

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**February 24, 2020**

Those present at 6:01 p.m.:

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

Absent: District 4, Chris Hamilton

Staff Members: City Manager Tom Coleman  
City Secretary Renee Bensley  
City Solicitor Paul Bilodeau  
Assistant to the Manager Jeff Martindale  
Chief Communications Officer Jayme Gravell  
Chief of Police Paul Tiernan  
Finance Director David Del Grande  
IT Infrastructure Manager James Reazor  
Planning and Development Director Mary Ellen Gray  
Public Works Water Resources Director Tim Filasky

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1. Mr. Clifton called the meeting to order at 6:01 p.m.
2. **EXECUTIVE SESSION**
  - A. Executive Session pursuant to 29 *Del. C.* §10004 (b) (2) for the purposes of preliminary discussions on site acquisitions for any publicly funded capital improvements, or sales or leases of real property.
  - B. Executive Session pursuant to 29 *Del. C.* §10004 (b) (4) for the purposes of strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to pending or potential litigation, but only when an open meeting would have an adverse effect on the litigation position of the public body.
  - C. Executive Session pursuant to 29 *Del. C.* §10004 (b) (9) for the purposes of personnel matters in which the names, competency and abilities of individual employees are discussed, unless the employee requests that such meeting be open.

MOTION BY MR. MARKHAM, SECONDED BY MS. HUGHES: THAT COUNCIL ENTER EXECUTIVE SESSION PURSUANT TO 29 DEL. C. §10004 (B) (2) FOR THE PURPOSES OF PRELIMINARY DISCUSSIONS ON SITE ACQUISITIONS FOR ANY PUBLICLY FUNDED CAPITAL IMPROVEMENTS, OR SALES OR LEASES OF REAL PROPERTY; AND THAT COUNCIL ENTER EXECUTIVE SESSION PURSUANT TO 29 DEL. C. §10004 (B) (4) FOR THE PURPOSES OF STRATEGY SESSIONS, INCLUDING THOSE INVOLVING LEGAL ADVICE OR OPINION FROM AN ATTORNEY-AT-LAW, WITH RESPECT TO PENDING OR POTENTIAL LITIGATION, BUT ONLY WHEN AN OPEN MEETING WOULD HAVE AN ADVERSE EFFECT ON THE LITIGATION POSITION OF THE PUBLIC BODY; AND THAT COUNCIL ENTER EXECUTIVE SESSION PURSUANT TO 29 DEL. C. §10004 (B) (9) FOR THE PURPOSES OF PERSONNEL MATTERS IN WHICH THE NAMES, COMPETENCY AND ABILITIES OF INDIVIDUAL EMPLOYEES ARE DISCUSSED, UNLESS THE EMPLOYEE REQUESTS THAT SUCH MEETING BE OPEN.

MOTION PASSED. VOTE 7 TO 0.

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

3. **RETURN TO PUBLIC SESSION**
  - A. Potential vote on disability pension.

**1:36**

MOTION BY MR. MARKHAM, SECONDED BY MS. WALLACE: THAT COUNCIL AUTHORIZE THE EMPLOYEE DISABILITY PENSION BENEFIT AS SET FORTH IN THE CHIEF HUMAN RESOURCE OFFICER’S MEMO TO COUNCIL, DATED FEBRUARY 21, 2020, AND AS OUTLINED IN THE EXECUTIVE SESSION.

MOTION PASSED. VOTE 6 TO 0.

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

Nay – 0.

Absent – Hamilton.

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

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

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

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

**6. 1-B. UNIVERSITY**

(1) Administration (5 minutes per speaker) (3 minutes)

**2:45**

Caitlin Olsen, UD Administration representative, informed Council that UD would host the Martin Luther King Day of Service on February 29<sup>th</sup> because most students were off campus in January. She stated that students would volunteer at several non-profits and help clean up the community garden. She added that UD’s Admitted Student Open Houses would be held on February 29, March 21, and April 18.

**7. 1-B-2. STUDENT BODY REPRESENTATIVE(S) (5 minutes) (2 minutes):**

**4:00**

Keri Edwards, Student Government Association, asked for an update on the crosswalk at Winslow Road and South College Avenue and stated the last communication was from October 22, 2019. Mr. Coleman responded he would check with the Traffic Committee and report back. Ms. Edwards asked if any members of Council were interested in speaking at the Student Government’s Senate meetings, held on Wednesdays at 5:30 pm, to begin relationships with the students. Mr. Clifton answered that he had participated in the past and looked forward to attending the meetings. Ms. Edwards told Council she would forward the dates.

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

**6:02**

Mr. Coleman announced that Devan Hardin was selected as Chief Human Resources Officer after a long search and Acting Chief Human Resources Officer Farrall would return full-time to the Police after nearly two years. Mr. Coleman informed Council that HB264, the local service credit bill, passed and was signed into law last week by the Governor. The bill restored the City’s fire service credits on the County tax bill.

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

**6:50**

**Mr. Horning:**

- Informed there was a presentation by The Newark Partnership at the STAR Health Sciences Complex North Atrium on *Knowing Agriculture in Newark* from 6-8 pm on February 26 ([www.thenewarkpartnership.com](http://www.thenewarkpartnership.com)).
- Announced an open public workshop for Parking in Council Chambers on February 26.

**Ms. Hughes:**

- Introduced Ryan, a Boy Scout from Troop II, Second Class, who was present to learn about Council. Mr. Clifton revealed he had been a Boy Scout and had issued his fourth Eagle Proclamation on Saturday and gave Ryan the goal of earning 36 merit badges to become an Eagle Scout.

**Mr. Clifton:**

- Thanked Code Enforcement and Public Works for their efforts over the last weeks.
- Explained the Friends of Christiana worked towards bettering the Christina School District and revealed there was another meeting on February 26 at 6:30 pm at the Thurgood Marshall School.

- Revealed the State Public Integrity Commission approved the request to expand the Board of Ethics from five to seven members in order to allow each district an appointment. Ms. Bensley stated the plan was to have the first reading on March 9 and the second reading on March 23 so the board changes would be constituted and take place immediately after the election
- Announced the Government Finance Officers Association awarded the City the Certificate of Achievement for Excellence in Financial Reporting. He thanked Mr. Del Grande and the finance department for their work.
- Stated he and Mr. Coleman, Ms. Gray, Mr. Fortner, Ms. Gravell met with a representative from the Census Bureau who explained there were only nine questions on the Census. Mr. Clifton stated the City received funding streams based on the census responses and stressed that participation was mandatory under federal law and an important assistance source for City residents.

**10. 1-E. PUBLIC COMMENT (5 minutes per speaker) (10 minutes):**

**15:02**

Nick Wasileski, District 3, revealed that 70 structures along the West Branch of the Christina River had foundations in the new FEMA 500-year flood plain and more properties had yards within the parameters. He called DNREC and learned the DNREC Floodplain Map was the 100-year flood plain. He explained a 500-year flood event meant each year, there was a 1 in 500 chance of severe flooding and repeated his previous example of Ellicott City’s catastrophic floods. He quoted an article posted by Steven Lachman in 2001 in the *Natural Resources Journal* that faulted municipalities for constructing inadequate surface runoffs and suggested municipalities not be granted immunity from tort liability from damages suffered from flooding where the municipality contributed to the flooding through the approval of building permits or inadequate draining facilities. He went on that immunity was contrary to public interest because urban sprawl reduced the capacity of the land to absorb water, underpredicted global warming storm events were likely to be more severe, and liability for the consequences for issued building permits discouraged urban sprawl and promoted more condensed development. He wanted the City to reach out to UD’s Department of Environmental Engineering and Civil Engineering to get ideas on how to reduce flooding, contact homeowners living in the flood plains, and consider holding a community meeting including DNREC and FEMA about the impact of the 500-flood plain on watersheds in Newark.

