

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

APRIL 25, 2022

Those present at 7:00 p.m.:

Presiding:	Mayor Stu Markham District 2, Corinth Ford District 3, Jay Bancroft District 4, Dwendolyn Creecy District 5, Jason Lawhorn Deputy Mayor, District 6, Travis McDermott
Absent:	District 1, John Suchanec
Staff Members:	City Manager Tom Coleman City Secretary Tara Schiano City Solicitor Paul Bilodeau Deputy City Secretary Nichol Scheld Finance Director David Del Grande Electric Director Bhadresh Patel Public Works and Water Resources Director Tim Filasky Planning and Development Director Mary Ellen Gray Planner I John Kennel Chief Purchasing & Personnel Officer Jeff Martindale Chief Communications Officer Jayme Gravell

1. Mr. Markham called the meeting to order at 7:00 p.m.

Mr. Markham explained the procedures for the hybrid Microsoft Teams Meeting Platform. He stated that at the beginning of each item, he would call on the related staff member to present and, once the presentation was complete, he would call on each Councilmember to offer their comments. If a Councilmember had additional comments to add later, they should signal the Chair to be recognized again after all members had the opportunity to speak. If members of the public wanted to offer comment and were attending in person, they should sign the sign-in sheet near the entrance to the Council Chamber to be called on to speak at the appropriate time. Members of the public attending virtually should use the hand-raising function in Microsoft Teams to signal the meeting organizer that they would like to speak or message the meeting organizer through the chat function with name, address or district, and the agenda item on which they would like to comment. He stated that all lines would be muted until individuals were called to speak, at that point, the speakers' microphone would be enabled, and they would need to unmute themselves in order to comment. He emphasized that public comments were limited to five minutes per person and all speakers were required to identify themselves prior to speaking. Comments in Microsoft Teams chat would not be considered part of the public record for the meeting unless they were read into the record as part of the public comment. He asked that all attendees keep cameras off until called on to speak.

Mr. Markham revealed that he would be making some minor changes that evening in order to better facilitate the meetings.

2. SILENT MEDITATION & PLEDGE OF ALLEGIANCE

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

Mr. Markham noted that the agenda needed to be amended to give the Oath of Office to Councilman Lawhorn. He suggested another change that if the Chair, staff member, or City Solicitor offered a motion, a Councilmember could say "so moved" and not have to repeat the actual motion.

MOTION BY MS. FORD, SECONDED BY MR. MCDERMOTT: TO ADD TO THE AGENDA THE OATH GIVEN TO COUNCILMEMBER JASON LAWHORN, DISTRICT 5.

MOTION PASSED. VOTE: 5 to 0.

Aye – Ford, McDermott, Creecy, Bancroft, Markham.
Nay – 0.
Absent – Suchanec.
Abstain – Lawhorn.

Ms. Schiano administered the Oath of Office to Councilmember Lawhorn.

MOTION BY MR. LAWHORN, SECONDED BY MR. MCDERMOTT: TO REMOVE ITEM 5C, RENTAL TAX RESOLUTION, FROM THE AGENDA.

MOTION PASSED. VOTE: 5 to 1.

Aye – Bancroft, McDermott, Creecy, Lawhorn, Markham.
Nay – Ford.
Absent – Suchanec.

- 3. 1. **ITEMS NOT ON PUBLISHED AGENDA**
 - A. Elected Officials who represent City of Newark residents or utility customers (2 minutes): None
- 4. 1-B. **UNIVERSITY**
 - (1) Administration (5 minutes per speaker) (10 minutes):

7:17

Caitlin Olsen, UD Administration, reminded that the previous week was Earth Day and mentioned that the president announced that UD was working to establish the Office of Sustainability and the Environment by the fall in order to advance the sustainability initiatives across the University. UD staff had already solicited Ms. Olsen’s assistance to partner with the City. She continued that once staff were in place in the Office, she would coordinate connections and facilitate with student groups. She reported that UDon’t Need It would return in the spring. It is an event where all of the exiting students bring their unwanted furniture and home goods to the STAR Campus where UD staff organize the donations for sale to the public. She shared that it was her favorite event and many people returned year after year; it also kept the materials out of the landfills and off of the streets. She noted that all of the dates were on the Newark website. She did not yet have deposit numbers available for admissions, but she did reach out to the VP of Enrollment to ensure that the City would have the numbers as soon as available in order to prepare for the fall. She informed that President Biden was scheduled to speak at commencement and cautioned that there would be a significant increase in traffic. She would make sure that the Newark Police Department (NPD) and UD Police would coordinate with Secret Service to ensure that people could move around town appropriately.

The Mayor opened the table to Council comment.

Ms. Creecy asked what types of positions UD needed to staff the new Office of Sustainability and the Environment. Ms. Olsen replied that UD was looking for a director, but she was not sure if student interns, or graduates would participate. She continued that UD staff were trying to determine how best to incorporate all of the UD groups under one mantle.

Mr. Markham recalled that UD used to allow charities to access UDon’t Need It in order to assist people with less resources to receive free furniture; he asked if UD intended to reinstate the action. Ms. Olsen would reach out to see if volunteers were available but confirmed that donations of non-perishable items were accepted for the Food Bank. Mr. Markham suggested that she reach out to local churches to determine need in the area and Ms. Olsen confirmed. Mr. Markham asked if the Office of Sustainability and the Environment would have a City liaison because he viewed the City as a real-life scenario that could put ideas to work to determine viability. Ms. Olsen informed that UD faculty had requested that she ensure that the Office connect with the City, and she suggested that the liaison may be the director of the Office. Mr. Markham noted that Dr. Bancroft was passionate about the environment and sustainability and asked he would serve as the point of contact. Dr. Bancroft confirmed and appreciated the opportunity.

There were no further questions from staff.

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

15:34

Jack Levine reported that the UDance on Sunday raised \$1.8 million for the B+ Foundation and he was pleased that some students had been able to participate for the first time. He continued that there were a few student complaints about the Alfresco event on Wednesday regarding the horrendous traffic; he understood that it was the only scheduled event. He referred to the train accident on early Saturday morning on West Main and reminded that there were previous incidents throughout the year. He asked to meet with Council to discuss the changes that could be made to the intersections because of the recent increase in accidents involving the freight train. He shared that the Student Government Association (SGA) announced its elections results that morning and informed Council that there was a new SGA president, and he would join the Student Executive Board. He looked forward to a smooth transition to a new government affairs center to speak to Council on every second and fourth Monday throughout the 2022/2023 school year.

Mr. Markham asked if Mr. Levine would still serve as the contact to speak before Council and Mr. Levine explained that he would still be a contact but the responsibility of addressing Council would fall to another person. He would reach out to Mr. Markham to schedule a conversation; he anticipated that the new contact would be announced in late May or early June. He would still be involved but would move into an executive cabinet role. Mr. Markham noted that it would be worthwhile for the contact to be available during the summer. Mr. Levine agreed and would ensure that the position would be filled by a dedicated student.

The Mayor opened the table to questions from Council.

Dr. Bancroft shared that he enjoyed meeting with the students at the SGA campaign rally on Earth Day.

Mr. Markham informed that Mr. Coleman would address the issues with CSX but reminded that it was federally regulated which presented more challenges when dealing with the railroad tracks.

6. 1-C. CITY MANAGER (10 minutes):

19:46

Mr. Coleman revealed that another vehicle was hit by a train at the railroad crossing at Deer Park over the weekend where two occupants were severely injured. Staff reinitiated discussion with DeIDOT to review options to reduce or eliminate future accidents. He explained that the last two accidents both resulted in the vehicle navigating into the gravel area between New London Road and West Main Street. Staff had ideas for solutions that had all been shared with CSX and he agreed with Mr. Markham that good ideas did not always progress because CSX had the final say with what happened in its right-of-way. He noted that some ideas were short-term and did not require CSX approval, but the longer-term, more permanent solutions required CSX approval and coordination with DeIDOT because it owned the road. He would have information for Council soon.

Mr. Coleman continued that there had been an incident with dirt bikes and four-wheelers on Sunday evening on Main Street. He requested more information from NPD on the incident as well as any challenges it faced and options to move forward. He also requested how other agencies were handling the problem and anticipated that he would have more information at the upcoming Council meeting.

