

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

March 23, 2020

Those present at 7:00 p.m.:

Presiding: Deputy Mayor Stu Markham, District 6
District 1, James Horning
District 2, Sharon Hughes
District 3, Jen Wallace
District 4, Chris Hamilton
District 5, Jason Lawhorn

Absent: Mayor Jerry Clifton

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
Finance Director David Del Grande
Parks and Recreation Director Joe Spadafino
Planning and Development Director Mary Ellen Gray
Planner II Thomas Fruehstorfer
Public Works and Water Resources Director Tim Filasky
Public Works and Water Resources Deputy Director Ethan Robinson

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

MOTION BY MR. LAWHORN, SECONDED BY MS. WALLACE: THAT COUNCIL ADD TO THE 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 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 COLLECTIVE BARGAINING, BUT ONLY WHEN AN OPEN MEETING WOULD HAVE AN ADVERSE EFFECT ON THE BARGAINING POSITION OF THE PUBLIC BODY; AND TO INCLUDE ITEM A, POTENTIAL VOTE REGARDING EMPLOYEE ON THE JOB INJURY SETTLEMENT AND ITEM B, A POTENTIAL VOTE REGARDING DIRECTION TO THE CITY SOLICITOR AND THE CITY MANAGER IN RETURN TO PUBLIC SESSION; AND ITEM I, FIRST READING BILL 20-14, AN ORDINANCE AMENDING CHAPTER 7, BUILDING; CHAPTER 21, PEDDLERS, VENDORS AND SOLICITORS; AND CHAPTER 23, PARADES AND PUBLIC ASSEMBLIES; CODE OF THE CITY OF NEWARK, DELAWARE, BY EXTENDING THE PROVISIONS OF EMERGENCY ORDINANCE NO. 20-01 WITH A SECOND READING ON APRIL 27, 2020; AND ITEM J, FIRST READING OF BILL 20-15, AN ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLES, BY EXTENDING THE PROVISIONS OF EMERGENCY ORDINANCE NO. 20-02 WITH SECOND READING ON APRIL 27, 2020, UNDER APPROVAL OF THE CONSENT AGENDA.

MOTION PASSED. VOTE 5 TO 0.

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

Nay - -0.

Absent – Clifton, Hughes.

2. **EXECUTIVE SESSION**

A. 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. HAMILTON, SECONDED BY MS. WALLACE: TO 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; AND THAT COUNCIL ADD TO THE 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 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 COLLECTIVE BARGAINING, BUT ONLY WHEN AN OPEN MEETING WOULD HAVE AN ADVERSE EFFECT ON THE BARGAINING POSITION OF THE PUBLIC BODY.

MOTION PASSED. VOTE 6 TO 0.

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

Nay – 0.

Absent – Clifton.

3. RETURN TO PUBLIC SESSION

MOTION BY MR. LAWHORN, SECONDED BY MR. HAMILTON: THAT COUNCIL APPROVE RESOLUTION OF THE EMPLOYEE ON THE JOB INJURY PERMANENT PARTIAL IMPAIRMENT CLAIM AS SET FORTH IN THE CHIEF HUMAN RESOURCES OFFICER'S MEMO DATED MARCH 20, 2020 TO COUNCIL AND AS OUTLINED TODAY IN THE EXECUTIVE SESSION.

MOTION PASSED. VOTE 5 TO 0.

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

Nay – 0.

Absent – Clifton, Wallace.

4. SILENT MEDITATION & PLEDGE OF ALLEGIANCE

7:31

Mr. Markham informed that he was chairing the meeting because Mr. Clifton was ill. He explained the guidelines for the first meeting of the GoToMeeting Platform. Mr. Markham 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 in order of seniority to offer their comments. If a Councilmember had additional comments to add later, they should signal Ms. Bensley through the GoToMeeting chat function. Members of the public wishing to comment should also signal Ms. Bensley through the chat function with their name, district or address, and the agenda item on which they would like to comment. He noted that for participants logged in by phone, names would only appear as Caller One, Caller Two, et cetera, so it was imperative that the participants inform Council of their identities. He stated that all lines would be muted until individuals were called to speak. All speakers were required to identify themselves prior to speaking and, in compliance with the executive order on teleconference meetings by Governor Carney, votes would be taken by roll call.

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

Mr. Markham indicated there were two additional emergency ordinances suggested to be added to the agenda and one Councilmember requested to change or table other items under consideration. The items discussed for adding second reading and public hearing were emergency ordinances requiring that the April 14 election be held exclusively vote by mail. He asked Council if it should be on the agenda for discussion later or if it was not necessary to add it to the agenda.

