion, the highest level of assurance the team was able to give on financial statements. CLA also issued a report on internal control over financial reporting, compliance, and other matters based on an audit of financial statements performed in accordance with government auditing standards. CLA noted no material weaknesses or significant deficiencies and the report was included as Exhibit A of the presentation and emphasized that the City had received no material weaknesses or significant deficiencies for years which was a credit to the Finance Department for having proper segregation of duties and internal controls in place. He noted that when the City went to remote work during the pandemic, the Finance Department adapted to ensure that no shortcuts were taken. He shared that the City had Federal expenditures that were in excess of \$750,000 which triggered program testing for the Coronavirus Relief Funds (CRF) and the Drinking Water Revolving Fund. He informed that the Single Audit Report was ready for review and would be issued by August 31 but was not due until next year because of extensions. He reiterated that the Single Audit Report currently had no findings.

Mr. Early informed that the American Institute of Certified Public Accountants (AICPA) issued statements that CLA was required to review with the City. He noted that Council was considered governance and the formal communication was Exhibit B in the presentation. He stated that the financial statements were the responsibility of management and the only portion that CLA owned were the three pages of the Independent Auditors Opinion, all else was prepared by management. He reiterated that CLA reviewed and audited the statement. He confirmed the statement was issued in accordance with Generally Accepted Accounting Principles (GAAP) and there were no significant issues discussed with management prior to CLA's retention as auditors nor was CLA informed of any consultations management had with other auditors. CLA met with the Finance Department to discuss any new accounting standards of which there were two: Governmental Accounting Standards Board (GASB) 84 and 97. He shared that 97 had more of an impact than 84 because it removed reporting requirements for certain funds.

Mr. Early explained that financial statements were required to have certain estimates and the management team had to review the estimates year to year to ensure that there were no real changes while CLA compared the estimates to the going trend in the government marketplace. The judgment and estimates included depreciation of capital assets, pension liability assumptions, other post-employment benefits (OPEB) liability assumptions, liability for self-insurance claims, and allowance for doubtful accounts. CLA concluded that there was a reasonable basis for significant judgments and no material adjustments were needed to the estimates. He continued that there were no particularly sensitive financial statement disclosures and there were no significant difficulties encountered during the audit. Neither the Finance Department nor CLA notified one another of any financial statement misstatements detected as a result of audit procedures. He noted that did pass on audit adjustments, presented as Exhibit B, which meant that it did not come up to the threshold of being material to the financial statements and CLA could pass per standards. He continued that the situation usually happened because the Finance Department was working on the financial statements and CLA discovered something that should have been recorded but would not change the auditor's report so CLA could pass on booking the adjustment.

Mr. Early confirmed that the representation letter was signed by management and there were no disagreements with management on financial accounting, reporting matters, auditing procedures, or other matters during the course of the audit and CLA did not note any other significant findings or issues. He informed that GASB 87, regarding leases, would be added for 2022 financial statements.

The Deputy Mayor opened the table to Council comments.

Ms. Creecy and Ms. Hughes thanked Mr. Early and had no questions.

Dr. Bancroft suggested a discussion on how it was decided that the City would do fixed income and international equities on page 100 of the report. He did not understand the misstatements and the Iron Curtain method.

Mr. Lawhorn assumed the report indicated that the City's budget process was working well. He thanked Mr. Del Grande and Ms. Hollander for their effort.

Mr. Suchanec noted that the report indicated the City was in compliance and following the required practices and Mr. Early confirmed.

Mr. McDermott thanked CLA for the presentation and the Finance Team. He recalled there was one weakness noted last year in bank collateralization. Mr. Del Grande informed that the issue was taken care of well in advance.

There were no public comments and the Deputy Mayor returned the discussion to the table.

MOTION BY MR. SUCHANEC, SECONDED BY MR. LAWHORN: THAT COUNCIL APPROVE THE FY2020 ANNUAL COMPREHENSIVE FINANCIAL REPORT.

MOTION PASSED. VOTE: 6 to 0.

Aye – Suchanec, Hughes, Bancroft, Creecy, Lawhorn, McDermott.

Nay – 0.

Absent – Clifton.

19. 5-B. RESOLUTION NO. 21- : VACATION OF LAWSON STREET (20 MINUTES)

49:31

Ms. Bensley read the resolution into the record.

Mr. Bilodeau explained that Lawson Street was a road that was abandoned and per City Charter, the City had the power to vacate streets that no longer needed to be streets. He noted that the procedures to vacate were outlined in City Ordinances. He added that the State Code also had provisions on vacating streets that involved DelDOT but noted that DelDOT had no power over City streets or roads unless the City surrendered its power. Per his research, the City never stated that the particular part of Lawson Street had ever been ceded to the State or DelDOT to control. He confirmed the City had the power and authority to vacate the portion of Lawson Street if Council determined it was no longer needed in the City as a street. He informed that street vacations were not commonplace, and Council needed to determine if the section was necessary for street and, if not, they could vote in favor of the resolution. He explained that when streets were vacated, the adjacent property owners were often involved but the City was the initiator for Lawson Street. The resolution included that the vacated portion of Lawson Street would be enclosed, and the City would assume responsibility and ownership for vacated portion. If the resolution passed, a deed would be recorded with the New Castle County Recorder of Deeds and the vacated portion would be assigned a tax map parcel number and added to the City's inventory of owned property.

The Deputy Mayor opened the table to Council comments.

Mr. McDermott asked if the City would still own the street and the adjacent property owners would not assume the property according the resolution. Mr. Bilodeau confirmed that the resolution was written that the City would assume ownership title to the vacated property. Mr. McDermott explained that the issue was brought to his attention by the adjacent property owners because the street was a dead-end street that the City was maintaining with paving and plowing but served no legitimate purpose as it did not connect to the back street as originally proposed. Mr. Coleman confirmed and recalled that at some point, the road connected to Market Street by Dean Drive but was cutoff when the Woolen Way townhouses were constructed. He reiterated that the road served no purpose and was on the City's list to be repave and was consistently pushed to the outyears because it offered the City no value. Mr. McDermott asked what the City would do with the property if it was vacated that evening. Mr. Coleman replied that the realistic choice would be to sell the property as surplus to one of the adjacent properties.

Ms. Creecy asked Mr. Coleman to repeat his answer. Mr. Coleman repeated that the City would look to sell the street as surplus property. Mr. Suchanec asked to whom the City would sell, and Mr. Coleman replied that the City would sell to the highest offer.

Mr. McDermott asked for the questions to resume order and explained that he brought the issue forward because the street served no legitimate purpose and the likelihood was that the adjacent property owners would have the ability to purchase the property if desired however, anyone could purchase the property; the vacation was not specifically for the benefit of the adjacent property owners. He reiterated that the street cost the City money and served no legitimate purpose.