Mr. Clifton offered Mr. Wasileski the FEMA maps he was sent last month.

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

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

- A.** Approval of Council Meeting Minutes – February 3, 2020
- B.** Approval of Council Meeting Minutes – February 10, 2020
- C.** Receipt of Alderman’s Report – February 6, 2020
- D.** Receipt of Green Building Code Work Group Minutes – October 22, 2019
- E.** Approval of Recommendation to Waive the Bid Process in Accordance with the Code of the City of Newark for the purchase of Carahsoft SecureWorks Annual Maintenance
- F.** Approval of Recommendation to Waive the Bid Process in Accordance with the Code of the City of Newark for the purchase of Digitalogic Annual Maintenance
- G.** Approval of Recommendation to Waive the Bid Process in Accordance with the Code of the City of Newark for the purchase of Tropos Annual Maintenance
- H.** Approval of Recommendation to Waive the Bid Process in Accordance with the Code of the City of Newark for the purchase of Honeywell Connexo NetSense Annual Maintenance
- I.** Approval of Recommendation to Waive the Bid Process in Accordance with the Code of the City of Newark for the purchase of ESRI Annual Maintenance
- J.** Approval of Recommendation to Waive the Bid Process in Accordance with the Code of the City of Newark for the purchase of Harris Computer SmartWorks Annual Maintenance
- K.** Approval of Recommendation to Waive the Bid Process in Accordance with the Code of the City of Newark for the purchase of Harris Computer Northstar Annual Maintenance
- L.** Approval of Recommendation to Waive the Bid Process in Accordance with the Code of the City of Newark for the purchase of T2 Systems Annual Maintenance
- M.** Approval of Recommendation to Waive the Bid Process in Accordance with the Code of the City of Newark for the purchase of Dell Financial Lease Year 3 of 4
- N.** Approval of Recommendation to Waive the Bid Process in Accordance with the Code of the City of Newark for the purchase of Dell Financial Lease Year 2 of 5

- O. Approval of Recommendation to Waive the Bid Process in Accordance with the Code of the City of Newark for the purchase of Canon Financial Lease
- P. Approval of Recommendation to Waive the Bid Process in Accordance with the Code of the City of Newark for the purchase of Vtech Solutions (IT Staffing)
- Q. **First Reading – Bill 20-08** – An Ordinance Amending the Comprehensive Development Plan by Adding a New Planning Area 7 to Chapter 11: Growth and Annexation – **Second Reading – March 23, 2020**
- R. **First Reading – Bill 20-09** – An Ordinance Amending the Comprehensive Development Plan by Changing the Designation of Property Located at 118, 126 and 130 New London Road – **Second Reading – March 23, 2020**

**20:33**

Ms. Bensley read the consent agenda into the record.

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

MOTION PASSED. VOTE 6 TO 0.

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

Nay – 0.

Absent – Hamilton.

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

- A. Appointment of David Redlawsk to the Vacant District 6 Position on the Election Board for a Term to Expire January 15, 2022 (5 minutes)

**23:15**

Mr. Markham asked that Council appoint David Redlawsk to the District 6 Election Board for a term to expire January 15, 2022.

The Mayor opened the floor to questions from Council.

Ms. Wallace thanked Mr. Redlawsk for his service.

There were no public comments and the Mayor returned the discussion to the table. Mr. Clifton revealed that Mr. Redlawsk’s time in appointed and elected positions exceeded his own. The Mayor thanked him for stepping forward.

MOTION BY MR. MARKHAM, SECONDED BY MR. LAWHORN: THAT COUNCIL APPROVE THE APPOINTMENT OF DAVID REDLAWSK TO THE VACANT DISTRICT 6 POSITION ON THE ELECTION BOARD FOR A TERM TO EXPIRE JANUARY 15, 2022.

MOTION PASSED. VOTE 6 TO 0.

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

Nay – 0.

Absent – Hamilton.

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

**14. 5. SPECIAL DEPARTMENT REPORTS:**

- A. General Assembly Update and Associated Requests for Council Direction – Lobbyist (30 minutes)

**25:39**

James DeChene, Armitage DeChene & Associates, informed that the Joint Finance Committee was meeting that week, Delaware Health and Social Services the next, and Bond the week after. He explained that Bond or JFC hearings would commence as needed and the Legislature would enter session the week of March 16.

Mr. Lawhorn asked for an update on the Redding Consortium and Mr. DeChene answered that there were two working groups. One group was focused on educator retention, training, talent acquisition, and providing services in the classroom to help bring Wilmington students great achievement in the classroom. He explained he was on the task force working group focused on redistricting and informed Council it was a very accelerated time schedule for the number of meetings necessary before the April report due date. The group was examining the existing Water Infrastructure Advisory Council

plans to make it palatable for members of the consortium and general public and was considering a one and two district solution. He indicated there could be further discussions of alternatives and acknowledged the time frame was short to encapsulate a solution. Mr. Lawhorn asked if the hope was to vote on a solution during the session and Mr. DeChene explained the consortium report was due in April to present to the General Assembly in order to determine a plan.

Mr. Markham asked for the status of the Renewable Portfolio Standard (RPS) and Mr. DeChene answered there was a revelation made during the Public Service Commission Meeting where DNREC reported the overages in the RPS amount were at 19% when they were supposed be capped at 3% and the rates were frozen for one year. He revealed that DEMEC communities had the option to do the same and was interested in how it would impact Senator McDowell's bill and goal to reach 40% by 2035. He stated there had not been more information from DNREC over the last week and he was curious from where they got their renewables and the breakdown of the costs over the course of the last ten years. He stated the legislature would not comment until mid-March.

There were no public comments.

**15. 5-B. FY2020 BUDGET AMENDMENT FOR ADDITIONAL SCHOOL RESOURCE OFFICER – NPD (25 MINUTES)**

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**30:44**

Chief Tiernan reported the Police Department received a request from the Christina School District to immediately add a second school resource officer (SRO) at Newark High School for the remainder of the 2019-2020 and 2020-2021 school years. Staff requested permission to increase the NPD-authorized strength by one full-time position to 72 sworn officers. The request for the additional SRO was due to an increase in call volume over previous years which significantly reduced the effectiveness of the SRO position. He reported the SRO required assistance from Newark Police Patrol Units 33 times since September of 2019.

Chief Tiernan revealed the NPD had a signed memorandum of understanding (MOU) with the Christina School District where the district agreed to pay 60% of the total compensation and vehicle cost for one SRO and the school district now agreed to pay an additional \$33,885, or 60% of the total cost, for an additional officer for the remainder of the school year. For the 2020-2021 school year, the district agreed to pay 60% of the total burdened cost for two SROs. He explained in order to proceed with the backfilling due to the additional SRO, the City would need to amend the 2020 approved Operating Budget to account for the additional police officer. He revealed the cost to add an additional police officer, effective February 2020, was \$48,000 which would initially be offset by the funding received from the Christina School District. Staff requested to increase the Police Department Expenditure Budget by \$48,000 and the City's Revenue Budget by the same amount to account for the additional position.

The Mayor opened the floor to questions from Council.

Mr. Markham asked if staff was working on an MOU to provide funding going forward and the Chief replied that the district would provide funding for the additional officer for this year and 60% next year but then would have the opportunity to apply for a COPS grant through the Department of Justice. Mr. Markham asked if the 60% was because the officer did not spend 100% of her or his time at the school and Chief Tiernan confirmed they worked at the school while it was in session and worked at the PD out of session.