Mr. Coleman reiterated that President Biden would be the commencement speaker at graduation which would involve a significant portion of staff time, especially Public Works and NPD. He anticipated there would be a number of preparatory meetings over the next few weeks.

Mr. Coleman requested Council feedback on whether the City should provide free parking on the Sunday after the Memorial Day Parade. He shared that parking was usually free until 1 pm every Sunday and noted that the parade was in the afternoon, so staff did not think it made sense to begin charging at 5 pm on a Sunday when it was typically a light period for parking anyway. Mr. Markham asked if the parade was on May 15th and Mr. Coleman confirmed.

7. 1-D. COUNCIL MEMBERS (5 minutes):

22:50

Dr. Bancroft:

- Supported the free parking after the parade
- Supported the solutions surrounding inflatable pools

Ms. Ford:

- Participated in a ride-along with the NPD on November 19, 2021. She shared that Sgt. DElia stopped to assist another officer who was dealing with an accident at the exact place. There was another accident on March 9th and the accident on April 23rd was the third in five months. She reached out to Representatives Baumbach and Osienski and the City Manager on Sunday because she thought the matter should be escalated to the state level as she believes the City needs more clout to deal with CSX. She reported that there was a streetlamp when drivers crossed over onto Route 273 but there was no streetlamp on 896/New London Road. She thought the issue was a combination of lighting and the physical layout of the area and suggested that a better lighting and signage could help. She pointed that the area had a long history of accidents and officers were in jeopardy every time they tried to assist.
- Informed that there were repeated incidents where elderly people were unable to board the Unicity bus. She explained that a nearly 80-year-old constituent called the bus service prior to determine when it would be at Main Towers and then arrived at the stop with her walker 20 minutes prior to pick-up. She did not expect the driver to assist her and wanted to put her walker on the wheelchair lift, sit on her walker and board the bus. Ms. Ford maintained that her constituent's request was the service that was publicized on Unicity's website. When the bus arrived, the woman was sitting directly under the sign and the driver passed without stopping. When questioned, the driver said that he was not sure that she wanted to get on the bus. Ms. Ford emphasized that such treatment of the City's senior citizens was inexcusable and unacceptable. She understood that Mr. Coleman was addressing the issue and she was trying to encourage some of the senior citizens to use the service and shared that the woman paid \$16 round trip, twice a week, for the paratransit which was \$32 a week on a fixed income. She pointed that taking the Unicity bus would be a great service and savings to the woman.
- Supported free parking on the Sunday after the Memorial Day Parade

Mr. McDermott:

- Supported free parking after the Memorial Day Parade
- Asked if staff had an anticipated expense for the City's services to assist UD during President Biden's visit. Mr. Coleman did not have an anticipated expense but understood that the event would involve many NPD. He mentioned that the Federal government was supposed to reimburse some portion while acknowledging that no entity in Delaware had yet been reimbursed. He admitted UD could always reimburse the City for NPD time during the event.

Ms. Creecy:

- Supported the free parking after the Memorial Day Parade
- Agreed that there was a serious issue with CSX. She shared that she lived in close proximity to the tracks, and she had been dealing with trash issues and CSX. She made several attempts to have CSX assist help clean up in the community. She understood the frustration and confirmed that the City should put some pressure on CSX.
- Wanted someone to be contacted regarding the Unicity situation to ensure that more attention would be paid to those who were waiting to catch the bus. She shared that she had a similar experience with her 41-year-old disabled cousin who was passed by the bus as well. She wanted more attention to be paid to those who were standing at the bus stop.
- Asked Ms. Olsen if UD was having an issue with trash around the University. Ms. Olsen explained that the Grounds Department typically handled refuse and litter on UD grounds; she asked if there was a particular area of concern. Ms. Creecy indicated the area was a block behind an automotive area and would provide Ms. Olsen with a more exact location. Ms. Olsen suggested there could also be a labor shortage. Mr. Coleman asked for the location to have City staff sweep the area.
- Shared that St. John's Cemetery was progressing nicely. The area did not have as much loitering and had been repaved. She believed that Pastor Hackett would invite Council for a visit in the near future.

Mr. Lawhorn:

- Acknowledged improvements were made years ago with the railroad but more improvements were necessary. He shared that one of the suggestions was that when improvements were made, a PM system should be implemented to ensure that the improvements were working appropriately at any high-risk location. He would leave it to staff to determine the rate of inspection but emphasized the need to check on operations and create a worklist of any improperly functioning items. He agreed that assistance might be necessary in driving change with DelDOT and suggested that State and Federal representatives be included in discussions.

Mr. Markham:

- Believed Council agreed on the issue with the railroad crossings and the City Manager was on-board with double-checking functions.
- Requested that Mr. Bilodeau investigate the issues with the wading pools

- Shared that he would run meetings differently from Mr. Clifton. He would ask for conversation versus polling each member during the discussion. He expected everyone to remain respectful and use a calm tone for better understanding. He endeavored to run a smooth and fair meeting where everyone would have an opportunity to speak. He wanted members to be prepared and make sure that the votes and direction to staff were clear. He asked that if he inadvertently skipped a member, then they should indicate their desire to speak with “Your Honor”, at which point he would immediately stop discussions and address the scenario. He asked to be informed if anyone needed to leave the meeting because the discussion could be critical and require all members. He could pause the meeting, if necessary.

Mr. Bilodeau reminded that the chat function was not part of the public record so the public should be aware before making substantive comments in the chat. He emphasized that Council should not engage in conversations with members of the public in the chat function because it was not part of the public record. He suggested that if a member received a message, the proper response should be “Thank you, if you wish to make public comment, you need to raise your hand to get noticed and make a public comment because the chat function was no appropriate”.

- Intended to reintroduce Council workshops where members could introduce issues they wanted to pursue but were not prepared to do the legislation. He continued that staff would have a stronger direction and what the legislation would include. The workshops would also let the public know what initiatives were under consideration. He wanted to find ways to increase transparency and communication. He mentioned that the City’s new software would allow people to follow proposed legislation, land-use items, and development projects, and be aware of the topics prior to the second reading in Council Chambers.

8. 1-E. PUBLIC COMMENT (5 minutes per speaker) (10 minutes): None

39:35

Elias j, owner of Pat’s Pizzeria on South Main Street, disapproved of the Alfresco event and wanted to ensure that it would not extend as it had last year. He explained that the event negatively impacted his business and delivery business significantly on Wednesdays. He also noted that the amount of traffic was absurd, and it took him nearly an hour to get from Kirkwood Highway to his store, meanwhile, he witnessed drivers cutting through parking lots to try to get to backroads which were subsequently jam packed. He continued that his distributors and most of the businesses he spoke with disapproved of the event. He acknowledged the idea was suitable during COVID when restaurants had capacity issues and the opportunity allowed for people to enjoy the weather, but it was now difficult to host the event because Main Street was a connecting corridor for the City’s roads. He explained that he was being blamed by the public and had to create returns for orders due to cold food and late deliveries. He shared that all three of his liquor distributors and his food distributors all tended to come during the dinner rush because they could not get through Main Street which created chaos for his entire store every Wednesday. He hoped that the event would not continue on a weekly basis and declared that he did not mind if it took place once a month.

Mr. Markham explained that the particular event was the last for April, and the current plan was to host an Alfresco-lite, which would include closing off Academy Street to create a take-out area that would not close Main Street. He shared that everything was subject to discussion and majority ruled. Mr. Coleman interjected that Ms. Gravell was heading the event; he confirmed it would be takeout but added that the City partnered with The Delaware Growler to offer beverage service at the event. He noted there were talks about potentially hosting an event during National Light Out but emphasized that the road belonged to DeIDOT, so any closure required DeIDOT approval. He shared that DeIDOT had been apprehensive about the most recent event and the worst came true. Mr. Markham pointed that the takeout could come from any restaurant and emphasized that Cleveland Avenue was a huge problem when it came to shutting down Main Street because it was improperly striped and left turns were an issue. As a result, Cleveland Avenue devolved into a parking lot when Main Street was shut down. Mr. Coleman informed that the barrels had been pulled back that day and the traffic was now flowing better. Mr. Markham thanked Mr. Degermentzidis for his comment.

Mr. Markham informed that item 5C, the resolution for the Charter change for lease and rental tax, had been pulled from the agenda. He intended to host a Council workshop to discuss the issue and asked Ms. Schiano to speak to Council for potential dates.