The Chair opened the floor to comments from Council and Mr. Markham understood that the Governor was meeting with the election board to discuss the State election process and he thought Council should hold on the ordinances until results from the Governor's conference were shared and then Council could hold a special meeting should action be needed. Ms. Bensley interjected that the City was scheduled for a conference call with the State Election Commissioner and all of municipalities in New Castle County regarding elections and informed Council that until the call, the State instructed municipalities to speak to their solicitors about how to interpret code.

Ms. Wallace agreed Council should wait until after the call then reevaluate and plan for an emergency meeting. Mr. Hamilton agreed with Ms. Wallace. Mr. Lawhorn thought Council should have a discussion prior to the call to provide guidance and lead the conversation although he was unsure of the format. Mr. Markham informed him that the format was an ordinance. Mr. Horning wanted to wait and

meet later if necessary and Ms. Hughes agreed with Ms. Wallace. Mr. Markham agreed that it was premature to entertain the ordinances and informed Ms. Bensley that he was not going to ask for a motion to add the agenda items.

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): None
7. 1-B-2. **STUDENT BODY REPRESENTATIVE(S) (5 minutes) (2 minutes): None**
8. 1-C. **CITY MANAGER (2 minutes): None**
9. 1-D. **COUNCIL MEMBERS (5 minutes):**

17:34

Ms. Wallace:

- Noted the meeting was supposed to be her last but would refrain from final comments.
- Commended staff on their response to the pandemic and felt well-represented by the service to the City.
- Urged public to follow social distancing guidelines to protect at-risk residents.

Mr. Markham thanked Ms. Wallace for her four years of service.

Mr. Hamilton:

- Agreed with Ms. Wallace's comments.
- Wanted to thank Mr. Markham and Ms. Wallace for their service in person later.

Mr. Lawhorn:

- Thanked staff for their forward-thinking regarding the virus.
- Thanked the Mayor for staying in constant communication.
- Believed Newark's action affected the State's reaction.
- Wanted residents to be proud of its local government.
- Thanked Ms. Wallace for her honorable service.
- Thanked Mr. Markham for his many years of service on Council and his skill at finding common ground.
- Noted the meeting could also be his last and was hopeful to be reelected.
- Thanked Mr. Coleman for his leadership.
- Thanked Ms. Bensley for her outstanding work as the legislative expert and a remarkable source of information.
- Thanked residents for the opportunity to serve.

Mr. Horning:

- Reiterated other commenters sentiments regarding staff and the Mayor's response to the virus.
- Noted the efforts of Police and City employees.
- Thanked Ms. Wallace for giving residents in her district a voice.
- Acknowledged Mr. Markham's depth of experience and his example.

Ms. Hughes:

- Echoed Council's previous comments.
- Was disappointed when Ms. Wallace and Mr. Markham decided to retire because of their extensive contributions to Council.

Mr. Markham:

- Originally anticipated a quiet exit into retirement and wished everyone health and success.
- Thanked the residents of District 6.

Ms. Hughes interjected that comments about City staff amazed her. She thanked Mr. Coleman for the detailed and informative memo highlighting the efforts of the various municipalities. She thanked Ms. Bensley and commented that she was irreplaceable. Ms. Hughes thought residents were in capable hands and wanted everyone to follow the shelter-at-home rules. Mr. Markham noted the most recent updates from DHSS were 31 additional positive cases, for a total of 87 laboratory-confirmed cases since March 11.

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

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

- A. Approval of Council Meeting Minutes – March 2, 2020
- B. Approval of Council Meeting Minutes – March 9, 2020
- C. Receipt of Alderman’s Report – March 9, 2020
- D. Receipt of Conservation Advisory Commission 2019 Annual Report
- E. Receipt of Green Building Code Work Group Minutes – December 17, 2019
- F. ***First Reading – Bill 20-11*** – An Ordinance Amending Chapter 27, Subdivisions, and Chapter 32, Zoning, Code of the City of Newark, Delaware to Increase Land Use Application, Plan Review and Public Works and Water Resources Fees – ***Second Reading – April 27, 2020***
- G. ***First Reading – Bill 20-12*** – An Ordinance Amending the Comprehensive Development Plan by Changing the Designation of Property Located at 734 Paper Mill Road and 5 and 11 Possum Hollow Road – ***Second Reading – April 27, 2020***
- H. ***First Reading – Bill 20-13*** – An Ordinance Annexing and Zoning to RD (Single Family Detached Residential) 4.47 Acres Located at 734 Paper Mill Road and 5 and 11 Possum Hollow Road – ***Second Reading – April 27, 2020***
- I. ***First Reading – Bill 20-14*** – An Ordinance Amending Chapter 7, Building; Chapter 21, Peddlers, Vendors And Solicitors; And Chapter 23, Parades And Public Assemblies; Code Of The City Of Newark, Delaware, By Extending The Provisions Of Emergency Ordinance No. 20-01 – ***Second Reading – April 27, 2020***
- J. ***First Reading – Bill 20-15*** – An Ordinance Amending Chapter 20, Motor Vehicles, By Extending the Provisions Of Emergency Ordinance No. 20-02 – ***Second Reading – April 27, 2020***