Ms. Wallace asked what would happen if Council did not approve the budget change and the Chief noted it would be a problem as it had been a significant burden. He thought the addition of another officer would reduce the number of arrests because the current officer was unable to fulfill all duties while performing investigations. The second officer would provide time to work closely with the student body and faculty. He recalled two incidents during the year where all available officers were at the high school. Ms. Wallace asked if he would reassign an officer to fulfill the position if Council voted no and Chief Tiernan replied no. Ms. Wallace asked how many open police officer positions there were and Chief Tiernan explained there was one person graduating from the Academy next week but would be in field training for several months and two were ready to go to the Academy at the end of March but would not be on the road for over a year. She asked if he would use an existing officer for the position and he answered no and explained that they would try to get someone there as soon as possible for the remainder of the year.

Mr. Horning recalled there was discussion with the Newark Charter School and the Chief confirmed intent for an additional officer at Newark High School as well as Charter, but the school district had funding issues and a referendum was approaching. Chief Tiernan revealed that officers rotated

through the other schools in the district. Mr. Horning was shocked to learn there had been over 200 field service reports and 90 arrests and was saddened for students forced to learn in that environment.

Mr. Lawhorn thought it was valuable to follow policies that best suited students and agreed that an additional officer was the best course of action.

Mr. Clifton remarked that the City was fortunate to have qualified personnel in the queue and noted the lengthy processes required to train an officer. He asked how many officers were eligible to retire in the next year and Chief Tiernan replied there were currently 19 officers eligible to retire. He revealed that the list of qualified applicants was expired, and staff had to advertise and test again. He remarked that if several officers decided to retire at the same time, it might be necessary to eliminate patrol, street crimes, or special operations. Mr. Clifton recalled the issues in 2006-2007 and wanted to consider staffing levels in anticipation.

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

MOTION BY MR. MARKHAM, SECONDED BY MR. LAWHORN: THAT COUNCIL PERMIT THE CITY MANAGER TO AMEND THE AGREEMENT WITH THE CHRISTINA SCHOOL DISTRICT TO PROVIDE A SECOND SCHOOL RESOURCE OFFICER AND AMEND THE 2020 APPROVED OPERATING BUDGET TO ADD THE POSITION AND FUNDING FOR ONE ADDITIONAL POLICE OFFICER TO THE POLICE DEPARTMENT'S BUDGET.

MOTION PASSED. VOTE 6 TO 0.

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

Nay – 0.

Absent – Hamilton.

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

- A.** Recommendation on the Award of Contract No. 19-14 – Rodney Complex Mass Excavation and to Waive the Bid Process for the Soil Disposal for CIP Q1802 (15 minutes)

**42:27**

Mr. Filasky reviewed the recommendation for Contract No. 19-14 and the associated waive bid. He explained it was a basic process of loading soil and depositing it at another site but acknowledged the Rodney site was a brownfield and was required to dispose of the soil at an approved site. He claimed the soil was not contaminated and staff removed all asbestos and polychlorinated biphenyl but was still required to deposit the soil at the appropriate site. He stated that City Steel and Delaware Recyclable (DRPI) were two qualified sites and revealed that City Steel was slightly less expensive and had confirmed the ability to take all the soil. He indicated that staff had received a range of bids but felt they had a good price that was less than the engineer's estimate and the project would be within budget.

Mr. Filasky described the general shape of the site and explained there would be stabilization and erosion sediment control over the next few weeks and then staff would begin to remove the dirt to shape the pond. He revealed staff was working a potential groundbreaking ceremony but needed to make sure the contract was approved prior to setting the date.

The Mayor opened the floor to questions from Council.

Mr. Markham asked if staff removed the metal from the concrete to recycle. Mr. Filasky replied the quote was for soil removal and explained the remainder of the concrete and metal would be handled by the end of the week and the dirt would be screened for any metal remnants.

Mr. Horning thanked Mr. Filasky for continuing to monitor the air and asked if there was a designated route for the trucks to avoid residential areas. Mr. Filasky replied the trucks would come from Forest Lane or somewhere at the front of the property and go right towards West Main Street to avoid the Apple Road bridge.

Ms. Wallace thanked Mr. Filasky for the air monitoring and thought the City took such issues seriously.

There was no public comment.

MOTION BY MS. HUGHES, SECONDED BY MR. HORNING: THAT COUNCIL AWARD CONTRACT NUMBER 19-14, RODNEY COMPLEX MASS EXCAVATION, TO CORRADO AMERICAN, LLC, OF NEW CASTLE, DELAWARE, IN THE AMOUNT OF \$729,824 AND WAIVE THE BID PROCESS IN ACCORDANCE WITH THE CODE OF THE CITY OF NEWARK FOR THE DISPOSAL OF APPROXIMATELY 2,500 TRUCK LOADS OF SOIL AT THE CITY STEEL FACILITY IN CLAYMONT, DELAWARE AT A UNIT PRICE OF \$85 PER TRUCKLOAD.

MOTION PASSED. VOTE 6 TO 0.

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

Nay – 0.

Absent – Hamilton.

**17. 6-B. RECOMMENDATION TO RATIFY AGREEMENT BETWEEN CWA LOCAL #1036 AND THE CITY OF NEWARK FOR THE TERM OF JANUARY 1, 2020 TO DECEMBER 31, 2023 (5 MINUTES)**

**48:44**

Mr. Coleman informed Council that a successor agreement was agreed to between staff and CWA Local #1036 and explained that nothing had changed since the previous discussion. He stated that once Council ratified the tentative agreement and the new collective bargaining agreement was signed by all parties, it would become a public document and would be posted on the City's website along with past agreements.

Mr. Clifton opened the floor to questions from Council.

Mr. Markham thanked Mr. Coleman for negotiating the contract.

There was no public comment.

MOTION BY MS. HUGHES, SECONDED BY MR. LAWHORN: THAT COUNCIL APPROVE THE CITY MANAGER TO ENTER INTO A COLLECTIVE BARGAINING AGREEMENT WITH CWA #1036 FOR THE YEARS 2020-2023 AS OUTLINED AND PROVIDED TO COUNCIL.

MOTION PASSED. VOTE 6 TO 0.

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

Nay – 0.

Absent – Hamilton.

**18. 7. ORDINANCES FOR SECOND READING & PUBLIC HEARING:**

- A. Bill 20-05 – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Changing the Salary Assignment Table For Management Positions and the Management Salary Plan (30 minutes for 7A and 7A1)**

**50:38**

Ms. Bensley read the ordinance into the record.

MOTION BY MR. MARKHAM, SECONDED BY MR. LAWHORN: FOR SECOND READING AND PUBLIC HEARING OF BILL 20-05.

Mr. Coleman explained Amendment 1 proposed a 2% across the board salary increase for management employees which would be an adjustment to wage scale at the bottom and top to address general salary compression associated with contractual salary increases. He stated that Amendment 2 proposed one pay grade increase from 22 to 23 for the three frontline engineering positions within Public Works to address compression within the department and to align the position with the IT Applications Manager in order to address recruitment and retention salary pressure issues. He remarked that it was a very tight market with engineering and IT which was reflected in recruitment efforts. He noted that the bill would not directly increase the pay for managers but would allow for 2% salary growth where the code allowed for increases of zero to six percent in any given year. He revealed that a positive review would generally result in a 4% increase and an outstanding review would result in up to a 6% increase. He stated that code allowed for a -2% decrease but noted there were other issues if that was the case.

Mr. Coleman stated there had been three cost of living increase and two wage scale adjustments since 2009 and the City transitioned from doing cost-of-living adjustments (COLA) in 2015 for

management. He informed that AFSCME and CWA received COLAs in each of the last five years and management had only received one in the same time which only adjusted the top of the wage scale. He indicated staff addressed individual positions when needed but had not addressed the entire group. The union CBAs continued to move up and had received increases every year since 2015 and created considerable compression through the height of management's salary.