Vince D’Anna, District 5, supported the Charter change and explained that he owned a house in Lewes for over 40 years which he rented for a period; the home was subject to the city’s rental tax. He pointed that all landlords paid the tax, and it did not seem to be an issue. He emphasized that tourist rentals were an industry in Lewes, Rehoboth, and Bethany Beach whereas the University was Newark’s industry, and the economic impact of the University was overwhelming with regard to the City. He noted

that the amount of tax-exempt land in Newark was another reason that Council might want to consider alternate methods. He revealed that he had been a Newark resident since 1960 where he first rented an apartment and then built a house in 1966. He shared that the City had been an attractive place then with low taxes and cost of services, and the municipal services were great. He found things to be less appealing now with the issues with reservoir, water rates, and electric rates. He pushed for Council to consider alternate sources of revenue like the rental tax. He shared that he had been a landlord to UD students for a number of years so he had some understanding of the situation but believed that because the landlords would all be treated equally, it was likely the additional charges could be passed on in the form of higher rents. He found the climate to be much more friendly towards landlords when he was one himself. He found that every reasonable zoning for apartments got approved and not many had been declined. He thought the City was now in a place where it was appropriate for landlords to pay their fair share of taxes. He appreciated Council's time.

Mr. Markham ensured that Council would remember Mr. D'Anna's comments during the workshop.

9. 2. **APPROVAL OF CONSENT AGENDA: (1 minute)**
- A. Approval of Council Meeting Minutes – March 28, 2022
 - B. Receipt of Planning Commission Minutes – March 1, 2022
 - C. Receipt of Alderman's Report – March 31, 2022
 - D. Receipt of Conservation Advisory Commission 2021 Annual Report
 - E. Budget Amendment to the 2022-2026 Capital Improvement Program for the Purchase of Replacement Mowing Equipment
 - F. Budget Amendment for Day Camp Personnel

48:50

Ms. Schiano read the consent agenda into the record.

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

MOTION PASSED. VOTE: 6 to 0.

Aye – Markham, Ford, Bancroft, Creecy, Lawhorn, McDermott.

Nay – 0.

Absent – Suchanec.

10. 3. **APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS:** None

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

12. 5. **SPECIAL DEPARTMENT REPORTS:**

- A. General Assembly Update – Lobbyist (15 minutes)

50:10

Rick Armitage, Armitage DeChene & Associates, informed that the General Assembly was currently in recess for the yearly two-week Easter break and would return on Tuesday, May 3rd. He reminded that he had provided Council with a spreadsheet listing all of the legislative issues that his team had been tracking at the City's request. He reported that the training reimbursement to police agencies if an officer moved to another agency within four years had not progressed. He noted there were intense discussions in Dover on how to fund the police body-worn cameras (BWC) and there was also a cohesive group that had come forward to assert that the State needed to assist the agencies with recurring costs to store the mandated data collection. He revealed the cost was approximately \$1,000 per officer per year to store the data, which was about \$1.5 million State-wide. He pointed that the State could afford the cost, so his team had been working with the League and Police Chiefs Council to ensure success as the situation evolved. He added that another issue with the BWC was that each agency wanted to own its own data; they did not want the entity storing the data to own it, nor the Attorney General's Office, rather each agency should control its own data.

Mr. Armitage explained that his team's focus during the upcoming months would be on the \$14 million request that had gone to the Bond Committee. He informed that the Cecil County Executive requested a \$2 million appropriation in building a range in Cecil County, where the County would staff and do the operating costs. His team reached out to the chairs of the Bond Committee as well as the Comptroller General's Office to determine if the partnership would work but had not yet received a reply. He noted that the issue was the last on the priority list but had so far gotten the most play.

Mr. Armitage reported that PILOT had not progressed, and the Police Qualified Immunity continued to be “safe” so far. He explained that a few years ago, the Department of Transportation (DOT) wanted to begin a PILOT program in Newark similar to an Uber/rideshare program which fell to the wayside because of COVID. He reported that Milford currently had a PILOT program but noted that Milford was a much smaller jurisdiction. He was encouraged that the idea was not dead and could move forward but admitted that there was currently no answer to the issue she presented earlier. He informed that the next Delaware Economic and Financial Advisory Council (DEFAC) meetings were scheduled for May 16th and June 17th.

The Mayor opened the table to Council comments.

Ms. Ford noted that HB328, introduced by Representative Kim Williams, passed the General Assembly. She asked if the bill had been signed and explained that it targeted motorists who drag raced or performed stunt driving on public roads. Mr. DeChene replied that the bill passed the House and was awaiting action in the Senate. Mr. Armitage asked if it was problem in her district and she confirmed.

Mr. McDermott understood that the revision of the Police Bill of Rights was pulled from the Senate’s agenda on March 21st and asked for an update. Mr. DeChene did not have an update.

Mr. Lawhorn asked for clarification on the resistance to the reimbursement for police training. Mr. Armitage was unsure that there was a decent answer and noted that the period was currently two years, and the request was to extend it to four years. He assumed it would eventually move forward but believed that politics were playing a part. Mr. Lawhorn asked if the bill had any Democratic support and Mr. Armitage would need to investigate but pointed that it had moved out of Committee was on the ready list, but it was not yet scheduled for a hearing in the House yet. Mr. Lawhorn wanted to inform the residents when politics played a part so they could act.

Mr. McDermott interjected and noted that a number of retired Delaware State Police (DSP) served in the Legislature; he asked if Mr. Armitage found that there was some type of institutional resistance from DPS to the type of legislature. Mr. Armitage did not and reported he had ever noticed one in his 36 years of working. Mr. Lawhorn expected some resistance from DSP and not party politics. Mr. Armitage anticipated pushback from the administration due to cost concerns but reiterated that he did not experience any pushback from the elected former officers. Mr. McDermott maintained that he was not claiming that it would be an occurrence but noted that people were influenced by their history. He pointed that it would be beneficial to DSP if the law did not pass because they continued to take officers from municipalities across the State which would be less appealing if the law did pass. Mr. Armitage noted the money would not come out of DSP’s budget, and he would have to review the bill to determine how the fund would be created; he agreed that DSP was the agency that most frequently hired from municipalities.

Mr. Lawhorn noted there was a bill to allow the recreational use of marijuana and that Mr. Armitage indicated there was a suggestion for the City position to amend for local taxing. He thought the taxation would be critical because there would be added expenses if the law passed between policing and managing what the allowance would become. He considered it critical that Council investigate ways to generate more revenue and thought the taxation should be written in immediately so Council did not have to make an amendment to receive the revenue, it should be justified upfront. Mr. Armitage expressed doubt it would come together and explained that the League was involved, and the sense was that the votes were likely available to pass the taxing authority and enabling legislation bills. He believed any change at this point would be difficult. Mr. Lawhorn asked if Mr. Armitage felt the bill would pass; Mr. Armitage admitted it was his best guess.

Dr. Bancroft added his general support for the marijuana bill and noted that it represented potentially \$12 million in revenue. He expressed his frustration that items were added to the ready list only to die. He thanked Mr. Armitage for his efforts.

Ms. Creecy was pleased that the Governor signed off on the BWC in order to protect NPD and was also pleased about the marijuana that should be taxed accordingly. She did not think the taxes could be used towards policing because much of what she read was geared towards medical marijuana. Mr. Armitage was not completely certain because the language had changed so many times but reminded that medical marijuana use was already in place in Delaware. He explained that attempts were being made to equate the recreational use of marijuana to alcohol and tax it in the same manner but noted that it seemed as though there was no language that included a way to help municipalities that might have expenses associated with the ongoing use.

Mr. Coleman asked if it would be helpful to explained why the issue had been split into two bills. Mr. Armitage explained that tax bills required a 2/3rds majority, and the votes were not available which was why the first two iterations failed. There were now two bills: one was the taxing authority, and the other was the enabling authority. He hoped that the enabling portion would not be passed without the taxation portion. Mr. Coleman explained that those who did not support the package deal would have to vote for it, otherwise marijuana would be legal without any regulation.