Mr. Coleman presented a map of Lawson Street and described it as a driveway between through the adjacent properties. He repeated that the original intent was for the road to connect to another street, but it did not connect to anything which was why the City wanted the vacation. He emphasized that Lawson Street was very narrow and was a liability on the City's books. He noted that there had once been a house in the area that had a driveway off of Annabelle Street.

Mr. Suchanec asked if the vacation meant that the road would no longer be maintained, and Mr. Coleman confirmed. Mr. Suchanec did not understand why the City would vacate and suggested to cease all maintenance. Mr. Coleman did not believe that the City currently plowed the road. Mr. Suchanec asked if the City wanted the option to sell the street as surplus property. Mr. Coleman confirmed and explained that the vacation was only worthwhile if the City was going to dispose of the property. Mr. Suchanec asked if Lawson Street was used to access any properties. Mr. Coleman replied that there was a property owner in the audience but noted that there was no house currently. Mr. Suchanec noted there was open space on 75% of the adjacent land and asked if the land could be developed and require an access road. Mr. Coleman assumed the property was likely vacant in anticipation of the ability to purchase the land and build a townhouse but noted the property owner was not in the audience.

Mr. Lawhorn asked if notices were sent to the surrounding properties and if any negative feedback was received. Ms. Bensley said there was no negative feedback and clarified that the notification process for a street vacation was different from a typical development in that the notices were only for the properties that were directly adjacent to the street being vacated. She continued that the two properties to the right and left of the street were notified as well as the property that was behind the street on the end but noted that two of the three properties were owned by the same group.

Dr. Bancroft supported vacating the street.

Ms. Hughes had no comments.

Ms. Creecy asked if the three residents all agreed with vacating the area. Mr. Coleman explained that no one had reached out to the City to say otherwise and believed that one or two of the owners were in the audience.

The Deputy Mayor opened the floor to public comment.

Todd Ladutko, 1101 Millstone Drive, was a co-owner of the LLC that owned 22, 24, and 28 Annabelle Street. He informed Council that his associate, Mr. Schweitzer, contacted Mr. McDermott about vacating Lawson Street. He repeated that street was non-functional, and the City wanted to dispose of the expense. He continued that vacating the street would allow potential owners to use the street and land to add additional units which would be added to the City's tax rolls. He continued that the street was non-conforming and could not be used in its current state because it only had 15 feet of paving and 24 feet was required for a fire lane or access road. He maintained that his LLC would take care of the paving, so the City was not obligated. He continued that Lawson Street was a dead end with no turnaround for emergency or City vehicles, so his company thought it was appropriate to request the vacation. He then offered to show recent pictures of the street. Ms. Creecy commented that the street more closely resembled a driveway and Mr. Ladutko agreed. He added there was not enough frontage proposed and hoped that if the City did create a separate tax parcel, his LLC would be allowed to acquire the property and blend it in to either 24 or 28 Annabelle Street. He emphasized that without a significant number of variances and because of the lack of frontage, nothing could be developed on the property unless it was adjoined to another property on either side of the street.

Ms. Creecy asked if the property would require plumbing infrastructure for storm drainage. Mr. Ladutko replied that question of infrastructure would be part of any project and would be the responsibility of the developer in the subdivision plan.

Alan Schweitzer, 1101 Millstone Drive, was under the impression that the street would be vacated then split with the adjacent property owners as was usual practice with the State. He said he was willing to pay for an appraisal and pay the appraised value. He did not realize the property would become a separate tax parcel that the City would sell as surplus.

There was no further public comment and the Deputy Mayor returned the discussion to the table.

MOTION BY MR. LAWHORN, SECONDED BY MR. SUCHANEC: THAT COUNCIL ADOPT THE RESOLUTION VACATING LAWSON STREET AND DECLARING THAT LAWSON STREET SHALL HENCEFORTH CEASE TO EXIST AS A PUBLIC STREET AND THAT THE CITY OF NEWARK IS ENTITLED TO ENCLOSE AND PROCEED TO USE AND OCCUPY THIS LAND.

MOTION PASSED. VOTE: 6 to 0.

Aye – Suchanec, Hughes, Bancroft, Creecy, Lawhorn, McDermott.

Nay – 0.

Absent – Clifton.

(RESOLUTION NO. 21-O)

20. 5-C. RESOLUTION NO. 21-__ : A RESOLUTION ENCOURAGING THE CITY OF NEWARK RESIDENTS AND BUSINESSES TO REDUCE OUTDOOR LIGHTING DURING BIRD MIGRATION PERIODS (15 MINUTES)

1:06:49

Ms. Bensley read the resolution into the record.

Mr. Martindale stated that the resolution was being presented at the request of the Conservation Advisory Commission (CAC). Earlier in the year, the CAC expressed interest in taking action related to the National Lights Out Movement which aimed to reduce urban lighting where possible to assist in the migration of the North American bird population. At the time of discussion, staff raised some concerns about the relationship between light reduction and associate crime, as affirmed in Deputy Chief Farrall's memo attached to the resolution. Staff also noted that the City's ongoing energy savings project would allow for better dimming controls of City streetlights on a light by light basis which should help aid in the effort to better light specific City areas if concerns arose. He informed the lighting effort should begin in fall or winter of 2021. As such, the resolution would mostly direct staff and the CAC to work with The Newark Partnership (TNP) and UD to distribute educational information related to National Lights Out to City residents and businesses, and work to dim City facility and streetlights in the future where appropriate and safe as determined by the Electric and Police Departments. He introduced Sheila Smith, Chair of the CAC.

The Deputy Mayor opened the table to Council comments.

Ms. Creecy asked if the intent was to dim lights so that birds could migrate south. Ms. Smith explained that professors in UD's Wildlife Ecology invited the CAC to participate in the national movement which included large cities and small towns. She explained that over the last 30 years, bird populations have declined by 2 billion and one problem was that when birds flew in their traditional migration routes and encountered tall buildings and more lights, they became disoriented by the lights and were pulled into cities. As a result, the birds expended more energy and became vulnerable and unable to locate their next rest stop. She emphasized that migrations were always perilous and was rapidly worsening. Once the birds were in cities, they were inclined to hit buildings, particularly at dawn. She shared that every year, hundreds of birds that died from hitting buildings in cities around the nation, so the Audubon Society started the Lights Out Movement twenty years ago to encourage cities to reduce outdoor lighting as much as possible. She noted the movement did not call for a blackout, but did promote dimming, shutting off unnecessary lights, and turning off lights inside of tall buildings. She informed that bird collisions were being counted at STAR Campus. She continued that the CAC wanted to work with UD and noted that the City was already working on reducing its lighting which would save energy, reduce greenhouse gas emissions, and reduce light pollution. She shared that light pollution also effected wildlife behavior and had a devastating effect on insect populations which all related to ecology. She noted that the CAC wanted to reduce the City's impact on the natural environment as part of the Sustainable Newark Plan.