The Mayor opened the floor to questions from Council.

Mr. Lawhorn clarified that when the adjustments were made, they were made to the brackets and the management staff still applied any wage increases based off of performance reviews and the bill was to correct the system from compression as the unions had increased significantly relative to the management staff. Mr. Coleman confirmed and explained if a person was at the bottom of the scale and outside of the brackets, the bill updated the salary.

Mr. Markham asked why it was in code versus following the CPI and Mr. Coleman answered that most places had wage scales but not many were codified. Mr. Markham thought it was unusual to come to Council because they had not researched the job market and thought there was a better way determine what worked. Mr. Bilodeau suggested the code could be amended and Mr. Markham pointed it was only in the code and not the charter. Mr. Coleman revealed he was open to researching alternative ways to address the issue and explained that codification made it difficult to change titles to address changing job markets.

There was no public comment.

MOTION BY MS. WALLACE, SECONDED BY MR. HORNING: THAT COUNCIL ADOPT BILL 20-05 AS PRESENTED.

MOTION PASSED. VOTE 6 TO 0.

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

**(ORDINANCE NO. 20-03)**

**19. 7-A-1. 2020 SALARY RATE FOR ALDERMAN AND DEPUTY ALDERMAN**

**58:11**

Mr. Coleman explained that during the process of developing Bill 20-05, staff realized the Alderman had gone longer than management for an increase, the last two being 2012 and 2017. He requested that Council make an adjustment like management and noted it was not codified which allowed Council the ability to set the rate.

The Mayor opened the floor to questions from Council.

Mr. Markham agreed there should be an increase and wanted to know the current salaries. Mr. Coleman responded the Alderman received \$38,704 and the Deputy Alderman was \$21,300. Mr. Markham was shocked that the wages were so little for position that required a law degree and asked if they had received 6.5% for four years. Mr. Coleman replied they had received 6.5% after five years. Mr. Markham calculated it to be less than 2% a year and remarked it still below CPI.

Ms. Wallace did not have problem with the increase but thought the process was more appropriate for budget season and wanted more information in the memo because the positions were unique. She did not think it was necessary to codify the titles and thought it all should be addressed during the budget process. She believed 4% to be appropriate.

Mr. Horning agreed with Ms. Wallace's comments. He calculated the total to be \$2,400 with \$1,548 for the Alderman and \$852 for the Deputy Alderman and asked if the positions were viewed as part-time and Mr. Coleman confirmed.

Mr. Lawhorn agreed that 4% was reasonable.

Mr. Clifton verified with Ms. Bensley that the funds could be in the budget, but Council was still required to approve the increase separately due to the code. Mr. Coleman revealed it would be included in the next budget.

There were no public comments and the Mayor brought the discussion back to the table.

Mr. Markham made the point that the positions were for the judges who were not being paid much to dispense justice and thought a 4% increase was worth it to not have to perform another job search for the position. Mr. Clifton agreed that it was difficult to employ an attorney for the salary offered.

MOTION BY MR. MARKHAM, SECONDED BY MR. LAWHORN: THAT COUNCIL DIRECT STAFF TO PREPARE A BUDGET AMENDMENT TO INCREASE THE ALDERMAN AND DEPUTY ALDERMAN SALARIES BY 4%.

MOTION PASSED. VOTE 6 TO 0.

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

Nay – 0.

Absent – Hamilton.

**20. 7-B. BILL 20-06 – AN ORDINANCE AMENDING THE COMPREHENSIVE DEVELOPMENT PLAN BY CHANGING THE DESIGNATION OF PROPERTY LOCATED AT 19 AMSTEL AVENUE (60 MINUTES)**

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**1:06:23**

Ms. Bensley read the ordinance into the record.

MOTION BY MR. MARKHAM, SECONDED BY MR. LAWHORN: FOR SECOND READING AND PUBLIC HEARING OF BILL 20-06.

Ms. Gray explained the application requested a Comprehensive Development Plan Amendment to change the future land-use designation for the 0.56-acre parcel located at 19 Amstel Avenue from University to Residential Low-Density. She listed the provided meeting materials:

- Planning and Development Department Summary;
- Planning Commission Motions for the January 9, 2020 meeting;
- Planning and Development Department Report dated January 2, 2020;
- Copy of the January 9, 2020 Presentation by Max Walton to the Planning Commission;
- Exhibits to Mr. Walton’s presentation;
- Copy of Richard Abbott’s presentation to the Planning Commission; and
- Copy of Mark Adcock’s presentation to the Planning Commission.

Ms. Gray continued that the property had a future land-use designation in the Comprehensive Development Plan as University. She then displayed a map from the Comprehensive Development Plan V which clearly indicated such. She explained the property was privately-owned by the Kappa Alpha Educational Foundation and was zoned RS or one-family detached residential. She referred to the maps displayed and indicated they were the City of Newark Zoning Map and the New Castle County Parcel View Zoning Map.

Ms. Gray referred to the Comprehensive Development Plan V, Chapter 10, as excerpted in the Planning Development Staff Report, and explained the only two compatible zoning districts for University designation in the Comprehensive Plan were either UN or STC. She explained the current zoning of RS was not compatible zoning district to the University land-use designation in the Comprehensive Plan. She then displayed a map and a table listing the designations. As indicated Comprehensive Development Plan V, Chapter 10, Table 10.1, University uses were described as “a parcel having institutional use but distinguished for use as part of the University of Delaware, a public university campus including classrooms, dormitories, laboratories, university offices, and university recreation and commercial facilities but excluding off-campus university-owned, single-family homes having residential uses.” She continued that the zoning code in Section 32-4 defined University as an institution for advanced education duly registered for this purpose with the State of Delaware. She repeated that the property at 19 Amstel Avenue was not owned or controlled by the University of Delaware and was privately-owned.

Ms. Gray next presented the Planning and Development Department and the Planning Commission recommendations. As noted in the Planning and Development Department Report, since the 19 Amstel Avenue property was not owned by a college or university and had an RS zoning classification, the Planning and Development Department's view was that the property was designated as University by mistake and, given the RS zoning classification, the appropriate land-use designation for the property in the Comprehensive Plan should be Residential Low Density. On January 9, the Planning Commission made the motion to recommend changing the land-use designation per the Planning and Development Department's recommendation from University to Residential Low Density. The motion failed with a vote of 4 -2 with one abstention. Ms. Gray informed that Council could designate the property as High Density Residential and, should Council adopt the designation, the zoning for the parcel would need to be changed to be compatible with the High Density Residential use such as RM (multi-family, garden-style apartments) or RA (multi-family apartments). She explained the Comprehensive Plan did not change and an ordinance would be moved forward to change the zoning to UN because the Comprehensive Plan and the zoning needed to be consistent.

The Mayor opened the floor to questions from Council.

Mr. Horning asked if there was a maximum number of stories allowable for a private location under the High-Density Residential Zoning and Ms. Gray answered it depended on the zoning district. She explained that RM had a three-story limit and RA had a seven-story limit.

Mr. Lawhorn asked about the process for the meeting and Mr. Clifton explained Council would first ask questions and the floor would then be open to public comment. Mr. Clifton asked Mr. Abbott if he intended to present and Mr. Abbott confirmed that he would be presenting on behalf of the property. Mr. Clifton informed Mr. Lawhorn that Council would hear from Counsel Abbott prior to public comment. Mr. Lawhorn withheld questions and comments until after Mr. Abbott's presentation.

Ms. Hughes agreed with Mr. Lawhorn to postpone comments.