32:11

Ms. Bensley read the consent agenda into the record.

Mr. Markham noted that the first reading items on the Consent Agenda were for advertising purposes to get them into the record and there would be no discussion on the items and no final vote that evening.

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

MOTION PASSED. VOTE 6 TO 0.

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

Nay – 0.

Absent – Clifton.

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

- A. Reappointment of Kismet Hazelwood to the Conservation Advisory Commission as an At-Large Member for a Three-Year Term to Expire March 15, 2023 (5 minutes)

35:14

Mr. Horning thanked Ms. Hazelwood for her service and community involvement.

MOTION BY MR. HORNING, SECONDED BY MR. LAWHORN: TO REAPPOINT KISMET HAZELWOOD TO THE CONSERVATION ADVISORY COMMISSION AS AN AT-LARGE MEMBER FOR A THREE-YEAR TERM TO EXPIRE MARCH 15, 2023.

MOTION PASSED. VOTE 6 TO 0.

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

Nay – 0.

Absent – Clifton.

13. 3-B. **REAPPOINTMENT OF STACY MCNATT TO THE PLANNING COMMISSION AS THE DISTRICT 3 MEMBER FOR A THREE-YEAR TERM TO EXPIRE SEPTEMBER 15, 2022 (5 MINUTES)**

37:30

Ms. Wallace stated that Ms. McNatt's term was up earlier but could not get on a Council agenda until then. Ms. Wallace thanked Ms. McNatt for her service and called her an asset to the Planning Commission. She was pleased to know that Ms. McNatt would continue her service. Mr. Horning and Ms. Hughes reiterated Ms. Wallace's comments.

MOTION BY MS. WALLACE, SECONDED BY MR. HAMILTON: TO REAPPOINT STACY MCNATT TO THE PLANNING COMMISSION AS THE DISTRICT 3 MEMBER FOR A THREE-YEAR TERM TO EXPIRE SEPTEMBER 15, 2022.

MOTION PASSED. VOTE 6 TO 0.

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

Nay – 0.

Absent – Clifton.

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

15. 5. **SPECIAL DEPARTMENT REPORTS:**

A. General Assembly Update and Associated Requests for Council Direction - Lobbyist (10 Minutes)

39:54

Ms. Bensley read Mr. Armitage's comments into the record and stated that Mr. Armitage had nothing to add other than the Governor announced schools would be closed until at least May 15 and he suspected the General Assembly would reevaluate if it would return to session at the same date.

Mr. Markham instructed Council to direct any questions for Mr. Armitage to Ms. Bensley for forwarding or contact him directly.

16. 5-B. **RESOLUTION NO. 20-__ : A RESOLUTION SUPPORTING AN APPLICATION FOR THE NATIONAL FISH AND WILDLIFE FOUNDATION GRANT (10 MINUTES)**

42:04

Mr. Spadafino introduced the resolution to support the removal of Dam #4 using a National Fish and Wildlife Foundation Grant. He explained that staff had been approached by the Delaware Department of Natural Resources and Environmental Control and the University of Delaware's Delaware Environmental Institute (DENIN) about submitting a grant application for potential funding availability for the removal of Dam #4 on the White Clay Creek. The grant application was for the estimated removal cost of \$400,000 and DENIN would administer the grant application and removal if awarded.

Mr. Spadafino continued that Dam #4 was located adjacent to the Paper Mill Road Bridge and the future construction of the White Clay Creek Bicycle and Pedestrian Bridge. He explained that the removal of the dam would have several benefits to the City and White Clay Creek including spurring migration and spawning of the American Shad, Hickory Shad, and Striped Bass, reconnecting fish habitats, lowering water temperatures, increasing oxygen levels, and decrease flooding. Mr. Spadafino explained that it was possible to remove the dam at the same time as the pedestrian bridge construction but that it would not be possible to remove the dam after the bridge was in place.

The Chair opened the floor to questions from Council.

Mr. Hamilton supported the plan and grant.