Ms. Smith wrote to DC Farrall to explain the safety aspect of the Movement in more depth and shared with him information sent by UD's Chris Williams. DC Farrall replied that the report that the Police Department submitted did not oppose the recommendation and he believed it was possible for the City to safely and reasonably participate in the initiative.

Ms. Creecy appreciated Ms. Smith's information and supported the environment as evidenced by her recent clean-up campaign. She was sure that reducing the City's light usage would help with the plight of the birds. She thanked Ms. Smith for her eloquent explanation.

Dr. Bancroft wholeheartedly supported the Movement and thought it was a great example of collaboration within the community. He assumed that there would be interaction with the community that could have mitigating effect on any crime concerns and thanked the CAC for pushing the resolution forward. He hoped the effectiveness of the Movement could be measured with coordination from UD.

Mr. Lawhorn supported the intent of eliminating light pollution that negatively impacted ecology but was felt that the details were lacking in the resolution. He wanted to ensure that an unsafe condition would not be created and referred to the Chief's memo indicating the importance of lighting. He wanted to utilize principles that improved the bird population without sacrificing residents' safety. Ms. Smith informed that she first contacted Public Works Director Tim Filasky to discuss feasibility and Mr. Filasky replied that the Movement was in line with actions the City was already undertaking. She clarified that the lighting would be reduced from midnight until 6 a.m. in general, depending on seasons and the rising and setting of the sun. She emphasized that the reduction was for winter and spring to coordinate with the north and south migrations. She continued that the CAC was asking to reduce excessive lighting and asked whether the lighting on the tops of the buildings at STAR Campus was completely necessary and if the interior lights could be turned off. Mr. Lawhorn understood her intent and supported her suggestions. He suggested that the City publish the plan so that residents were aware. Mr. Martindale added that the purpose of the resolution was not to propose that the City reduce light from midnight to 6 a.m. by a certain percentage, but rather to encourage residents and business to reduce light over time. Mr. Lawhorn understood and requested that the published information be more informative. Mr. Coleman confirmed and explained that the resolution was one of support showing that Council was behind the Movement so that staff could begin outreach to the community requesting participation. He was sure there would be changes to City operations and noted that as part of the ESCO project, the City was already planning on decreasing wattage on most LED street lights by 20%. He continued that when the City replaced the high-pressure sodium bulbs with LED, the lumen output was increased because the wattage dropped so much. Staff had the ability to increase or decrease output as desired and the current plan was to drop the wattage by 20% and fine tune locations based off need. He shared that staff would have the ability to control every light in the City on an individual basis.

Mr. Suchanec did not believe that birds were predictable, especially in terms of climate change, and thought the migration periods were roughly spring and fall. He pointed that a local goose population stayed all winter. He was supported the general reduction of power consumption and lighting as a rule and any assistance to birds was a benefit. He doubted that birds migrated midnight to 6 a.m. Ms. Smith corrected that birds were quite predictable and had been following the same pattern for millennia. She informed that a guide called BirdCast used a form of radar to predict migratory patterns. BirdCast could be used to determine how many millions of birds were expected to be in migration through a certain area during a certain time of the night on a particular day. She informed that a UD professor operated BirdCast for the local area and reiterated that birds were quite predictable. Mr. Suchanec appreciated the education and asked if the migration always passed through Newark. Ms. Smith replied that the White Clay Creek area was a very important stopover for migrating birds both coming and going.

Ms. Hughes was fascinated that birds were so predictable and supported any measure the City could take to work with the environment.

Mr. McDermott admitted he was slightly concerned about the City's elderly population's security and safety, as well as the Police Department's security assessments. He asked if the City would work with the Police Department in the initiative to ensure that residents were not instructed to turn off all of their lights at night. He did not want an increase in crime as a result of the light reduction and would support the initiative if staff could provide assurance. He wanted what was best for the environment but did not want to put the public in a bad situation. Mr. Martindale and Ms. Gravell worked closely with the CAC and provided insight on behalf of the City. He confirmed that they would include all pertinent parties in discussions. Ms. Smith emphasized that participation was completely voluntary, and the process was one of public education.

The Deputy Mayor opened the floor to public comment.

Donald Sharpe, representative of the UAW Cap Council, spoke in support of the birds and recalled that passenger pigeons were once so prevalent that they could be caught in nets. He stated that people would put dynamite in trees to destroy nests and the last passenger pigeon, named Martha, died in 1914 at the Cincinnati Zoo. He emphasized that birds had enough problems in contending with global warming,

environmental changes, pollution, chemicals, and roadkill. He informed that cats killed billions of birds every year and birds also suffered from habitat loss. He thanked City Council, County Council, County Executives, the State, Legislators, and the Governors for their good judgement for combining Middle Run Natural Park and White Clay Creek State Park and for recognizing the value of the natural area. He emphasized that the parks provided excellent protections for birds and thanked Council for the opportunity to speak.

Desmond Kahn, District 1, was a professional biologist with a specialty in ecology. He admitted he did not work directly with birds but read very disturbing reports about the negative impact of the Country's increased lighting and the disturbing major decreases in bird populations in recent year. He was pleased that Council seemed to be supportive of the measure and credited the CAC for bringing the issue forward. He hoped that Council would follow through.

There were no further questions and the Deputy Mayor returned the discussion to the table.

MOTION BY MR. LAWHORN, SECONDED BY MS. CREECY: THAT COUNCIL PASS A RESOLUTION ENCOURAGING CITY OF NEWARK RESIDENTS AND BUSINESSEES TO REDUCE OUTDOOR LIGHTING DURING BIRD MIGRATION PERIODS AS DISCUSSED.

MOTION PASSED. VOTE: 6 to 0.

Aye – Suchanec, Hughes, Bancroft, Creecy, Lawhorn, McDermott.

Nay – 0.

Absent – Clifton.

(RESOLUTION NO. 21-P)

21. 5-D. VIRTUAL COUNCIL MEETINGS – CITY SECRETARY/CITY MANAGER

1:27:50

Ms. Bensley informed that a memo was distributed to Council and posted on the City's website on Thursday of the previous week. She continued that staff received guidance from the Delaware League of Local Governments (DLLG) who received information from the Governor's Office that the Attorney General's Office had provided interpretation of the recently enacted SB94 regarding virtual meetings. Due to the public health emergency that was currently in place, public meetings could be held 100% virtually with no anchor location required. She reminded that from March 16, 2020 to July 12, 2021, Council met virtually under the powers derived from the State of Emergency (SOE) for the State of Delaware and, effective July 13, 2021, due to the SOE's replacement with the Declaration of Public Health Emergency and the SOE being lifted, staff was under the impression that the City could no longer hold 100% virtual meetings. SB94 included provisions for virtual meetings in the case of an SOE but also had the ability for the public body to hold hybrid meetings during normal times where meetings could be accessed remotely, as long as there was an anchor location where the public could attend. She continued that with the removal of the virtual meeting provisions that were in the SOE, staff resumed in-person meetings on August 9 with the understanding that the City was unable to hold fully virtual meetings and Council had approved technology upgrades for the Council Chamber on June 14 that gave staff the ability to hold a fully hybrid meeting where attendants participate remotely and provide public comment or members could have visual and audio participation. She informed that staff were waiting for the project equipment to be delivered sometime between September and December of 2021 and explained the current hold-up was centered around video equipment because the cameras were backordered. If the delivery was as late as December, then staff would look to address the audio components of the hybrid meetings first, and then add the video components added later which would allow virtual attendants an equivalent experience of the GoToMeeting software Council used during the SOE.