Ms. Creecy was elated about HB113 because she received correspondence from landlords in her district that had issues with getting nuisance tenants out of the units. She thought the bill was a good step forward in relieving the situation. Mr. Armitage confirmed the intent was wonderful, but he was unsure whether it would move forward because the downside was that tenants might be unfairly accused. He shared that he was also a landlord embroiled in a current situation where his tenants were destroying the house and had not paid rent in months, but the hearing was at the end of May. Ms. Creecy noted that the bill would help Mr. Armitage; he agreed and reiterated his doubt that it would pass. Ms. Creecy wanted a similar bill to return if HB113 failed because the issue was a serious problem. She explained that a tenant had a party where someone was shot, they continually left trash all over the grounds, and the landlord was unable to get the tenant out of the unit. Mr. Armitage shared that his tenant's son shot an 83-year-old neighbor and an RV window with a pellet gun, but he learned that as long as the tenant was paying the rent, he could not evict. He reminded that there were issues a number of years ago that involved nuisance properties, the Attorney General's Office, and the County where there was no resolution.

Mr. Markham thought PILOT would not pass in the near term, but Mr. Armitage suggested that there could be an incident where the issue was made a priority, and something would move forward. Mr. Markham asked if the yearly \$400,000 in-lieu-of PILOT was in the Bond Bill. Mr. Armitage explained the funds were included with the Grant-in-Aid Bill and his team had discussions with the two Chairs where he learned that one Chair thought the funds should be made a standard occurrence as part of the regular budget; he was encouraged after the discussion. Mr. Markham asked if there would be a yearly inflation kicker, but Mr. Armitage could not promise.

The Mayor opened the table to Council comment. There was no public comment, and the Mayor returned the discussion to the table.

Mr. Markham explained that there was a technical issue with the camera in Council Chambers and took a five-minute recess.

(Secretary's note: the recess was ten minutes)

13. 5-B. APPOINTMENT OF NICHOL SCHELD – DEPUTY CITY SECRETARY – CITY SECRETARY (5 MINUTES)

1:10:20

Ms. Schiano explained that her acceptance as City Secretary created a vacancy in the Legislative Department for the role of Deputy City Secretary. Staff posted for applicants per the CWA Local 1036 contract and Ms. Scheld was selected from the recruitment pool for promotion from her Administrative Professional I position to the Legislative Coordinator/Deputy City Secretary position. Ms. Schiano continued that Ms. Scheld had worked in the Department since September 2019 and had experience in various industries and the skillset to match. Ms. Schiano stated that she was pleased with Ms. Scheld's impeccable minutes and requested that Council confirm her appointment to Deputy City Secretary, as Ms. Scheld would act in the City Secretary's absence.

There was no Council comment, and the Mayor returned the discussion to the table.

MOTION BY MR. LAWHORN, SECONDED BY MR. MCDERMOTT: THAT COUNCIL APPOINT NICHOL SCHELD AS THE DEPUTY CITY SECRETARY FOR THE CITY OF NEWARK.

MOTION PASSED. VOTE: 6 to 0.

Aye – Bancroft, Lawhorn, Creecy, Ford, McDermott, Markham.

Nay – 0.

Absent – Suchanec.

14. 5-D. RESOLUTION NO. 22__ : – A RESOLUTION AUTHORIZING THE REIMBURSEMENT OF A PRIOR EXPENDITURE OF FUNDS FROM THE PROCEEDS OF A TAX-EXEMPT OBLIGATION OR OBLIGATIONS TO BE ISSUED FOR THE FINANCING OF CERTAIN CAPITAL PROJECTS – FINANCE DIRECTOR (20 MINUTES)

1:12:57

Mr. Del Grande informed that the resolution was the final component to fund the projects approved within the 2018 Referendum on a tax-exempt basis and staff was required to provide a reimbursement resolution per US Treasury regulations. He clarified that the total amount for which staff was seeking approval was not to exceed \$3 million, the amount that was approved in the 2018 Referendum. He explained that the prices contained in the financing included upcoming improvements to City infrastructure, requirements to comply with the Americans with Disability Act (ADA), hard surface facility improvements, street paving projects, and other City capital projects, such as those included within the ongoing 2018-2022 Capital Improvement Program (CIP). He reminded that financing the projects with debt was approved in the 2018 Referendum and staff was present to complete the final piece of financing.

The Mayor opened the table to Council comment. There was no Council comment.

The Mayor opened the floor to public comment. There was no public comment, and the Mayor returned the discussion to the table.

MOTION BY MR. LAWHORN, SECONDED BY MR. MCDERMOTT: THAT COUNCIL APPROVE THE PROPOSED RESOLUTION AUTHORISING THE REIMBURSEMENT OF A QUALIFYING PRIOR EXPENDITURE OF FUNDS FROM THE PROCEEDS OF A TAX-EXEMPT OBLIGATION OR OBLIGATIONS TO BE ISSUED FOR THE FINANCING OF CERTAIN CAPITAL PROJECTS AS PRESENTED.

MOTION PASSED. VOTE: 6 to 0.

Aye – Creecy, Bancroft, Lawhorn, McDermott, Ford, Markham.

Nay – 0.

Absent – Suchanec.

(RESOLUTION NO. 22-F)

15. 6. FINANCIAL STATEMENT: (Ending December 31, 2022) – Finance Director (15 minutes)

1:16:04

Mr. Del Grande presented the financial report through December 2021 and explained that staff's close-out of 2021 was a lengthy process and was not traditionally completed until mid-March. He revealed that figures in the report, as with all the prior monthly reports, were considered unofficial until the annual yearly audit was completed, which was targeted to be within the next thirty days. Once the annual audit was completed, the auditors would present the annual audit to Council for acceptance, and staff would also forward it to the Government Finance Officers Association (GFOA) for award consideration.

Mr. Del Grande began with the City's operating expenses and revealed that the City's total operating expenses remained below budget throughout the year and all spending reflected a positive ending balance of \$2.75 million. He reported that one third of the balance, or \$896,000, came from electric purchases coming in under the estimated budget. He continued that personnel services comprised 31%, or \$843,000, of the variance due to the number of vacancies carried by the City throughout 2021. He shared that Human Resources advertised sixty job postings throughout 2021, which was twice the amount posted in 2020, and informed that the trend was continuing into 2022. Debt Service comprised 25% of the balance and carried a balance of \$698,000 from delays in debt payments on leased equipment due to supply chain issues. Additionally, staff experienced the slowdown of some capital projects that were funded through the State Revolving Loan (SRL) program. He continued that the overall deficit of \$315,000 in Contractual Services was due to legal expenses incurred within Administration's budget (\$58,000) and recruitment/retention expenses (\$54,000), which were mostly related to COVID and would be reimbursed with ARPA funding. Additionally, reimbursable expenses for \$356,000 in electric, which were included in the figure, were primarily related to the Elkton Road project. Lastly, Fleet Maintenance's contractual budget was exceeded by \$100,000 due to vehicle and accident repairs. He explained that the cumulative shortfalls were offset by positive variances in other departments to equal the negative contractual services variance of \$315,000.

Mr. Del Grande reported that all revenue reflected a \$1.3 million positive variance when compared to the budget; the variance was from \$837,000 in utilities and \$500,000 in non-utilities. He informed that all utilities exceeded 2020 in both revenue and volumetric sales and when comparing 2021 utility activity to 2019, staff reported that electric and sewer revenue were on par with pre-Covid times. He pointed that water revenue trailed 2019 by \$150,000, or 1.7%, but began to close the gap as the year progressed. He continued that electric, water and sewer volume were below 2019 by 0.8%, 6%, and 2.8% respectively but revealed that STAR campus growth since 2019 had helped with electric and sewer sales.

Mr. Del Grande informed that revenue for the water and sewer funds were more consistent in 2021 due to the changes made to the customer charges. In 2021, \$1.25 million, or 14%, of all water sales and \$763,000, or 10%, of all sewer sales came from the customer charge. By comparison, only \$103,000, or 1.3%, of water and \$34,000, or 0.5%, of sewer sales came from a fixed charge in 2020, which made it difficult for the City to consistently meet its revenue requirements. The switch of ensuring cost recovery through a fixed rate provided a level of stabilization to the utilities.

Mr. Del Grande then presented the non-utility revenue and reported that the lodging tax exceeded budget expectations by \$58,000, as revenue for 2021 surpassed \$508,000 for the year. As travel restrictions waned throughout the year, hotel activity improved; staff expected activity to improve throughout 2022. He continued that real estate transfer tax (RTT) finished the year at \$2.2 million, which was \$758,000 more than budgeted. There were six transactions of \$1 million or more in 2021 which accounted for \$489,000 and another 388 transactions generated \$1.7 million in revenue. Lastly, 39% of the real estate transactions were exempt from RTT per State and City Code which was typical.