Mr. Markham reiterated there were three options presented to Council. He explained the first was to zone it UN to match but noted it was not University-owned. He acknowledged it was the opposite of what Council had done with Dickinson where the property went from UN zoning to Residential. He revealed the other two choices were to assign the property Residential Low Density or Residential High Density. He assumed there would be follow-up afterwards but wanted to outline the basic items being presented and Ms. Gray confirmed.

Mr. Abbott, on behalf of Kappa Alpha Educational Foundation, the owner of 19 Amstel Avenue, introduced himself as an attorney in Delaware. He requested that Council table the ordinance as more information was needed. He stated the property owners were unable to get information and alleged it was being withheld by City representatives. He suggested that City representatives created a catch-22 where they stayed the litigation in Superior Court so the property owners could not get the discovery, and the City denied FOIA requests because of pending litigation. He said the pending litigation exception in FOIA was intended to force litigants to get the information and documents in discovery, but the property owners were stymied at the court level because the City did not want to share what really happened. Mr. Abbott proposed there was no mistake on the Comp Plan map because it properly indicated the property as University. He said the mistake was on the official zoning map because it should say UN instead of RS. He explained that based on anecdotal information, there was an administrative change made to the map by a former Planning Director even though there was no notice to Mr. Abbott's client, no hearing, no vote, and no change in the zoning to RS. He claimed the RS was a mistake and should be UN.

Mr. Abbott referred to Ms. Gray's comments regarding University campus and he indicated the property on a University map from UD's website. He identified the library, Hullihen Hall, and the KA house on the map. He noted the Alpha Phi sorority house directly adjacent on 158 South College Avenue was zoned UN and was owned by the University. He revealed it was zoned UN while owned by the Delta Tau Delta Fraternity, long before it was owned by the University. He felt that since the house was operated as a fraternity house, it was an indication that UN zoning was an appropriate zoning for a Greek organization house. He described the property's location as the middle of campus.

Mr. Abbott stated the house was built around 1905 and described it a heavy, large stone house with historic attributes. He noted that although there was limited indication in the City code that there could be some degree of historic protections from demolition, the house was not included. He predicted there would be an application for seven stories because the house would be demolished. He described the property as a beautiful home and an iconic part of the campus. He referred to the map and pointed out Smith, Purnell, Kirkbride, and Hullahen Halls. He repeated the building was on University campus and felt it was appropriate for the zoning. He stated that properties other than University-owned properties had been zoned UN and revealed that there were presently three properties zoned UN that were owned by private companies. He reported 9 Innovation Way was owned by Fraunhofer, USA, 489 Wyoming Road was owned by the Girls' Club of Delaware, and 5 Innovation Way was owned by University Park Associations II, LLC. He explained the properties were the only ones he was able to find using Mr. Adcock's multi-list service but assumed there were more. He explained UD had always owned the land where Sigma Phi Epsilon and Sigma Nu houses were, just off Main Street, and were now Jastak-Burgess Hall. He said both he and his grandfather were Sigma Phi Epsilon members, but his grandfather was at UD in the 1920s. He stated UN equaled fraternity/Greek use and had always been the case. He admitted he did not know for a fact but believed the UN zoning was adopted around 1973 because there was a case from the Court of Chancery that held that the City of Newark was not able to regulate University of Delaware uses. He thought that was the genesis for the UN zoning category and why various properties were zoned UN.

Mr. Abbott pointed again to the map and indicated the locations of Kappa Alpha and Alpha Phi and repeated that Alpha Phi was zoned UN. He stated it was possible to use UN zoned lands for Greek organization use. He revealed a 1978 ordinance was the last he could find that indicated the zoning for 19 Amstel Avenue and quoted "Kappa Alpha, Delta Tau Delta, single home, prior zoning prior to 1978 UN, new zoning UN/RS." He stated the definition for UN/RS was in Section 32-6 and described RS as a reversionary zoning category and read "when any lands zoned UN are sold or leased by the University for the purposes other than accessory uses as customarily related to the operation of the University, such land shall automatically revert to the alternate zoning category designated such as \_RT, \_RS." Mr. Abbott pointed there had been no sale or lease by the University and therefore, no reversion had taken effect.

Mr. Abbott next moved to the planning principles and claimed that there were none that supported the modification of the designation on the Comp Plan, which he described as a backdoor downzoning. He indicated Chapter 7 of Title 22 of the Delaware Code, Section 702 (c) revealed that once Council adopted the Comp Plan Amendment, the City was mandatorily required to change the zoning designation of the property to be consistent with the Comp Plan within 18 months. He declared an administrative correction should say UN because the RS was not properly changed on the official zoning map and, once corrected, University UN would be consistent. He suggested the City wanted the public to believe the property was legally zoned RS, which he maintained was incorrect, so the City could change the Comp Plan to be consistent with the RS zone. Mr. Abbott stated that Comprehensive Plan IV designated 19 Amstel Avenue as University. He then read "in preparing the land development portion of the plan, a detailed land use survey of every parcel in the City was developed." He maintained that Ms. Gray's claim that the UN designation was a mistake was false because the Planning Department claimed to look at every parcel. He declared the property was zoned UN before Comp Plan V and in Comp Plan V and Comp Plan IV had similar language. He claimed that staff was aware of what was going on with the property because it was a huge parcel of land in the middle of the community.

Mr. Abbott again stated that the style and architecture of the building were distinct. He described the parcel as having institutional use but distinguished for use as part of the University of Delaware or public university campus, including things like dormitories. He stated that up to 21 members of a Greek organization were permitted to reside pursuant to a validly issued annual City rental permit. He made the statement that University equaled UN and displayed a 2018 Rental Unit Registration document from Code Enforcement that showed the property zoned as UN with 21 occupants. He explained that with 21 occupants, it was possible to pay the mortgage and make sufficient funds to be able to maintain the home but if there was not a fraternity use, there would not be 21 tenants or occupants but rather three, as there was a maximum of three unrelated individuals allowed in a single-family home. He claimed it would be economically impossible for the house to survive. He predicted the house would be sold, demolished, and replaced with a three to seven story building with virtually no setbacks or open area in place of the beautiful, iconic landmark. He stated he had covered talking points in the recent memo he provided but wanted to reiterate the issue of how someone went into the official zoning map and changed the zone from UN to RS. He revealed if there was a hearing, a notice to the applicant, a Planning Commission

hearing, or a recommendation, then it would be possible to produce documentation. He maintained that nothing of the sort had ever happened and RS was an illegal zoning designation and UN was legally valid. He repeated that staff should not be changing the Comp Plan but should introduce an amendment to the official zoning map to change the zoning to UN.

Mr. Abbott speculated that the City would claim that the zoning map RS was consistent and, even if it was suggested that the zoning be high density residential, the City would want it rezoned to RM or something else consistent under the Comp Plan. He believed that the City would then send the official notice that the Kappa Alpha Fraternity was suspended for four years and lost its historical claim status and, therefore, the fraternity could never again use the property as a fraternity house. He declared it would be the death certificate for the property and repeated his presumption that the house would be demolished, and the 72-year old fraternity house would never be allowed to be used. He remarked that the City would spend a lot of money litigating the issue because it would go on for a long time in multiple state and federal courts. He claimed it was not a threat, but his clients had no choice. Mr. Abbott likened the situation to the hypothetical scenario of a personal home being downzoned, thereby forcing the habitants to relocate and sell at a loss. He claimed it was highly unfair, inappropriate, unwarranted by any planning principles and he respectfully requested that if Council was going to vote, that it defeat it in its entirety instead of issuing a death knell to the property.