Ms. Bensley continued that with the DLLG's guidance on virtual meetings and the increase in COVID-19 cases due to the Delta variant, staff wanted to be sure to present the option to Council to determine interest in returning to virtual meetings until Council Chamber upgrades could be completed to a point where attendants could do so virtually or if Council wanted to maintain current practice with livestreaming the meetings for viewing without having the ability to interact with Council to offer live public comment. She shared that staff devised a work-around for Council and staff who needed to participate virtually but warned that the audio quality was poor and there were difficulties with access. She reiterated that her purpose was to have a discussion with Council about how to proceed because staff was moving towards a point where it would be possible to have a fully hybrid meeting to allow remote access, the ability to view presentations and meeting participants live, and offer comments remotely, but reminded that the hybrid capabilities were not currently possible. She asked if Council wanted to maintain the current practice with livestreamed, in-person meetings with limited remote access for public body

members and required staff members or return to a fully-virtual option to allow virtual public participation until the hybrid Council Chamber upgrades were completed and then reconsider based on the COVID situation. She noted that staff could initiate virtual meetings immediately for the following week and provide notice after the meeting to comply with FOIA on how to remotely access the meetings. She noted that some Council members had reservations about returning to in-person meetings given the COVID situation, so staff wanted to have a full discussion to provide Council with the available options.

The Deputy Mayor returned the discussion to the table.

Ms. Hughes had no questions.

Dr. Bancroft credited staff for providing accommodations and understood that hybrid technologies were a challenge because of the delayed video chips. He did not want to encourage people to participate in virtual meetings because social interaction was important. He reached out to constituents and said that one response was that it would be a benefit to be able to see Council's faces, so he suggested to use video cameras as a solution for better social interaction with constituents. He encouraged a positive vote from Council because working remotely reduced waste in a myriad of ways, virtual meetings were less disruptive, and to stop the spread of COVID. He anticipated more issues as school and colder weather got underway and he wanted the City to demonstrate good leadership. He hoped that the virtual technology would work out.

Mr. Lawhorn preferred in-person participation but believed the concerns around FOIA and the potential for resident complaints about accessibility could be solved by hybrid technology. He supported returning to exclusive virtual meetings until the hybrid equipment became available and then host in-person meetings to offer various attendance options.

Mr. Suchanec asked what staff would call the current meeting method because it was neither virtual nor hybrid. Ms. Bensley replied that staff would call it doing the best they could with what was available. Mr. Suchanec asked if it was possible to continue the current meeting format. Ms. Bensley replied that the largest issue with the current setup was that there was no capability to offer the public remote access to the meeting. Mr. Suchanec inserted that the public would have to attend in person and Ms. Bensley confirmed that public members would have to either show in person or submit written comments in order to participate in the meetings. She noted that during the time when Council held virtual meetings, more people participated in meetings that had not joined previously during in-person attendance. She felt that virtual meetings cast a wider net into the community and offered the ability to take part. Mr. Suchanec admitted he had not participated in any virtual meetings and asked if residents had participated. Ms. Bensley confirmed and reiterated that the platform allowed attendants to listen to live feed and offer live public comment. She informed that a drawback of submitting written comments in advance was that while the materials were published, the public was unable to hear Council comments or debates and therefore were unable to adjust comments accordingly. Mr. Suchanec asked if Ms. Bensley was referring to Zoom meetings when she spoke about virtual meetings. Ms. Bensley confirmed and explained that the City used the GoToMeeting platform. Mr. Suchanec supported virtual meetings and wanted to accelerate the timeline for hybrid meetings. Ms. Bensley repeated that the hybrid timeline was solely dependent on the delivery of materials and equipment and clarified that staff was not able to accelerate the timeline.

Ms. Creecy supported virtual meetings until the hybrid supplies arrived. She referred to her earlier comments about reintroducing a gathering ordinance and commented that if in-person meetings continued, she expected another shutdown. She supported virtual meetings.

Mr. Suchanec asked if anyone participated virtually from Council Chambers during the virtual environment. Ms. Bensley replied that each week, she met with the City Manager and the Mayor in Council Chambers to run the meeting. Mr. Suchanec asked if other Council were in attendance and Ms. Bensley replied that no and clarified that Mr. Bilodeau would join from Council Chamber when there were more substantive items that required legal expertise. Mr. Coleman interjected that there was not a physical limitation for the meeting other than the ability to make sure that mute was engaged when not speaking. Mr. Suchanec asked if he could participate in virtual meetings from the dais and Ms. Bensley confirmed.

Mr. McDermott was concerned about ensuring that the public had ease of access to their government and did not feel the current set up was appropriate because a vulnerable population of the City was hesitant to join in person. He wanted to move to virtual meetings until hybrid capability was possible because virtual was the most the open form of government. He reiterated that consideration should be for members of the public who could not participate and only watch the live feed.

Ms. Hughes added that she supported the virtual meetings because of the reasons stated by other Councilmembers.

The Deputy Mayor opened the table to public comment.

Will Hurd, District 2 and Planning Commission Chair, asked if the decision on virtual meetings would affect the other boards. Ms. Bensley replied that the decision would strictly be for City Council and each board would individually determine their own meeting format. Mr. Hurd agreed that hybrid would be the best solution and noted that some older residents were consistent attendees of the Commission meetings but had not been able to participate in the virtual Commission meetings. He shared that virtual meetings made it easier for the Commissioners to attend because some were working from multiple locations so most times, the entire board was in attendance during the virtual meetings. He asked that Council consider using cameras during virtual meetings because seeing one's representative was valuable.

There was no further public comment and the Deputy Mayor returned the discussion to the table.

MOTION BY DR. BANCROFT, SECONDED BY MR. LAWHORN: THAT COUNCIL RESUME VIRTUAL MEETINGS EFFECTIVE AUGUST 30, 2021 UNTIL SUCH TIME THAT THE TECHNOLOGY UPGRADES IN THE COUNCIL CHAMBER THAT WILL PERMIT FULLY HYBRID MEETINGS ARE COMPLETE. WHEN THOSE UPGRADES ARE COMPLETE, COUNCIL WILL CONSIDER WHETHER TO CONTINUE FULLY VIRTUAL MEETINGS OR RESUME HYBRID MEETINGS BASED ON THE COVID-19 SITUATION AT THAT TIME.