Mr. Del Grande reported that fine activity improved each month when comparing 2019 to 2021: traffic, criminal and court costs were 12% below average, and parking tickets were 5.6% above 2019 activity. He informed that Alderman Court activity for the majority of 2021 remained steady and staff did not anticipate fine revenue to exceed the budget by \$435,000 (\$1.8 million), however, it still fell \$120,000 short of 2019 levels. He explained that prior to 2020, parking revenue traditionally generated between \$2.7 and \$2.9 million annually but the 2021 lost revenue was \$785,000. While there was a shortage in the early stages of 2021, parking activity was returning to pre-2020 levels. He informed that the permit line item included building, rental, fire, sign fees, development fees, rights of way, et cetera, which were budgeted to provide \$2.2 million in revenue. He pointed that staff recorded some large permits as highlighted in the report but through December, building and rental permits fell a little short of expectations. Staff overestimated rental permit revenue by \$50,000 (\$550,000 versus \$600,000) and building permits by \$170,000 (\$1.1 million versus \$1.27 million). Oftentimes, the timing of large projects was difficult to forecast for many reasons however staff expected large permit volume to improve in 2022.

When combining the budgetary expenditure savings of \$2.75 million and the positive revenue balance of \$1.3 million, staff estimated to finish the year at \$4.1 million to the positive.

Mr. Del Grande concluded that the end of December balance was \$53.9 million, which included \$24.4 million in the City's long-term cash account, \$2.2 million in the ESCO escrow account for the ESCO projects, and \$27.3 million in operating cash. The figures would decline as the next tax billing season progressed. The electric regulatory liability carried a credit balance, an over-collection of \$1.7 million, and was already managed through the 2022 rate stabilization adjustment (RSA) and approved by Council on March 7th, 2022.

The Mayor opened the table to Council comment.

Mr. Lawhorn asked if the \$4.1 million surplus was split into various accounts. Mr. Del Grande confirmed and explained that part of the amount was the RSA; staff returned over \$1 million. He added that the amount was also a result of prior year shortfalls when there were no customer charges in water and sewer which created a negative impact throughout the years. He emphasized that any surplus to water and sewer helped the bottom line and went into the cash building of the capital projects in the out-years. Mr. Coleman explained that a profit in the current year was the next year's capital budget so whenever staff funded a project with capital reserves, the money was derived from surpluses in previous years. Mr. Del Grande added that \$600,000 savings in debt service would be used in future years to pay down the SRLs because the City was still fixed to the State to pay back its loans by a set date; if it took longer to complete the project, the City would pay interest payments and not full debt service obligations so even though the City might have saved money during the year, it would pay higher debt service in the future to make up the time lost. Mr. Lawhorn noted that with the surplus, ARPA funding, and infrastructure bill, the City was receiving money to fund capital projects which proved that staff was managing the City's finances well; he asked if staff could create a simple executive summary to share with residents. He believed that there was an impression in the City that did not follow Council meetings, so it was important to share when operations were going well to inform that staff and the finances were performing well. Mr. Del Grande agreed and shared that he intended to create a four- or five-page simplified version of the City's financials that could be shared with constituents.

Mr. Lawhorn asked for clarification on parking's multi-space versus lots. Mr. Del Grande explained that nearly 99% of parking revenue stemmed from the kiosk and had a separate revenue line instead of being held as cash.

(Secretary's note: The hybrid access to the meeting was disrupted and comments were halted until the line was reestablished.)

Mr. Del Grande continued that staff changed the revenue lines for parking to better account for how the money was collected. Mr. Lawhorn explained that he was attempting to compare to past years and asked if he could compare the bottom line. Mr. Del Grande confirmed.

Mr. Lawhorn noted that many comments indicated that most items were returning to pre-COVID levels and Mr. Del Grande confirmed and shared that February parking results were the strongest in some time.

Ms. Creecy credited staff for the success in keeping the City afloat while also creating a surplus. She asked for clarification on contractual services on the third page. Mr. Del Grande explained that the net was -\$314,000 and all of it, if not more, was due to the reimbursable contractual work that the Electric Department had been conducting for the Elkton Road project. He continued that additional revenue under utilities offset the shortfall. Mr. Coleman interjected that the City did not have the staff to handle the work in-house and contracted with a third-party that would be paid by DelDOT.

Mr. McDermott asked how much the City typically spent out of Capital Reserves. Mr. Del Grande replied that the amount could vary from year to year because the CIP was funded by the City's ability to complete projects with available funding. Staff would consider the funds on hand and determine which street projects could be completed in the future or any other project that would be funded by the General Fund. Mr. McDermott explained that he wanted to be certain of the operations so that he was clear in his discussions with constituents. Mr. Del Grande revealed that the City had a reserve policy that considered how many days' worth of cash staff had to have on-hand, either 60-day or 100-days depending on the fund, any future Council-approved capital projects, current requirements for the equipment reserve fund, and similar items that were subtracted from the cash on-hand and resulted in hundreds of thousands of dollars from the \$54 million discussed. He reminded that staff ensured that each fund was positive, and the City was not operating at a loss from year to year. He would work with Mr. Coleman to create a comprehensive, simplified report to share with residents.

Dr. Bancroft thanked staff for the report and agreed with previous comments on the necessity of a simplified report. He was interested to see if the RTT trend continued with the housing market.

Mr. Markham thought it was important to realized that much of the \$4.1 million was encumbered or in funds that were not necessarily accessible to the General Fund. He reminded that the City was not running a full staff so there were overtime costs and unfilled positions. He emphasized the need to fill the positions because he doubted that staff could keep up with the level of work. He informed Council that in 2010, the end of year balance was at \$13 million, and the situation had been dire, but the balance had increased to \$30 million and was now at \$50 million so there was more flexibility, and the City was in much better shape.

MOTION BY MR. MCDERMOTT, SECONDED BY MR. LAWHORN: TO ACCEPT THE FINANCE REPORT AS PRESENTED.

MOTION PASSED. VOTE: 6 to 0.

Aye – Ford, McDermott, Creecy, Bancroft, Lawhorn, Markham.

Nay – 0.

Absent – Suchanec.

16. 7. RECOMMENDATIONS ON CONTRACTS & BIDS OVER CONSENT AGENDA LIMIT:

- A.** Recommendation to Award Contract 22-02, Purchase of One (1) Wire Tensioner Trailer – Electric Director (10 Minutes)

1:37:16

Mr. Patel presented the recommendation to award Contract 22-02 for the purchase of one wire tensioner trailer.

The Mayor opened the table to Council comment.

There was no Council comment, and the Mayor opened the floor to public comment.

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

MOTION BY MR. LAWHORN, SECONDED BY MS. CREECY: THAT COUNCIL AWARD CONTRACT 22-02 TO SHERMAN & REILLY, INC. OF CHATTANOOGA, TN FOR THE PURCHASE OF ONE WIRE TENSIONER TRAILER IN THE AMOUNT OF \$112,179.

MOTION PASSED. VOTE: 6 to 0.

Aye – Creecy, Bancroft, Lawhorn, McDermott, Ford, Markham..

Nay – 0.

Absent – Suchanec.

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

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

A. **Resolution No. 22- __:** A Resolution Renaming Newark Senior Living, 924 Barksdale Road to “The Vero at Newark” (10 minutes)

1:39:13

Mr. Kennel presented the recommendation to rename Newark Senior Living, at 924 Barksdale Road, to “The Vero at Newark”. He confirmed that staff coordinated with NPD and there were no objections.

The Mayor opened the table to Council comment.

Ms. Ford asked what motivated the change. Mr. Kennel believed there was a change in ownership.

Mr. McDermott asked what Vero meant and Mr. Kennel informed that Vero meant true.

Ms. Creecy did not understand why the name needed to be changed. Mr. Kennel repeated that that the property changed owners.

Mr. Markham asked Mr. Bilodeau why the name change had to be adopted by Council. Mr. Bilodeau explained that he had not been included but assumed that the request was a substantial change to a previous decision by Council, but he did not necessarily agree. Mr. Coleman recalled that the change was requested by Mr. Clifton prior to serving as Mayor because development projects were changing their names and Aetna was having difficulty finding the locations. Mr. Kennel agreed and explained that Aetna needed to know where to send the trucks. Mr. Coleman explained that the request formalized the process to make sure that everyone knew where to go. Mr. Kennel pointed that it was formalized in Code Section 27-24.