Mr. Clifton asked Mr. Abbott to repeat his reasoning to table the discussion. Mr. Abbott understood that former Planning Director Lopata realized the property was not owned by the University and switched the zoning map. Mr. Abbott was unsure if the instance was true but, if it was, it was material and the someone could change the zoning from RS to UN immediately because it was an invalid administrative change. If that was the case, the UN zoning would match the Comp Plan designation and if the City proposed downzoning, it would have to acknowledge destroying the Kappa Alpha fraternity and the house. He wanted the public to be aware of the City's intentions, but he hoped that the Mayor and Council would choose not to destroy the house. He claimed he was present to refute the claims that it was a housekeeping correction. He stated that without the facts, he could only speculate on what occurred. He thought that for the purposes of the record, Council should proceed under the belief that the correct valid zoning was currently UN with no need to correct the map. He referred to statements made in the process that UN zoning did not prevent fraternity or sorority house use and declared the statements were false given his examples. He remarked that the claims that UN zoning was only applicable to University-owned properties was also false as proven by decades of history. He explained that a split decision to change a law to take away a person's vested property rights was not permissible by law and was unconstitutional. He requested that Council table the discussion if there were questions on how the zoning designation was changed to RS but if Council chose to proceed based on the stories provided to the property owners by City representatives, then they should proceed based on the knowledge that the valid zoning of the property was UN.

The Mayor opened the discussion to questions from Council.

Mr. Horning asked Mr. Abbott if it was possible to file a motion to compel the discovery in the Superior Court case. Mr. Abbott replied that discovery was stayed by the City's request and Mr. Horning repeated that discovery was totally stayed. Mr. Abbott confirmed and claimed the whole case was stayed because Council indicated to the court that the process may moot the litigation and the court, in order to preserve resources, put the case on hold until the City decided how to proceed. Mr. Horning asked what the UN zoning did for the fraternity that the RM or RA would not do. Mr. Abbott replied that UN meant fraternity forever and another other designation meant there would never be another fraternity house. He claimed the City had an unspoken zoning code ban on fraternities because the RA designation specifically forbade sorority and fraternity houses. He noted it was possible to have 21 residents in a rooming house but not a fraternity. He repeated that it was a death knell for the house and fraternity.

Mr. Horning stated he had communications with Steve Hastings, who spoke at the Planning Commission meeting, and asked if the fraternity planned on seeking reestablishment of the charter. Mr. Abbott said it would be better to ask Mr. Hastings and Mr. Adcock but his basic understanding was that the immediate intent was to rent the house for three years to another sorority or fraternity, or longer, to recolonize. He claimed the national fraternity fully supported the reestablishment of the fraternity and indicated the desire to start fresh with a new group. He revealed he helped reestablish the Sigma Phi Epsilon fraternity as a UD student and claimed that they had high GPAs and that Rich Gannon was a

member. Mr. Horning asked if there was an appeal of UD's decision by the national chapter and Mr. Abbott confirmed. He explained there was a party in Ocean City, Maryland, and the hotel complained because students left the rooms a mess and the incident caused a one-year suspension. He said the same students held the same party as part of their annual spring fling and advertised the party with T-shirts which made it obvious that they had broken their suspension, although they were days away from the end of the suspension. UD then made the suspension a four-year suspension which Mr. Abbott viewed as draconian. He felt the University was overly zealous. Mr. Horning asked if there was an option to appeal the ruling to UD after a year and Mr. Abbott stated that Mr. Hastings confirmed. Mr. Abbott guessed that the fraternity hoped to shorten the ruling and repeated that the fraternity needed to have other occupants in the interim in order to generate revenue. He calculated \$6,500 per student per year for 21 students equaled over \$130,000 of revenue per year.

Mr. Horning asked how many stories the home had, and Mr. Abbott replied the home had three stories and a locked basement that students could not access. Mr. Horning asked if the house was privately-owned when the 1978 ordinance was passed, and Mr. Abbott replied it had been owned by Kappa Alpha since 1947. He was dismayed at how staff missed that Delta Tau Delta and KA were private fraternities and claimed everyone knew when he was a student from 1982-1986. He thought it was intentional because of the location and everything around it was zoned high density. He referred to Commissioner Wampler's comments during the Planning Commission hearing where he asked why low-density was proposed for the location. Mr. Horning asked if the fraternity's stance was that UN was a proper designation was because the property acted as a dormitory. Mr. Abbott replied that it was effectively student housing and was distinguished for use as part of the University of Delaware public university campus. He remarked the property was right in the middle of the campus and fit well within the confines of the definition of University under the Comp Plan.

Mr. Markham summarized that the owners wanted the property to be a fraternity or a sorority and Mr. Abbott confirmed. Mr. Markham asked if the only foreseeable path forward was UN and Mr. Abbott confirmed.

The Mayor opened the floor to public comment.

Dr. Steven Hastings, 221 Cheltenham Road, stated he retired from UD after forty years as faculty and served as faculty advisor to the KA Chapter from 2004 until he retired. He revealed he also served as a volunteer regional director for Kappa Alpha order to keep track of other chapters in the region. He attended UD and lived at 19 Amstel Avenue as a member in the early 1970's. He mentioned he was also an Eagle scout. He reiterated that the chapter had a party in Ocean City, Maryland, but UD still held them accountable. He acknowledged that the fraternity made a mistake and Dr. Hastings thought they should have been sanctioned. He described the four-year suspension as a death sentence. He claimed there were no instances of hazing or serious violations of any kind at the property. He noted that UD's judicial system heavily favored the University and was not a true judicial system. He claimed that other organizations and students were found guilty based on anonymous comments and were tasked with proving innocence.

Dr. Hastings revealed the fraternity appealed the ruling and that he spent hours with the Code of Conduct members and tried to negotiate more productive sanctions, such as training. He stated that the national organization offered to expel every member that participated in the party, but UD objected. He indicated that there was a request earlier in the semester for the officers to be allowed to go training and UD objected and were uncooperative. Dr. Hastings announced that Kappa Alpha was fully behind the chapter's efforts and referred to a letter from the executive director which affirmed their intent to recolonize in four years, after the suspension. He repeated that the attempt was made to negotiate better deals, but UD was unwilling to entertain the thought, from the Code of Conduct members to the legal department. He claimed that UD was well-aware of the consequences of suspending a chapter for more than a year and they anticipated the fraternity would lose the use of the house. He thought that fraternities had gotten their share of bad press and though some deserved it, Dr. Hastings did not feel this group deserved it, but he did acknowledge they had a party. He claimed that fraternity members typically had higher GPAs than the average student, performed community service, and raised money for charities. He reiterated that the property was situated in the middle of the University and emphasized the location was great for student housing. He revealed he was at the meeting in 2002 when the legislation was passed and the problem was fraternity houses in residential areas, not in University areas.

Mark Adcock, President of Kappa Alpha Educational Foundation (KAEF), stated that he was a graduate Newark High School and UD. He claimed the fraternity was the first on the UD campus and formed KAEF in 1946 for the sole purpose of acquiring 19 Amstel Avenue, which had served as a chapter house since 1947. His research indicated the house was built in 1919 and had an addition constructed which was then removed during the 2003 renovations. He explained that renovations were carried out in conjunction with the City's Code Enforcement team where sixteen bedrooms were created with common bathrooms so there were eight full bathrooms and a half bath. He stated the home also had a common laundry room, kitchen, living room, and TV room, and had nearly 6,000 square feet of finished living space. He revealed the project cost KAEF over \$700,000 and said they had also invested \$100,000 since then for upkeep. He noted the historic home required special skills, vendors, methods, and materials, such as the custom-made curved glass windows.