MOTION PASSED. VOTE: 6 to 0.

Aye – Suchanec, Hughes, Bancroft, Creecy, Lawhorn, McDermott.

Nay – 0.

Absent – Clifton.

22. 6. **FINANCIAL STATEMENT:** None

23. 7. **RECOMMENDATIONS ON CONTRACTS & BIDS OVER \$75,000:** None

24. 8. **ORDINANCES FOR SECOND READING & PUBLIC HEARING:**

A. **Bill 21-24** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Creating a Deputy Director of Planning and Development Position (15 minutes)

1:46:00

Ms. Bensley read the ordinance into the record.

MOTION BY MR. LAWHORN, SECONDED BY MS. CREECY: FOR SECOND READING AND PUBLIC HEARING.

Ms. Gray explained that the need for a Deputy Director of Planning and Development was discussed extensively and Council reached a consensus to move forward with a proposed ordinance to create the position as well as a 2021 budget amendment. She continued that due to the current demand on resources, the Planning Director's had primarily focused on land use and the day-to-day management of the Planning Division. She pointed that current development and Community Development Block Grant (CDBG) activity resulted in considerable overtime to manage along with delaying projects and reducing bandwidth for management of the balance of the Planning and Development Department which caused a significant impact to the Department's ability to dedicate adequate time toward long-range planning. If approved, the Deputy Director would help manage the day-to-day activities of the land use division as well as serve as a substitute for the Director during absences. She informed that the new hire would be a Grade 28 based on reviews with other deputy positions in the City and State. Assuming the position could be filled on October 1, 2021, the total cost, including benefits and non-salary expenses would be \$37,000. The full annual cost of the salary with benefits and non-salary expenses would be \$145,000 annually. In addition, it was estimated that the position would require an additional \$5,000 for equipment to fully support the additional position.

Ms. Gray repeated the Council discussion on the position was favorable and supportive and resulted in a motion to direct staff to prepare a budget amendment for \$42,000 and an ordinance to establish the position as presented that evening. She thanked Council for their consideration.

The Deputy Mayor opened the table Council comment.

Mr. Lawhorn had no questions and agreed that the position was justified.

Mr. Suchanec asked if the City had ever had a Deputy Director position for the Planning Department. Ms. Gray replied that there had not been a specific Deputy Director position and Maureen Feeney Roser acted in capacity as Deputy Director. Mr. Suchanec asked if Ms. Roser had the same responsibilities. Mr. Coleman confirmed and explained that there had been two management positions during Ms. Roser's employment and there had been a Building Department and a Planning Department prior to Ms. Roser. The departments were merged and lost two managers.

Ms. Creecy had no questions and thought the position was necessary to address the backlog.

Ms. Hughes and Dr. Bancroft agreed with Ms. Creecy.

Mr. McDermott confessed that he had the same concerns as when the matter was first introduced. He clarified that amending the budget outside of the traditional process and adding an additional \$42,000 to the 2021 budget seemed to overstep the regular budget process. He thought the request was a large sum of money to ask the taxpayers to pay outside of the traditional budget process. He noted that the current request was written as a single recommendation for a budget amendment and a resolution adoption and asked Ms. Bensley if separate motions would be more appropriate. Ms. Bensley replied that there was nothing to stop Council from having two separate motions. Mr. McDermott explained that he was concerned with the proposal for the position and emphasized that he appreciated the Department's work. He noted that after the last discussion, the bill was for \$388,000 for the two full-time planners for two years and the Deputy Director, and he left the meeting very concerned. He pointed to the previous week's budget presentation indicating a \$6.7 million shortfall and shared that he was even more concerned. He noted that staff was tasked with cutting the \$6.7 million deficit but were also adding the positions. Ms. Bensley clarified that the number Mr. McDermott referenced from the original presentation included the three positions as well as the additional consulting funds. Mr. McDermott asked if the amount was \$125,000 for the consultant for the Code revision and Ms. Gray confirmed the amount was for the charette and the revision to the BB central business district and RA multi-family high-rise zoning districts. Mr. Coleman added that he and Mr. Del Grande had recently discussed the shortfall, specifically the two full-time temporary positions and felt that it would be appropriate to use ARPA funding to cover the two positions because much of the workload was related to COVID. He clarified that the funding for the two positions would be immediately removed from the shortfall. Mr. McDermott admitted using the ARPA funding was more desirable.

There was no public comment and the Deputy Mayor returned the discussion to the table.

MOTION BY MR. LAWHORN, SECONDED BY DR. BANCROFT: THAT COUNCIL PASS BILL 21-24 AS PRESENTED.

MOTION PASSED. VOTE: 6 to 0.

Aye – Suchanec, Hughes, Bancroft, Creecy, Lawhorn, McDermott.

Nay – 0.

Absent – Clifton.

(ORDINANCE NO. 21-24)

MOTION BY MR. LAWHORN, SECONDED BY MS. CREECY: THAT COUNCIL APPROVE A 2021 BUDGET AMENDMENT IN THE AMOUNT OF \$42,000 FOR THE PLANNING AND DEVELOPMENT DEPARTMENT FOR THE ESTABLISHMENT OF THE DEPUTY PLANNING AND DEVELOPMENT DIRECTOR POSITION.

MOTION PASSED. VOTE: 5 to 1.

Aye – Suchanec, Hughes, Bancroft, Creecy, Lawhorn.

Nay – McDermott.

Absent – Clifton.

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

- A.** Review of and Direction to Staff on Transportation Improvement District Committee Recommendations (60 minutes)

1:56:32

Ms. Gray introduced Sarah Coakley, Principle Planner with DeIDOT, who would present that evening. She continued that Ms. Coakley was a lead at DeIDOT on the Newark Transportation Improvement District (TID) and she and her team had been working with the City on the effort since mid-2018. Ms. Gray credited the team for an extraordinary job and provided a brief background and the Planning Commission's recommendation on the issue. She explained that the City's Comp Plan V included an action item in Chapter 6 to work with DeIDOT to establish an area in Newark's downtown core to create a TID. She clarified that a TID was defined in DeIDOT's Standards and Regulations for Subdivisions, Streets, and State Highway Access as a geographic area defined for the purpose of securing required improvements for transportation facilities in the area by comprehensively coordinating with transportation planning partners, land use, and transportation decisions. She continued that TIDs were created through an agreement by local government, DeIDOT, and the Wilmington Area Planning Council (WILMAPCO) which would establish the TID boundaries, the timeframe (typically 20 years from the previous census), a criteria and standards for adequate transportation and the facilities needed, and the rolls of each participating agency. The participating agencies would then develop a land use and transportation plan for the TID, identify a projected build-out plan, a fee formula to fund the improvements, and a monitoring program to track the need for new projects. As projects were completed, they would be incorporated into the TID agreement. She informed that Council approved the formation of a Committee to offer feedback and guidance on the TID process on September 24, 2018, and included City staff, DeIDOT, WILMAPCO, New Castle County, University of Delaware, and citizen appointees. Staff was assisted by AECOM, a consulting firm that provided technical expertise and administrative support. The first meeting was May 8, 2019 and had continued monthly since. Meeting information was available on the City's TID Committee webpage.