The Mayor opened the floor to public comment. There was no public comment, and the Mayor returned the discussion to the table.

MOTION BY MS. CREECY, SECONDED BY MR. MCDERMOTT: THAT CITY COUNCIL ADOPT THE RESOLUTION AS PRESENTED.

MOTION PASSED. VOTE: 6 to 0.

Aye – Ford, McDermott, Lawhorn, Creecy, Bancroft, Markham.

Nay – 0.

Absent – Suchanec.

(RESOLUTION NO. 22-G)

19. 9-B. **REQUEST OF DANNEMANN & DANNEMAN, LLC, FOR THE MAJOR SUBDIVISION FOR THE REDEVELOPMENT OF APPROXIMATELY 0.6518 +/- ACRES IN ORDER TO DEMOLISH THE EXISTING STRUCTURE AT 134 EAST MAIN STREET AND CONSTRUCT AN 12,350 SQUARE FOOT STRUCTURE WITH TWO RESTAURANTS AND COMMERCIAL TENANT SPACE WITH 31 APARTMENT UNITS AT 132-138 EAST MAIN STREET**

1:44:29

Ms. Schiano read the request into the record.

Mr. Markham asked Mr. Bilodeau if both items would be discussed simultaneously, and Mr. Bilodeau confirmed.

MOTION BY MR. MCDERMOTT, SECONDED BY MS. FORD: FOR PUBLIC HEARING OF BOTH ITEMS.

Ms. Gray presented the major subdivisions for site plan approval and a special use permit for apartments in conjunction with a permitted non-residential use on 0.6518 acres of property located at 132-138 East Main Street. The plan included replacing the structure at 132 East Main Street with a five-story mixed use building including 6,580 square feet of commercial space and 31 apartment units. A 29-space parking waiver to accommodate the development was approved by the Planning Commission on February 1, 2022. She reminded that the project previously came before Council on February 8, 2021 where the Mayor petitioned to review the parking waiver approved by the Planning Commission on December 1, 2020. The Planning Commission's approval of the Parking Waiver was overturned by Council and as a result the project was denied. Subsequently, the applicant revised the plans and requested that the project, including a reduced parking waiver, be reconsidered by the Planning Commission and Council. On October 25, 2021 Council voted 6-0 to approve the request for a new application, including a new parking waiver for the property.

Ms. Gray noted that the revised project included adjustments to the number of apartments, apartment bedroom counts, and a change of use in the commercial space from restaurant to a take-out shop, which significantly adjusted the parking requirements from 117 required spaces and a waiver request of 67 spaces to 82 required spaces and waiver request of 29 spaces. She pointed that the changes to the parking requirements were articulated in the staff memo to Council and included in the packet.

Ms. Gray continued that the applicant requested site plan approval as indicated in the project description, and also requested relief from the front setback for a difference of 6 feet, and a side yard setback of 8 feet. On February 1st, the revised plan was presented to the Planning Commission and the Commission voted 5-0 to recommend that City Council approve the major subdivision by site plan approval and the special use permit for the apartments in conjunction with the permitted non-residential use, and the 29-space parking waiver with the provision that the applicant provide a perpetual mutual cross access easement to allow traffic within Lot #4 to continue to cross the property and that the applicant would pay the required parking waiver fee of \$135,897.75. She informed that the Planning Commission did not make a recommendation on the request for special use permit for the apartments since the Code-required threshold for Planning Commission review of a special use permit was one acre or more. As indicated in the Planning and Development report, staff recommended approval of the special use permit for the apartments.

Ms. Gray informed that there were changes made to the plans since the February 1, 2022 Planning Commission meeting whereby the conditions of approval indicated several corrections to the plans and tasks that were required to be completed before the plan could be scheduled for that evening's Council meeting. She revealed that the changes and tasks had been addressed to the satisfaction of staff with the outstanding items being required in the subdivision agreement. She explained that the drawings in Exhibit A of the Planning and Development report represented the drawings as they were presented to the Planning Commission with the revision date of November 29, 2021. She continued that the drawings attached to the Council packet represented the revised drawings with the revision of date of February 9, 2022.

The Mayor opened the table to Council comment.

Mr. McDermott asked for clarification on the parking situation at the rear of the building. Ms. Gray explained that the footprint of the building had not changed, and the lot was currently leased to the City by the property owner/applicant for 30 parking spaces. The proposed development proposed to have 14 spaces provided as part of the plan and there were also a number of legally non-conforming parking spaces as a result of previous approvals. When combined with the required number of parking spaces per the plan, the result was a shortage of 29 spaces. Mr. McDermott understood and clarified that there was an issue with access to the City lots through the applicant's property; he wanted to know more about the access under the new plan. Ms. Gray explained that under the current plan, as part of the parking waiver, the applicant proposed a perpetual cross-access easement from the west side to the east side of the property. Mr. McDermott recalled that if the City lost the access to the lot, staff would have to seek another type of egress into the Lots that the City currently owned; if the City did not have the agreement with the applicant, the City's access to the other City lots would be cut off. Ms. Gray confirmed. Mr. McDermott pointed that when staff investigated other methods to gain access to the lots, none of which seemed appealing. Ms. Gray confirmed that none were appealing or workable at the current time.

Ms. Ford and Ms. Creecy had no questions.

Mr. Lawhorn noted that page 5 indicated that the Design Review Committee approved the plans and asked if the Committee had been reinstated. Ms. Gray explained that historically, the Newark Design Committee was established by the Downtown Newark Partnership, and when The Newark Partnership was created, the Design Committee existed on paper in Code. Staff had proposed a change in the Code to reestablish the Design Committee which failed in a pre-COVID vote. She noted that the Design Committee still existed but there had been quorum issues, so the Chair suspended meeting until the ordinance was changed. Mr. Lawhorn asked how the plans were approved by the Design Committee and Ms. Gray explained that it had been approved when the Design Committee was still meeting. Mr. Lawhorn asked how long the easement would last and Ms. Gray informed that the easement would be perpetual. Mr. Lawhorn asked if the easement was part of the subdivision agreement and Ms. Gray confirmed.

Ms. Creecy asked if the parking was reduced. Ms. Gray confirmed and the applicant currently needed a waiver for 29 spaces which was a result of a change in uses and bedroom count at the property.

Dr. Bancroft thanked Ms. Gray for her efforts and the good faith efforts of the other stakeholders as related to the easement in the parking lot access.

Mr. Markham asked if the amount of space next to Chipotle was zero. Ms. Gray confirmed that the building was proposed to be against the rear of Chipotle with the access changing to the east side. There were requirements for fire code to do additional attenuation of the shared walls. Mr. Markham noted that there was currently no distance between the two and Mr. Coleman confirmed.

The Mayor opened the floor to the applicant.

George Danneman, applicant, explained that his family owned the property since 1950 and had spent significant time formulating the current plan which was a result of consensus and great time spent with City staff. He introduced John Tracey, attorney, who would demonstrate the formal presentation.

Mr. Tracey, Young, Conaway, Stargatt, and Taylor, introduced Kevin Wilson of Architectural Alliance, Julian Pellegrini of PELSA Engineering, and Craig Johnson from North Star Construction Management. He continued that the project was familiar to some and credited Ms. Gray for reviewing the project history and repeated that the applicants had been before the Planning Commission twice where the proposal was reviewed at the beginning of 2021. He explained that the City Solicitor was asked to investigate a few issues with regard to the project and reiterated that the plan was unanimously approved by the Planning Commission, including the 67-spot parking waiver. Afterwards, Council reviewed the application and overturned the previously approved parking waiver by a 4-3 vote, so the applicants returned to the drawing board. He reminded Council that the vote would have typically ended the project for some period of time but there was some Council concern so the ordinance that applied to parking waivers and denials was reviewed and revised to provide an opportunity for projects to return if substantial changes were made and Council deemed it to be appropriate. He reminded that the applicants had returned to Council in the fall, and it was determined that enough had been done to merit further consideration. He reiterated that the project was reviewed in February by the Planning Commission where it received the unanimous approval for the parking waiver and the site plan and major subdivision plan. He explained that the difference was that there was no challenge to the 29-space parking waiver. He noted that Council was to consider the site plan, major subdivision plan, and the special use permit, all of which had been endorsed by the Planning Department; the Planning Commission endorsed the major subdivision and the site plan approval.