Mr. Adcock claimed the fraternity had a great track record within the community by raising money for charity and partaking in various community service projects. He revealed the fraternity had not received citations from the Fire Marshal in over five years and had also not received complaints from law enforcement, neighbors, or students. He stated that the fraternity did pay its taxes and explained that hope for a UN designation was not intended for an exempt status as they intended to pay taxes going forward. He felt the location was perfect because it was surrounded by UD properties and the closest neighbor was blocks away. He presented a view of the front porch. He described the financial impact of downzoning from 21 residents to three was over \$113,000. He stated KAEF was a non-profit organization and every penny brought in went to operating expenses and upkeep of the property. He said there were no buyers on the market for a sixteen bedroom, eight and a half bath, single family home. He described the house as an iconic structure of solid stone with a great side yard. He stated it was common sense if a person walked on the sidewalk and saw people unloading groceries and kids from soccer practice, then the area was residential but if they were going to class and feeding the meters, it was not. Mr. Adcock then presented a slide depicting the UN-zoned Alpha Phi house with the KA house around the corner and said the fraternity should be UN-zoned.

Mr. Horning asked if the Alpha Phi parcel was owned by UD and Mr. Bilodeau confirmed that it had been University-owned since 1990.

Mr. Clifton asked Special Counsel Max Walton to address Council.

Mr. Walton said the question before Council was to determine the appropriate Comprehensive Plan designation for the parcel. He explained the City was sued by Kappa Alpha to command or seek a writ of mandamus to compel UN zoning for the property because there was a difference between the Comprehensive Plan Map and the City's Official Zoning Map which had RS and the Comprehensive Plan had UN. He explained it was not about demolishing a house and, ultimately, because there was an RS zone and UN designation, something must change. He explained that it was Council's determination of what should change, and he supported Ms. Gray's options of Low Density Residential, High Density Residential, or a University Comp Plan designation. Mr. Walton continued that if Council decided to keep the property at a University designation, an ordinance would be submitted to make the match. He stressed it was Council's position to determine the right land use determination for the parcel.

Mr. Lawhorn referred to the previous discussions regarding UN zoning with other projects and it was clear to him that UN zoning was meant for property owned by the University. He believed it was clear that when a property was designated UN/RS with an underlying zoning, if the University ever sold the property then the underlying designation would rule. He thought that since the University never owned the property, it was a mistake, but even if it was not a mistake, property that was owned by the University should be UN designated. From a zoning standpoint, Mr. Lawhorn believed the property should be zoned RS. He acknowledged the property was perfect for a fraternity house and reiterated the comments regarding the beauty of the property, the historical significance of the house, and noted that there was the opportunity to offer protection for the house to list it as historical.

Mr. Lawhorn admitted the City code did not allow fraternity house usage and referred to Mr. Markham's question on the goal of what was being achieved by Council for the property owners. He remarked that Council had the authority change it and proposed that Council could allow a special use permit to allow for fraternity housing in the appropriate zoning. He thought it was possible to go a step further to create a new RS zoning with student specific focus. He referred to the conversations about

student housing around focus areas and the City's progress towards a plan. He explained that there were discussions about the student population encroaching into residential areas. He said there was a lot of discussion on Council around the correct places to have a high concentration of students. Mr. Lawhorn acknowledged the property had been a fraternity for a very long time and it should remain so. He proposed to rezone the property as RS and then direct staff to return with a proposal to create a new zoning and a special use permit. He noted the special use permit gave Council authority and recognized the fraternity as good neighbors although there were a few Police calls which he viewed as reasonable for a four-year period. He noted the special use permit gave Council very specific control over each property where any applicants would have to undergo the permitting process and Council had the ability to revoke permits. He declared that if a fraternity had serious behavioral issues and used Police resources, the permit could be revoked. He noted that the University's decision had nothing to do with the Council and Council had no control on what the University chose to do with the fraternity. Alternatively, he revealed Council could control what happened and how the students behaved within the City. He knew the Police force used the Unruly Gathering Ordinance to interact more with the students and thought his proposal was a fair compromise on both sides. He acknowledged the owners' fear over losing the property and he believed his suggestion offered the ability to save the property and continue with its use while giving Council and residents the confidence that students would behave in the best interest of the City.

Mr. Horning concurred with Mr. Lawhorn's points but wanted overview from the Planning Department Director or Mr. Bilodeau with regards to the special use permit process and how it would practically apply to the property. He wanted to know how quickly Council could address concerns if the property had a special use permit. Ms. Gray explained it would require a change in code which would have to go through the Planning Commission and Council but noted that a property only had to go to the Planning Commission for a special use permit if it was one acre or greater. She thought it was possible that the special use permit for the property would only have to go through Council. She repeated that Council could articulate conditions on the property and would act as a conditional use and staff would have to craft the special use into the ordinance for review and approval by Council. Mr. Horning asked if it was a situation where three occurrences would mean action or if Council could act after one infraction. Mr. Bilodeau interjected that under code for special use permits, Council could only suspend for one year and code did not address revocation. He suggested that Council consider changing the code as it was currently limited to suspension. Mr. Coleman recommended modeling it after the ordinance for bars on Main Street with a point system for different violations that would sunset after time.

Mr. Horning was interested in the overview of the process. He asked Mr. Bilodeau if the University would have the right of first refusal if the property were to be sold, similar to the STAR Campus. Mr. Bilodeau responded that he did not know. Mr. Horning was not aware of any complaints and referred to other Greek houses in the City that managed their properties well. He noted that since the 2002 code provision to indefinitely revoke the legal, non-conforming use of having a fraternity on an RS or UN property based on a University suspension, Council passed the Unruly Gathering Ordinance and he did not know the extent it provided the City with additional resources for law enforcement to monitor properties. In his reading of the Council minutes, Mr. Horning believed the provision seemed to deal with privately-owned, off-campus fraternity houses, most of which were gone. He agreed with Mr. Lawhorn's point that the house was centrally located to the University and did not have close residents.

Ms. Wallace did not agree with Mr. Horning or Mr. Lawhorn and was not in favor with moving forward with a special use permit for fraternities. She pointed that the applicants were suing the City because the fraternity lost its privileges with the University. She declared that the property was not owned by the University and so it was inappropriate for the property to be UN-zoned. She thought the matter was simple and remarked it would be a loss if the property were sold and the house was modified or demolished but acknowledged that was entirely up to the fraternity and not the City. She did not take kindly to threats of counsel suing the City, particularly when the actions were brought on by the fraternity.

Mr. Markham revealed that he was sympathetic to the applicants' situation and stated that UN had always meant University during his time on Council. He referred to Mr. Lawhorn's legislative solution to the situation as proof that Council was not deferring to court rule. He liked the idea of a special use permit because it was not guaranteed, applications could be denied or revoked, and applicants were afforded due process. He suggested proceeding with the special use permit.

Ms. Hughes agreed with many of Mr. Lawhorn's statements but also agreed with Ms. Wallace. She asked if the Newark Police Department had jurisdiction over the property and Messrs. Coleman and Clifton confirmed. Ms. Hughes stated she agreed with Mr. Lawhorn and was open to RS-zoning. Mr. Coleman explained the reversionary zoning was RS and recommended that Council choose a different zoning than RS because it would open a lot of the City up to potential special-use applications for fraternity houses. He suggested using RM and/or RA zoning. Ms. Gray clarified that the question before Council was the Comp Plan designation, not the zoning. Mr. Coleman confirmed and explained if staff were to make a recommendation to Council, he would not choose RS.