Ms. Gray continued that the establishment of criteria and standards for adequate transportation and the facilities needed were part of the TID process. The TID Committee discussed and reviewed the criteria and standards which included the service standards and transportation improvements, and then presented the whole to the Planning Commission for review at the July 6, 2021, Planning Commission meeting where the Commission unanimously recommended that Council approve the service standards and transportation improvements as presented. Ms. Coakley would present the standards and improvements to Council for review.

Ms. Coakley informed Council that she would review the TID development steps and current status, the land use forecast modeled by DeIDOT to identify needed transportation improvements, the service standards which defined what was to be considered adequate transportation facilities, and then review and seek concurrence on recommended service standards and transportation improvements so the group could progress to the next step in the TID process.

Ms. Coakley explained that a TID replaced individual impact studies conducted by developers and clarified that if a development would generate at least 50 peak hour trips or 500 daily trips, DeIDOT required the developers to conduct a Traffic Impact Study (TIS) and make a contribution towards necessary transportation improvements. She continued that developments within the TID would instead pay a readily determined fee which would be held in an account that could only be used for the TID improvements. As part of DeIDOT's regular Capital Transportation Program Prioritization Process performed every other year, DeIDOT sought recommendations from local governments with TIDs to be added to the Capital Transportation Plan.

Ms. Coakley noted several benefits for a TID, including Comprehensive Infrastructure Planning so instead of DeIDOT responding to land use issues as they arose, the team worked together on creating a Comprehensive Transportation Plan (CTP) which enabled quicker response times and incorporation of projects into the capital budget earlier. She continued that another benefit was that TID projects advanced more quickly through the CTP because of the extra points awarded for being in the TID. She emphasized that the fees acted as Traffic Impact fees, stayed local, and could only be used for the agreed upon TID projects. She continued that the TID improved equitable treatment of competing developers and provided known costs for developers. She pointed that the TID also provided expedited development reviews which saved six to nine months during the process because developers were not required to perform a TID.

Ms. Coakley continued that the initial TID agreement was established that included the initial target horizon year of 2045 for the land use forecast, the date of completion for the transportation improvements, and the boundaries. She then displayed a map depicting the agreed upon boundaries and explained the red area included the parcels included in the TID and the green circles and blue lines represented the facilities boundaries or the roads and intersections that DeIDOT agreed to study to identify necessary improvements for the TID. Within the agreement, the team agreed to work together on next steps including the service standards, land use and transportation plan (LUTP), TID-CTP or list of

improvements, and the infrastructure fee program. She shared that the current task was working to finalize the LUTP and list of capital improvements for the TID. Once the task was completed, the team would return to finalize the infrastructure fee and monitoring program.

Ms. Coakley shared that DelDOT previously committed to compiling existing conditions reports on the transportation network and to inform the LUTP and the list of improvements. DelDOT also forecasted traffic based on the future land use plan on the study area road network for the 2045 target horizon year and also identified locations that needed improvements to meet service standards in 2045. The team was currently compiling the information into the LUTP for City review and approval to authorize DelDOT to proceed to the next step of providing concept plans and cost estimates for the improvements needed as well as negotiating an infrastructure fee program.

Ms. Coakley then reviewed the land use forecast and service standards. She explained that the future land use was based on the City's Comp Plan and Zoning Code as well as current and anticipated development trends. She displayed a map from the Comp Plan V showing the six different planning areas and explained the land use forecast was done by planning area :

- PL – Currently planned
- ST – short term projections (by 2030)
- LT – long term projections (by 2045)

Ms. Coakley informed that the stages were included in the transportation model so that if a development came in and was consistent with the land use plan, the development would participate in the TID and pay the fee as opposed to conducting a TID. She revealed TID Development Hotspots included several target areas recently added to the Comp Plan. She continued that the service standards would be used to develop the transportation component of the LUTP with the purpose of identifying triggers for determining what type of transportation improvements were needed, and when and where they were needed. The standards were developed through a public process with Public Workshop held on October 14, 2020 and monthly TID Committee meetings and recommendations. Service standards specified what was considered adequate transportation infrastructure and could include levels of service but would also include desired typical sections for roads and standards for the presence and frequency of transit service. She informed that the Committee and Planning Commission recommended an overall average intersection delay of a maximum of 80 seconds at signalized intersections and 50 seconds at roundabout and all-way stop-controlled intersections during peak periods. She clarified that the delay standard was the amount of time it took for a driver approaching the intersection to slow, stop, and return to speed after passing. Further recommendations were for an intersection control delay during peak periods for two-way stop-controlled intersections for a maximum of 50 seconds for left turns from the major street, and a travel time standard. DelDOT investigated five key arterial that went through and around the City and recommended a maximum increase of 80 seconds in the total travel time per segment for the five key segments.

Ms. Coakley continued that the recommendation for geometric standards was that State standards be held for State roads and City standards for City streets. DelDOT also recommended that roundabouts be considered first on state-maintained roads for access and intersection control which was a new State policy due to the large safety benefits that roundabouts provided. She admitted that roundabouts were not suitable for every area and shared that DelDOT considered right-of-way constraints and environmental impacts. She pointed that the service standard for fixed route transit was to consider the recommendations from the 2019 Newark TIS which also specified that capital transit improvements were eligible for TID fees. She noted that the service standards specified aesthetic standards but allowed for the opportunity to use fancy street signs in select locations, required adequate drainage for all improvements, and referred to recently adopted City, County, and State bicycle plans and followed national best practices for the design of bicycle and pedestrian facilities.