Mr. Lawhorn also supported the plan and asked Mr. Coleman if removing the dam would impact the water production facility. Mr. Coleman replied that there would not be a direct impact on the water treatment plant because the intake was at Dam #5. He explained that if the first four dams were removed, staff would need to discuss how to address Dam #5 but Dam #4 was the dam for the former NVF Paper Mill (Timothy's) and noted the USGS gauge station would have to be relocated as part of the project but was not considered a problem.

Mr. Horning thanked Mr. Spadafino for the presentation and noted the benefit of having UD as part of the community and the coordination of the work with the Emerson Bridge.

Ms. Hughes also thought it was a great idea and hoped it would proceed.

Mr. Markham noted the project would help the upstream water quality and asked how it would impact residents at Creek Bend. Mr. Coleman did not anticipate issues downstream. The water would be

cooler and, while the water surface elevation would be lower upstream, it should not affect downstream. He noted a delay in the project was due to staff modeling the impact of the dam in place and removed.

There was no public comment.

Mr. Markham supported the project and noted that the Chair did not typically make a motion but as the project was in his district, he called on Councilman Lawhorn.

MOTION BY MR. LAWHORN, SECONDED BY MS. WALLACE: THAT COUNCIL APPROVE A RESOLUTION SUPPORTING AN APPLICATION FOR THE NATIONAL FISH AND WILDLIFE FOUNDATION GRANT AS OUTLINED.

MOTION PASSED. VOTE 6 TO 0.

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

Nay – 0.

Absent – Clifton.

(RESOLUTION NO. 20-A)

17. 6. **RECOMMENDATIONS ON CONTRACTS & BIDS OVER \$75,000:** None

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

A. **Bill 20-08** – An Ordinance Amending the Comprehensive Development Plan by Adding a New Planning Area 7 to Chapter 11: Growth and Annexation (60 minutes)

50:13

Mr. Markham invited Mr. Horning to have a conversation before the items were discussed.

Mr. Horning asked if Council should have discussion whether it should proceed with agenda items 7A, 7B, and 8A in the current conditions because they pertained to land use matters, and the public might have difficulty being involved. He noted he wavered on the decision and wanted to hear from Council.

Mr. Markham asked Mr. Horning how he stood, and Mr. Horning replied that he was comfortable proceeding.

Ms. Wallace also admitted that she wavered on discussing the items and the circumstances were not ideal to review and vote on the matters and worried how future Council would keep up with development projects. She noted that it was not ideal to consider development projects because of the lack of community input and the forum was not ideal. She appreciated that the applicant wanted resolution but believed it was not the best way for Council to make decisions. She said she would prefer to remove the items and add them to a future agenda.

Mr. Hamilton agreed that Ms. Wallace raised good points and acknowledged the role of public officials. He believed that many residents were already sheltering at home and stated that Council and staff had tried to be as open as possible by using email and remaining as open as possible. He acknowledged some residents did not have access to internet and were limited with contacting representatives. He was not opposed to removing the items from the agenda to revisit in the future.

Mr. Lawhorn understood the previous points and did not want to see a project suffer but acknowledged no one knew how long the situation would last. He thought Council needed to learn how to handle agenda issues in the current format in case it was necessary in the long-term, but he was not opposed to tabling the agenda items that night. He asked if the items were tabled, that they be placed on the earliest agenda possible. Mr. Markham confirmed the next Council meeting was scheduled for April 27th and noted that three Council members, the City Manager, the City Solicitor, or the Mayor could call additional meetings. Mr. Lawhorn agreed it was possible to have additional meetings to catch up. He agreed the agenda items could be pushed out but was hesitant to allow it to be commonplace if the situation was long-term.

Ms. Hughes asked if the public was sufficiently notified of the meeting as regular procedure and Mr. Coleman confirmed and stated staff received fourteen comments on the Planning Area 7 item. Ms. Hughes acknowledged Council and staff were trying to conduct business in the best format possible because the business of the City had to proceed. She understood the format was not typical but did not see why it could not be kept on the agenda and continue as a normal Council meeting. She was concerned

that delaying the items would allow for uncertainty and wanted to conduct business as usual to keep the City running.

Mr. Markham noted that Pennsylvania shut down construction and admitted that Delaware's decision to shut down construction would change the situation. He stated that both projects were either in or next to his district and was concerned that Council could not meet face to face with residents who had questions. He knew many people had questions about Planning Area 7 and it was nearly impossible to have the conversation, but he also did not think it was fair to the applicants to not have a chance to defend or present. He asked if any Councilmembers were willing to make a motion to postpone.