Mr. Tracey continued to the presentation and pointed that it was the Planning Department's practice to prepare a thorough report that outlined the project, its merits, and any concerns. He shared that the project was the result of substantial collaboration between the property owners and the City's various departments as different iterations moved forward. He reminded that the original plans called for a grander project with a ten-story hotel, parking garage, and other amenities that would have taken up large portions of Lot #4. He noted that the Design Committee issued a favorable report on the design and its elements which had been carried through to the current project such as the mansard roof added at the fourth floor, more brick and brick façade, respacing windows, and additional design elements with window type amenities to the structure. The applicants also eliminated one design: the raised column platform over the parking lot but there were substantial concerns from the Fire Department and refuse company.

Mr. Markham interjected and asked that the discussion concentrate on what the applicant was presenting to Council and Mr. Tracey replied that he appreciated the request. There was a technical issue and Ms. Scheld explained that the public and Mr. Tracey were able to view the presentation but those in Council Chambers could not.

Mr. Tracey began with the initial slide of the presentation which showed the aerial photograph of the area; the property was indicated with the red marker and was familiar to most as the former site of Margherita's Pizza. He noted there were several larger structures in the exhibit than what the applicant was proposing, including some six- and seven-story structures. He revealed that the area was commercial and included a number of mixed-use and student housing projects. The zoning was BB which permitted the use, along with the Comprehensive Plan so Mr. Tracey was confident that the proposal fit comfortably with what the Comprehensive Plan and zoning Code were trying to establish.

Mr. Tracey then displayed the current site of the property with the operational businesses of Tasty Wok and Playa Bowls and the previous site of Margherita's Pizza. The next slide showed the property from Center Street; the area was almost entirely paved with Walgreens building in the foreground and the Kate's Place Townhomes at the opposite end of the parking lot. He pointed that the photograph showed the parking kiosk and parking gate which were no longer operating at the lot. The next slide was the existing condition slide from PELSA which showed the existing and neighboring uses in the area. He explained that the applicant's building with Tasty Wok, Playa Bowls, and Margherita's Pizza, Chipotle and Panera Bread were to the east, and Walgreens was immediately to the west. He noted that rendering depicted the parking spaces behind the building and showed that the applicant's property lines ran completely through the parking lot to the back end. In addition to the restaurant uses he previously referenced; the building currently contained a small office as well as four two-bedroom apartments.

Mr. Tracey continued to the proposed site conditions which looked similar to the previous slide but included the redesigned parking lot and proposed uses in the building's first floor. He reminded that the proposal was for a five-story building where the first floor would be commercial uses, amenities, and services for the residential units. The rendering also showed that the applicant was adding new ADA parking spaces to the rear of the building; the applicant was also proposing to add an electric vehicle charging station as part of the overall parking lot design. He revealed that the retail street fronts on Main Street would be reduced from three-stories to two-stories and allowed for continued vehicular access through the property.

Mr. Tracey then displayed a colored rendering of the first-floor site plan that showed the commercial uses more clearly. He pointed that there would be pedestrian and fire access from Main Street to the residential properties as well as access to the rear for the commercial facilities employees. He explained that the rear commercial tenant space was set to be occupied by two first-floor apartments in the first proposal but were removed as part of the overall proposal and replaced with commercial office space. There would also be interior and exterior bike parking and bike storage units on each of the four residential floors above the building.

Mr. Tracey explained that the next few slides represented the architectural concepts for the building and noted the comparison to the Newark Opera House. which was a motivation of the design concept and pointed that both buildings had the same step back. He revealed that the architectural materials and design elements would include brick, asphalt shingles, and synthetic stucco on the top level which was stepped back 20 feet from the front of the building and would not be visible from many locations. He then displayed several slides depicting the different perspectives of the building.

Mr. Tracey reminded that the applicant was seeking site plan approval for two deviations; the original request before the Commission was for four deviations, including first-floor apartments and a density bonus, which had been originally approved but withdrawn with the current application. He clarified that the applicant was seeking two deviations: the front setback and the side yard. He argued that the deviations were not uncommon for the types of projects that had been considered along Main Street and emphasized that the front setback was an improvement over the current condition and would pull the building back from Main Street, aligning it with the Chipotle building. He continued that the applicant submitted justification for the minimal deviations sought in the site plan approval and informed that the Main Street façade was an example of Second Empire architecture, drawing from other examples along East Main Street, specifically the Opera House. He continued that the distinguishing mansard roof reduced the visual impact of the top floor along Main Street and was separated from the body of the structure with an ornate cornice line. He stated that the red brick façade with cast stone detailing recalled the Colonial Georgian style of campus buildings and the architectural base at street-level included storefront glazing, awnings over the entries, and accent lighting.

Mr. Tracey revealed the project met or exceeded the Leadership in Energy and Environmental Design (LEED) requirements and would include an electric vehicle charging, a white roof to reduce the heat island, a wired roof for solar panels, and a storm water management system, which was not technically required for the site per Code. He explained that the applicant would install an underground

stormwater system that would treat quality and quantity and would be designed to accommodate a ten-year storm and assist in problems with stormwater runoff issues on Main Street. He reiterated that the applicant sought a parking waiver and emphasized that the project benefited the City by containing students in areas of the City that were walkable to campus and the businesses and not extending them into the neighborhoods. He repeated that the project provided a perpetual cross access easement and made improvements to the entrance of the parking lot from Center Street as well as off of the property within the parking lot to ensure correct functionality. He pointed the applicant paying a parking waiver fee of approximately \$136,000.

Mr. Tracey proceeded to the slide captioned "Changes" which highlighted the changes the between what was before the Commission the first time around and the current plan. He thought the change in unit types were critical because the first iteration generated significantly more parking with four- and six-bedroom units; the presented proposal was almost entirely two-bedroom units with four one-bedroom and one three-bedroom. He concluded with a comparison slide between the before and after and reminded that one of the aspects for Council consideration was the special use permit, of which there had been a number granted for student apartments on Main Street. He explained that the standard was fairly straightforward because they would not adversely affect the health or safety of people in and around Newark, would not be detrimental to the public welfare or injurious to property in and around Newark, and would not be in conflict with the Comprehensive Plan. He emphasized that the proposal was completely consistent with the Comprehensive Plan which looked for mixed-use buildings in the central corridor. He acknowledged the discussion of height along Main Street and pointed that the plan was at five-stories and the applicant was not looking to build higher. He reminded that the original plan was much grander and pointed that the step back provided a minimized impact of the fifth story, particularly from the Main Street corridor.

The Mayor opened the table to Council comment.

Mr. McDermott revealed that most of his questions had been answered in the previous presentations but asked for clarification on the water treatment facility. Mr. Tracey explained that the plan would create an underground storage basin for storm water that would treat the water from a quantity standpoint by capturing the water to slow its release, and by quality standpoint in that the water would be treated prior to release. Mr. McDermott asked where the water would be discharged, and Mr. Tracey replied that it would be released into the stormwater system's existing network.

Mr. McDermott referred to the applicant's claim that the project met the outstanding architectural design and met site plan approval based upon the tiered building. Mr. Tracey added that it was the different tiers, materials, and design elements along all sides of the building; site plan called for substantial measures. He shared that the applicant continued to modify the architecture based on comments received from the City and reminded that many of the elements were a result of meeting with the Design Review Committee. Mr. McDermott thanked Mr. Danneman for allowing the City to continue to utilize the parking area behind the property. He reminded that he voted for the project the first time and appreciated the revision better because the one-bedroom apartments were conducive to maintaining order along Main Street.

Ms. Ford appreciated that the building was capped at five-stories, and she would not have voted for a taller building. She asked if any consideration had been given to greenery around the building. Mr. Tracey revealed that the applicant was required to create a landscape plan that was consistent with the City and there would be a wood fence along the rear property line to separate from the rental properties. The applicant was also working with the Parks Department to incorporate greenery at the rear of the building on the patio.