Ms. Coakley explained that the recommended TID improvements were included in the models and were determined through multiple rounds including a short-term scenario with projects that were currently underway or in the CTP. DelDOT modeled State Route (SR) 4 improvements from Elkton Road to SR 896 and included the current Elkton Road improvements so they could be included in the funding scheme for the TID. She continued that there were several improvements for SR 896, including the South College Avenue Gateway project to include bicycle facility improvements, and additional intersection improvements identified between Old Chestnut Road and Marvin Drive from restriping to adding three through lanes and bicycle facilities. She noted that there were improvements to the South College Avenue and Welsh Tract Road intersection to widen the eastbound Welsh Tract Road approach to allow lengthening of the right turn lane onto South College Road. Other changes to the intersection were to add a left turn lane to the westbound approach to create a dedicated lane and lengthen the left turn lanes

from South College onto Welsh Tract. She displayed a map of the recommended TID improvements with bike improvements in green and continued that the SR 4 improvements included two lanes in both directions along the entire segment between Elkton Road and SR 896, including a separate shared use path on the north side that would tie into the bicycle improvements on South College Avenue. Further additional recommended TID improvements were add a northbound right turn lane at the intersection of S. College Avenue and W. Park Place, checking the pedestrian crossing time, investigating the possibility of a no right turn on red, and considering a phase for pedestrian crossing to stop all vehicular traffic at once. More recommendations were to extend the westbound left turn lane at Papermill Road and Thompson Station and extend the northbound right turn lane at SR 273 and Marrows Road.

Ms. Coakley continued to list TID improvements by sharing the suggestion to add a second southbound through lane to widen the Suburban Plaza approach on Elkton Road and SR 4. A new roadway connection was suggested that would send SR 4 north from Suburban Plaza to Barksdale Road, part of the previously known "west connector". The Committee recognized the existing stream corridor, trail, and wetlands that needed to be avoided and the recommendation was to build with a separate shared use path on at least one side with consideration that the path be closer to the river for scenic views. Most of the road would need to be elevated to avoid the flood plain and environmental impacts and more studies would need to be conducted before determining an alignment. She continued that the road would extend through the shopping center and emerge on Barksdale Road but noted that Committee members felt that the road was a key recommendation that greatly improved the level of service on Casho Mill Road and Elkton Road without causing issues on Barksdale Road.

Additional recommendations included comprehensive intersection improvements at SR 72 and SR 4, including extending the eastbound left turns lanes, widening the so the southbound through lanes extended to Kensington Lane, and dualizing and signaling the right turns from SR 72 onto SR 4. At SR 72 and Wyoming Road, it was suggested to extend the eastbound left turn lane, widen to add a second westbound turn lane, and installing a single-lane roundabout and bicycle facilities at the South Chapel Street and Wyoming Road intersection. The Committee also identified numerous bicycle improvements that would lead to assisting with the level of service in traffic. The bicycle improvements included a protected intersection at Library and Wyoming Avenue, a separated bikeway along Wyoming Road, installing a mid-block crossing at Brookside and SR 72, installing a shared-use path on the east side of SR 72 to connect Kensington Lane to SR 4, and installing a pathway from SR 273 to Old Newark Road. Other recommendations were a side path extension along Library Avenue between Delaware Avenue and Main Street as well as along Main Street between Library Avenue and Capitol Trail, a pathway along SR 273 between Library Avenue and Marrows Road, and the Main Street McKees Connector for a protected bike lane on Main Street between Library Avenue and the Pomeroy Trail.

Ms. Coakley continued that additional recommendations for TID bicycle improvements were a shared-use path connecting the Casho Mill Road and Nottingham Road intersection to Old Casho Mill Road to make the intersection bike friendly, the Kershaw Connector pathway from Emerson Bridge to Pomeroy Trail, adding trail connections to trail system near Paper Mill Road and the Thompson Station Road/Possum Park Road intersection, and the White Clay Creek Old Paper Mill Road Pathway from Capitol Trail to Old Paper Mill Road. She noted that DeIDOT modeled all of the vehicular oriented improvements and said that the service standards were met in the AM peak with the exception of Cleveland Avenue and Capitol Trail, and the PM peak with the exception of Cleveland Avenue, Capitol Trail, and SR 72 and SR 4. She explained that DeIDOT proposed and the Committee and Planning Commission agreed to exempt the two intersections from the service standards because they were already level service F and DeIDOT was still proposing improvements at SR 72 and SR 4 to get down to the 80 second delay standard by adding a through lane along SR 4. Improvement options had been previously identified for Cleveland and Capitol that could help but had not been selected to move forward for a variety of reasons.

Ms. Coakley presented the results of the arterial travel time assessment and clarified that the red percentages on the chart were the changes in travel time. She noted the worst in Arterial 1 was SR 72/SR 2 from SR 4 to Possum Park Road during the southbound PM direction. She shared that from the existing conditions to the long-term future, travel time was expected to increase by 1.3 minutes where the rest of the increases were moderate. She then displayed the arterial travel time results for SR 896 from Welsh Tract Road to Cleveland Avenue and explained that the existing to long-term future changes were within the 80 second increase. She informed that the travel time for SR 4 from Elkton Road to Marrows Road was expected to decrease significantly in the AM and PM peak periods while the westbound direction travel time would increase but would be within under 80 seconds of delay. The results for SR 273/Main Street/Nottingham Road from Marrows Road to Casho Mill Road were less than minute of increase in travel time. From Elkton Road to Otts Chapel Road to Amstel Avenue, most travel time decreased for most of the segments in AM and PM peak periods.

Ms. Coakley reported that the Planning Commission recommended approval of service standards and transportation improvements on July 6, 2021, and DeIDOT was seeking City concurrence. She explained the next steps if Council agreed would be for DeIDOT to develop conceptual plans and cost estimates for all TID improvements, DeIDOT and the City would then work on developing the infrastructure fee program, and monitoring program. The goal was to complete the Committee work by the end of the year and finalize the fee structure by early 2022 at the latest.

The Deputy Mayor opened the table to Council comments.

Mr. Lawhorn shared that a positive of the program was that development projects were never large enough to trigger a TIS but could impact traffic in conjunction with other smaller projects over a longer period of time. He asked if it was accurate that the plan changed from the model to a more proactive plan to where DeIDOT projected and planned for development and then pulled funding from every development project. Ms. Coakley confirmed that fees would be dependent on what was built so the fees were typically per square foot for non-residential or per unit for residential units. Mr. Lawhorn asked when the funds would start to be collected and Ms. Coakley replied early 2022. Mr. Lawhorn asked how the service standards were determined. Ms. Coakley replied that DeIDOT initially modeled the short-term scenarios from the current projects in the CTP which resulted in a maximum 10% increase in travel time along the arterials but then noted substantial deficiencies when all the scenarios were modeled. Once the Committee agreed on the intersection delay, they wanted to ensure that the arterial standard would not be impossible for the worst intersection delay to achieve. Mr. Lawhorn asked if it was an aspirational goal and Ms. Coakley confirmed and continued that it was decreased to a realistic amount based on the improvements.