Mr. Lawhorn asked Mr. Coleman if he was suggesting using RM as it was or creating a new classification to allow Council to pick where it would allow such uses. He further explained that Council would have two layers of control with one being the special use permit and the other being designated areas where the permits were allowable. Mr. Coleman explained that Council could not create an overlay zone that attached multiple zoning districts, but it could create a new zoning district that had an allowable or by-rights special use. Mr. Coleman indicated that the option would build on what staff was doing with the Rental Needs Assessment and recalled it would be a new type of use within existing zones and Ms. Gray confirmed. She continued that overlay was not a feasible option and believed that if Council desired exploring an avenue for special use, she would look to include that in the existing zoning districts as opposed to creating a new zoning district to make an allowable use within the residential zoning districts. Mr. Coleman stated that RA and RM were generally focused close to campus and did not think there would be a lot of interest in creating fraternity houses in more distant locations.

Mr. Clifton firmly agreed with Ms. Wallace that he would never legislate because an attorney suggested a lawsuit and thought it was not the best route to address a public body. He also understood Mr. Lawhorn's point that creating a fraternity zoning could put heavily residential areas at risk. He wanted to identify suitable areas for fraternities and agreed with Mr. Lawhorn that the property was in a high-density area. He thought it was the proper location for a fraternity and he wanted to see a resolution that addressed the concerns of the petitioners, Council, and the preservation of traditionally residential areas, and thought it was possible through a collaborative effort. He believed staff needed to consider where a fraternity would go and what it would look like outside of the downtown area. He believed there were select places that were appropriate. He reiterated his agreement with Mr. Lawhorn and hoped it was acceptable to counsel to consider other solutions. He acknowledged that Council was approving high density apartments downtown to put students close to campus. Mr. Clifton recalled the discussions in 2002 and understood the concern of residents then. He believed Mr. Lawhorn's proposal was an excellent solution to address the concern of residents.

Ms. Wallace wanted to share that she had a problem legislating based on one case under the threat of a lawsuit. She asked that fellow Council consider her concerns and she seriously doubted the residents of the City were clamoring for Council to have a special use permit for fraternities.

Mr. Horning asked Ms. Gray if RM had a maximum of three stories and Ms. Gray confirmed. He believed the UN designation was an error and that in terms of the 78-30 ordinance that passed 7-0 by Council September 11, 1978, the heading of the attached exhibit was University of Delaware Owned Property, Present and Proposed Zoning and stated the property should never have been on the list. He repeated his support of the proposed solution.

MOTION BY MR. MARKHAM, SECONDED BY MR. LAWHORN: THAT COUNCIL ADOPT THE ORDINANCE PRESENTED TO CHANGE THE COMPREHENSIVE PLAN DESIGNATION FOR 19 AMSTEL AVENUE, PROVIDED HOWEVER THAT THE WORDS "HIGH DENSITY, RESIDENTIAL" IN THE PROPOSED ORDINANCE SHOULD BE SUBSTITUTED FOR THE WORDS "LOW DENSITY, RESIDENTIAL" AND THAT THE ORDINANCE BE AMENDED ACCORDINGLY.

Mr. Markham repeated the motion at the request of Ms. Wallace. He believed that the high density classification promoted health and the general welfare, would allow for the provision of adequate light and air, would prevent the overcrowding of land as the location was appropriate and was zoned high density, was made with reasonable consideration as to the character of the district and peculiar suitability for particular usages given the area was mostly for student housing and University use, and was high density.

Mr. Lawhorn supported the motion for the reasons previously stated by Councilman Markham.

Mr. Horning supported the motion for the reasons previously stated by Councilman Markham and added that a high density classification would also work toward conserving the value of the building in its current state and character and that the designation to UN and UN/RS in the 1978 ordinance was an error.

Ms. Wallace, Ms. Hughes, and Mr. Clifton supported the motion for the reasons stated by Councilman Markham.

MOTION PASSED. VOTE 6 TO 0.

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

Nay – 0.

Absent – Hamilton.

**(ORDINANCE NO. 20-04)**

Mr. Clifton asked for a motion for direction.

MOTION BY MR. LAWHORN, SECONDED BY MR. HORNING: THAT COUNCIL DIRECT STAFF TO INVESTIGATE AND PROPOSE THE ADDITION OF A FRATERNITY AND SORORITY HOUSE USE BY MEANS OF A SPECIAL USE PERMIT.

Mr. Clifton indicated that there needed to be direction on the zoning as well. Ms. Bensley asked that there be a motion from Council with direction to staff regarding the zoning designation they would like to see brought forward to match the high-density residential comp plan designation. Mr. Lawhorn withdrew his motion.

MOTION BY MR. LAWHORN, SECONDED BY MR. HORNING: THAT COUNCIL DIRECT THE PLANNING DEPARTMENT TO DRAFT AND PRESENT AN ORDINANCE TO REZONE 19 AMSTEL AVENUE TO AN RM ZONING CLASSIFICATION AND TO ALLOW FOR A BOARDING HOUSE USE AND REQUEST THAT SUCH ORDINANCE BE SUBMITTED TO THE PLANNING COMMISSION FOR RECOMMENDATION AND LATER FOR PRESENTATION TO COUNCIL FOR A VOTE AT AN UPCOMING MEETING.

MOTION PASSED. VOTE 6 TO 0.

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

Nay – 0.

Absent – Hamilton.

MOTION BY MR. LAWHORN, SECONDED BY MR. HORNING: THAT COUNCIL DIRECT STAFF TO INVESTIGATE AND PROPOSE THE ADDITION OF A FRATERNITY AND SORORITY HOUSE USE BY MEANS OF A SPECIAL USE PERMIT IN THE RM ZONING DISTRICT.

MOTION PASSED. VOTE 5 TO 1.

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

Nay – Wallace.

Absent – Hamilton

**21. 7-C. BILL 20-07 – AN ORDINANCE AMENDING CHAPTER 31, WEAPONS, CODE OF THE CITY OF NEWARK, DELAWARE, BY DELETING PROVISIONS REGARDING STUN GUNS AND TASER GUNS TO COMPLY WITH DELAWARE CODE (10 MINUTES)**

**2:27:11**

Ms. Bensley read the ordinance into the record.

MOTION BY MS. WALLACE, SECONDED BY MR. HORNING: FOR SECOND READING AND PUBLIC HEARING OF BILL 20-07.

Mr. Coleman explained that staff recommended to remove the code sections because the existing language was not consistent with the State Code. Mr. Bilodeau confirmed the bill would make the City consistent with State Code and stated that after the City adopted the ordinance, the Supreme Court said that the City's ordinances did not meet Constitutional muster. Mr. Bilodeau spoke to the Police Department who said that they could enforce the State Code on stun guns and tasers.

Mr. Clifton remarked that the bill was housekeeping and Mr. Coleman confirmed.

There were no questions from Council. The Mayor opened the floor to public comment.

Dr. Amy Roe, District 4, supported the ordinance and reported on the various court cases documenting the unconstitutionality of the original ban.

Mr. Clifton returned the discussion to the table. Mr. Markham asked when the Supreme Court ruled to overturn the Massachusetts ban and Mr. Bilodeau answered 2016 and 2018. He also indicated there was a ban in the State code on municipalities passing legislation on firearms.

Mr. Horning thanked Dr. Roe for her comments and Mr. Bilodeau for his efforts.

MOTION BY MR. MARKHAM, SECONDED BY MR. LAWHORN: TO AMEND CHAPTER 31, WEAPONS CODE OF THE CITY OF NEWARK, DELAWARE, BY DELETING PROVISIONS REGARDING STUN GUNS AND TASER GUNS TO COMPLY WITH DELAWARE CODE.

MOTION PASSED. VOTE 6 TO 0.

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

Nay – 0.

Absent – Hamilton.

**(ORDINANCE NO. 20-05)**

**22. 8. RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING AND DEVELOPMENT DEPARTMENT: None**

**23. Meeting adjourned at 9:35 p.m.**

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

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