Dr. Bancroft believed the decision would be difficult because the building was large, and the deviation requests were modest. He agreed with the concerns around congestion but thought that City services could be adjusted and leveraged to create beneficial economies of scale. He wanted to be consistent with his interpretation of Code from previous iterations of the project and pointed that the property had long been owned by a local family. He appreciated the patience with the community's open discussion and thought that the final refinements were an improvement. He continued that front step back and the cosmetic effects could help with perception of a looming height, the stormwater system was a benefit, and noted that the Planning Department's January 25, 2022 report was thorough in its details. He found the smaller apartments, bike parking, and electric chargers were important features. He agreed that the architecture was consistent with the character of the nearby area.

Ms. Creecy was also pleased with the project and shared that her constituents were concerned about how close the building was to the street; she was pleased with the setback. She appreciated the revision to one-bedroom apartments and agreed with the Planning Department's January 25, 2022 report.

Mr. Lawhorn asked if staff was comfortable with the width and safety of the angle of the easement and Ms. Gray confirmed. Mr. Tracey shared that the final design was preferred by City staff and the fire department. Mr. Lawhorn asked if the patio was for residential use. Mr. Tracey described the patio as more than a sidewalk and was unsure if there were any plans to add chairs to the area but reiterated that there would be planters or trees. Mr. Lawhorn thought the setback feature was important and that the Main Street frontage was around three stories. He hoped that the feature would be added to Code so that the Main Street could remain cozy while increasing density downtown to keep the student population out of the neighborhoods. He asked if it made sense to have side setbacks downtown and Ms. Gray explained that Code currently required an 8-foot side setback for any building over three stories. Mr. Lawhorn explained that variances were necessary because Code sometimes had shortfalls and he thought there was no sense for the project to have side setbacks. Mr. Tracey interjected that the project would make improvements to the roof of the Chipotle building from a fire rating standpoint and shared that there was also an easement on the Chipotle property that prevented anything from being built directly against the property. Mr. Lawhorn was pleased with the minor improvement and preferred to have huge sidewalks but acknowledged it was an impossibility unless the building was demolished. He was also pleased with the stormwater improvements.

Mr. Markham agreed with Mr. Lawhorn's preference for a wider front sidewalk for those with ADA issues and dining events; he asked how individuals would access the elevators from the front of the building. Mr. Wilson explained that there was fire ready corridor leading back to the stairwell from Main Street and the lobby for resident use which would include a fire command center. The path extended along the side of the building to the primary entrance off of Center Street into the residential portion of the building which contained the elevators and another stairwell. He confirmed that the route was fully accessible from Main Street. Mr. Markham asked if ADA individuals could get through the stairwell and Mr. Wilson confirmed that all of entries were zero clearance and had appropriate clearances at the doors and openings. Mr. Markham asked if there were automatic door openers and Mr. Wilson confirmed. Mr. Markham recalled another project where there was construction on the side of the building and the only way a person could get to the elevators was through the back of the building, but they were in the front; he asked that staff be more conscientious about ADA access from the front of the building. Mr. Danneman interjected that entrance on the side of the building with all of the ADA parking anticipated to be the primary entrance for residents. The front entrance was added to appease Fire Marshal concerns. Mr. Markham understood but pointed that residents had visitors and handicapped parking was free along Main Street. Mr. Danneman maintained that the entrance was ADA accessible.

Mr. Markham wanted to ensure that exterior materials were not inferior, and Mr. Wilson revealed that the project would use self-weeping synthetic stucco system that was generations beyond the product that cause mold and moisture intrusions. He explained that the design was a rain screen that would allow water to permeate behind the skin and flow back out of the building through a weep screen. He added that there was a weather-tight water-resistant barrier behind the stucco; he was very comfortable with the current technology and uses.

Ms. Ford asked if the entrances would be secure so that only residents could have access to the building and Mr. Tracey confirmed.

The Mayor opened the floor to public comment.

Howard Smith asked how many parking spaces would be lost in Lot #4 as a result of the project. Mr. Tracey stated that 16 spaces would be lost, and Ms. Gray confirmed.

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

Ms. Gray noted that there were two letters of support in the packet and Ms. Schiano explained that the letters had been submitted earlier and offered to read them into the record. Mr. Danneman shared that they were submitted in January and Mr. Markham confirmed they were part of the Council packet. Ms. Creecy asked for the authors and Ms. Schiano said they were submitted by Jeffrey Stannard, 208 Murray Road, and Dennis Aniunas, retired NPD Lieutenant.

MOTION BY MR. MCDERMOTT, SECONDED BY MR. LAWHORN: THAT CITY COUNCIL APPROVE THE MAJOR SUBDIVISION BY SITE PLAN APPROVAL AT 132-136 EAST MAIN STREET AS SHOWN ON THE PLSA COMPANY SITE PLAN APPROVAL, SPECIAL USE PERMIT, & MAJOR SUBDIVISION PLAN

DATED AUGUST 5, 2019 AND REVISED NOVEMBER 29, 2021, AND DESCRIBED IN THE JANUARY 25, 2022 PLANNING AND DEVELOPMENT REPORT INCLUDING THE SUBDIVISION ADVISORY COMMITTEE CONDITIONS AS OUTLINED IN THE ATTACHED SUBDIVISION AGREEMENT AND RESOLUTION.

Mr. McDermott voted yes because he believed the proposed plan fully complied with the subdivision ordinances, building Code, zoning Code, and all other applicable ordinances of the City and the laws and regulations of the State of Delaware and would not be in conflict with the purposes of the Comprehensive Development Plan of the City. He found that the plan met the criteria for the site plan approval because it showed distinctiveness and excellence of site arrangement and design as demonstrated by the applicant. He also appreciated the unique treatment of parking facilities which allowed access to City lots through the applicant's lots.

Dr. Bancroft voted yes for the reasons stated by Mr. McDermott and for the reasons stated in the Planning and Development report dated January 25, 2022. He continued that the plan supported the subdivision ordinances in the Code for the City and the State, the site plan approval for the green efforts, the attention to LEED and International Building which demonstrated good benefits for other projects.

Ms. Ford voted yes for the reasons stated by Mr. McDermott and urged the developer to remember the green touches.

Ms. Creecy voted yes for the reasons stated by Mr. McDermott and in the January 25, 2022 memo.

Mr. Lawhorn voted yes for the reasons stated by Mr. McDermott and in the January 25, 2022 memo.

Mr. Markham voted yes for the reasons stated by Mr. McDermott, Dr. Bancroft, and the January 25, 2022 memo.

MOTION PASSED. VOTE: 6 to 0.

Aye – Markham, Ford, Bancroft, Creecy, Lawhorn, McDermott.

Nay – 0.

Absent – Suchanec.

(RESOLUTION NO. 22-H)

20. 9-C. REQUEST OF DANNEMANN & DANNEMAN, LLC FOR THE SPECIAL USE PERMIT FOR A TOTAL OF THIRTY-ONE (31) APARTMENT UNITS ON THE SECOND THROUGH FIFTH FLOORS (AGREEMENT AND RESOLUTION ATTACHED) (SEE ITEMS (9A & 9B) (60-90 MINUTES))

2:43:41

MOTION BY MR. MCDERMOTT, SECONDED BY MR. LAWHORN: THAT CITY COUNCIL APPROVE THE SPECIAL USE PERMIT FOR APARTMENTS IN CONJUNCTION WITH A PERMITTED NON-RESIDENTIAL USE AT 132-138 EAST MAIN STREET.

Mr. McDermott voted yes for the motion because the proposed use did not affect adversely the health or safety of person or persons residing or working within the city of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware; would not be injurious to property or improvements within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware; and would not be in conflict with the purposes of the Comprehensive Development Plan of the City and the findings due to the reasons outlined in the Planning and Development Department's report dated January 25, 2022.

Dr. Bancroft voted yes for the reasons stated by Mr. McDermott.

Ms. Ford voted yes for the reasons stated by Mr. McDermott.

Ms. Creecy voted yes for the reasons stated by Mr. McDermott.

Mr. Lawhorn voted yes for the reasons stated by Mr. McDermott.

Mr. Markham voted yes for the reasons stated by Mr. McDermott.

MOTION PASSED. VOTE: 6 to 0.

Aye – Markham, Ford, Bancroft, Creecy, Lawhorn, McDermott.

Nay – 0.

Absent – Suchanec.

21. Meeting adjourned at 9:56 p.m.

Tara Schiano
Director of Legislative Services
City Secretary

/ns