Mr. Lawhorn assumed that the Delaware Avenue project would create a safe environment for biking and was a gold standard and Ms. Coakley confirmed. Mr. Lawhorn asked for the parameters to increase bike safety. Ms. Coakley replied that all bike paths were nearly all shared-use path or on-street facilities but protected. Mr. Lawhorn asked for clarification on protected. Ms. Coakley replied that protected usually included a vertical barrier. Mr. Lawhorn asked if it was a physical barrier and Ms. Coakley confirmed. Mr. Lawhorn asked if the biking lane would be physically separate and Ms. Coakley confirmed. Mr. Lawhorn asked how the plan's projected residential units were equated to traffic. Ms. Coakley explained that DeIDOT used the Institute of Traffic Engineers Generation Manual to convert residential units or commercial square footage to trips. Mr. Lawhorn asked if Ms. Coakley knew the units to trips and Ms. Coakley replied that it varied but was around ten daily trips per single family house and one peak hour trip per single family house. Mr. Coleman informed that the he had manuals available. Mr. Lawhorn commented that some projects in the plan were smaller, but the Suburban Plaza/Barksdale Project seemed massive that many residents still requested. He asked if the model indicated that the project would be a significant improvement relative to the other projects and Ms. Coakley confirmed. Mr. Lawhorn acknowledged there would be significant challenges and asked Ms. Coakley how the project would proceed. Ms. Coakley replied that if it was agreed to include the project in the TID then DeIDOT would create concepts and estimates so the project would become eligible for TID fees. Once the City agreed to include the project in the CTP, then it would undergo the prioritization process, be entered as a planning study with community outreach and a National Environmental Protection Act study to verify the different constraints in the field and best mitigation processes, and then design and construction. Mr. Lawhorn asked how funding was determined. Ms. Coakley replied that DeIDOT would review the total cost for the project and then present different options for consideration for a fee structure. The current TIDs varied from covering 20% to 50% of the cost of improvements and she suspected the City would be closer to 10% so as not to discourage development. Mr. Lawhorn noted the STAR Campus was an Opportunity Zone and there was a Federal program that encouraged development. He asked if it would influence using more State or Federal money to support the traffic that would come with a Federally encouraged development. Ms. Coakley explained that DeIDOT used the TID phase as a match on projects because most were 80% Federal and 20% State. Mr. Lawhorn asked if there was a way for the City to help drive more support from other areas. Ms. Coakley was unsure. Mr. Lawhorn asked if websites would be available for the public to view the models and Ms. Coakley confirmed that the concepts and estimates would come back through the Committee and Planning Commission and then to Council. She continued that DeIDOT would first complete the planning study to identify the alignment and workout the environmental constraints, then move to preliminary engineering for survey plans, and then a public workshop. Mr. Lawhorn asked why ideas were left out for improving Cleveland Avenue. Ms. Coakley understood that DeIDOT presented the DeIDOT recommended solution and it was agreed to not move forward with the proposal. Mr. Lawhorn was worried that the project was controversial which was why it was voted down but thought there were other ideas that were similar. He wanted to fix the intersection and thought it could be received differently if it was reviewed in a larger scope with other improvements.

Ms. Creecy referred to the third project on slide 21 and asked when the improvement would take place. Ms. Coakley was unsure because DeIDOT had to first do the concepts and estimates and then work on the fee structure before the project became a joint effort between the City and DeIDOT to prioritize. She emphasized that the improvements were listed in the presentation by location and not by prioritization but noted that DeIDOT would welcome the City's input. Ms. Creecy was pleased with the proposed bicycle improvements.

Mr. Suchanec shared that he did not purchase a home in Christine Manor because the Newark bypass was going to be built through Christine Manor. He reminded that many aspects required negotiations and there was talk that the bypass would tie directly with Apple Road. Twenty years ago, Maryland was against the bypass because of the influx of traffic. He felt that some of the proposals sounded appealing, but reality would take effort. He asked if DeIDOT's procedures would expedite the projects. Ms. Coakley replied that TIDs in southern New Castle County happened faster because the development community offered more funding and they were also awarded extra points in the prioritization process. She continued that five TIDs were currently in operation and then there were seven or eight in process so there would eventually be more projects in TIDs than not. Mr. Suchanec explained that one of his concerns in representing District 1 was through traffic and noted that the presented development hotspots were all within the target area. He asked if DeIDOT considered traffic that came from Maryland and Pennsylvania. Ms. Coakley confirmed that DeIDOT included a 5% annual increase in existing traffic counts to cover the background traffic. Mr. Suchanec hoped the concept would come to fruition. He offered his support but acknowledged details needed be thrashed out first.

Dr. Bancroft commented that the presentation was thorough, and the service standards were reasonable. He noted the presentation included good ideas for bike lane improvements and admitted there was work in south Newark where traffic proved a challenge. He continued that highways created noise pollution when roads were expanded and credited DeIDOT for its awareness of the environmental justice challenges. He appreciated the awareness of impacts on wetlands and that DeIDOT sought to place pedestrian and bicyclist paths in more scenic areas. He thought traffic circles were a means to slow traffic. He noted that the City was adding thousands of housing units and millions of square feet of commercial space in the long-term and was pleased that people were voicing their concerns.

Ms. Hughes wanted to review the information further and appreciated the effort that went into the presentation.

Mr. McDermott noted there was a potential for development for RT 273 and Library Avenue and asked if the process would replace TIS for the areas outlined or the entire City. He asked if commercial establishments would still be required to complete a TIS. Ms. Coakley replied confirmed TIS would be replaced for the area in red for developments that were consistent with the land use forecast. Mr. Lawhorn asked if there was a DeIDOT approval for the particular item within its own process. Mr. Coleman replied that it depended on how many trips it generated relative to what was there before. Mr. McDermott asked if the TID alleviated a developer's responsibility to perform a traffic impact study. Mr. Coleman confirmed and explained that the TIS for individual sites that barely broke into the requirements cost the developers a large sum of money and considered the local impact of the site plus 300 sections in either directly. He pointed that the TIS did not capture the full picture and felt that the City would receive a better result from the TID, the developer would pay less, DeIDOT would complete the work faster, and the City would receive more money to go towards projects. He emphasized that the smaller projects could not support all of the upgrades necessary to fix the problems while the TID would have the capability. Ms. Coakley informed that DeIDOT was only legally permitted to investigate up to a maximum of three intersections of State-maintained roads with a limitation of 150 trips at peak hour. Mr. McDermott noted that the study did not include improvements to the intersection of SR 273/Library Avenue/Cleveland and Mr. Coleman confirmed.

There was public comment and the Deputy Mayor returned the discussion to the table.

MOTION BY MR. LAWHORN, SECONDED BY DR. BANCROFT: THAT COUNCIL RECOMMEND THAT THE SERVICE STANDARDS AND TRANSPORTATION IMPROVEMENTS TO THE CITY OF NEWARK'S TRANSPORTATION IMPROVEMENT DISTRICT BE ACCEPTED AS PRESENTING.

MOTION PASSED. VOTE: 5 to 1.

Aye – Suchanec, Bancroft, Creecy, Lawhorn, McDermott.

Nay – Hughes.

Absent – Clifton.

26. Meeting adjourned at 9:48 p.m.

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

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