Mr. Coleman interjected that Council would normally postpone to a certain date or postpone indefinitely. He did not want to postpone indefinitely because the project would be dead, but he admitted that staff did not have a date Council could postpone to because no one knew when the emergency would be over. Mr. Markham admitted it was a conundrum and suggested that Council could word the motion to pass when the State of Emergency was lifted. Ms. Bensley said the choice was at Council's discretion. Mr. Horning asked if Council wanted to ask the applicants or proponents of the agenda items if there were any comments prior to voting. Mr. Markham noted that Item 7A was a City item and believed Council was the ultimate authority. Mr. Bilodeau agreed it was a City item. Mr. Hamilton believed that if a project was going to be voted on, it was only fair to let the applicants speak.

Mr. Markham stated that Items 7B and 8A had applicants prepared to address Council and asked if Kevin Heitzenroder was available. John Tracey and Kevin Heitzenroder came forward and Mr. Markham asked if there were any comments on the idea of tabling the agenda. Mr. Heitzenroder was prepared to go forward. He cited the amount of money spent, the adequate advertisement of the project, and the lack of opposition to the project as indicators that the agenda should move forward. He did not believe there would be substantial changes if the meeting was pushed. Mr. Tracey added that the City had gone through great lengths to advertise the meeting and create the alternative meeting forum and to allow for meeting participation for residents. He felt it was appropriate to move forward with their application.

Mr. Markham asked Mr. Bilodeau if Item 7A was a City item and Mr. Bilodeau confirmed. Mr. Markham asked if staff needed to address the item or if it was at Council's discretion. Mr. Bilodeau saw no harm in allowing staff to speak and Mr. Coleman stated that Ms. Gray or Mr. Fruehstorfer could best address the item. Ms. Gray informed Council that she was prepared to speak on Item 7A.

Ms. Gray stated that the proposed amendment to the Comprehensive Plan to add another growth area was not a decision on a particular land use development but was a decision to consider future applications for annexation. She continued that applications for land use projects to annex into the City were discretionary decisions by Council. She explained it was a two-step process and the discussion of considering amending the Comprehensive Plan did not approve land use plans. She continued that the Governor's Emergency Proclamation called to shut down non-essential services would not apply to construction services and suspending the consideration of land use decisions would likely put a hold on construction in the coming future and could potentially negatively impact the City's economy. She also pointed that the most recent declaration from the Governor indicated May 15th as a target but noted that it was impossible to say when the situation would be resolved. She pointed that Governor's first emergency proclamation made accommodations to allow government entities to hold virtual public meetings. She noted that although the virtual meetings were not ideal for land use decisions, they should continue.

Mr. Markham asked if a motion would be put forth or if Council would proceed with the agenda. Mr. Horning suggested that Council vote separately per item.

MOTION BY MR. HORNING, SECONDED BY MS. WALLACE: THAT COUNCIL TABLE ITEM 7A TO BE RESCHEDULED FOR A MEETING FOLLOWING THE GOVERNOR'S LIFTING OF THE CURRENT STATE OF EMERGENCY AS SOON AS PRACTICABLE.

The Chair opened the floor to comments from Council.

Ms. Hughes believed the agenda should continue as presented.

Mr. Markham asked Ms. Bensley if there were any public comments. Ms. Bensley stated there were no comments for the discussion but there were fourteen comments submitted for 7A if there was a public hearing. Mr. Hamilton asked if the vote was to table item 7A and Mr. Markham clarified that the vote was to table item 7A until the first meeting after the Governor lifted the emergency declaration. Ms. Bensley interjected that the meeting would be the first meeting after the City was able to give notice

required by City code and would likely be two meetings after the first meeting held. She explained that a Comprehensive Plan amendment required fifteen days' notice and would be scheduled for the first meeting after the State of Emergency ended, once proper notice was given.

The Chair returned the discussion to the table.

MOTION PASSED. VOTE 5 TO 1.

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

Nay – Hughes.

Absent – Clifton.

Mr. Markham declared the item was postponed until after the State of Emergency was lifted.

MOTION BY MR. HORNING, SECONDED BY MS. WALLACE: THAT COUNCIL TABLE ITEMS 7B AND 8A TO BE RESCHEDULED FOR A MEETING FOLLOWING THE GOVERNOR'S LIFTING OF THE CURRENT STATE OF EMERGENCY AS SOON AS PRACTICABLE.

The Chair opened the floor to discussion from Council.

Ms. Wallace appreciated the comments from the applicants but did not see a difference in the discussion from item 7A. She did not think it was the ideal time or circumstance to consider development projects and thought all sides needed the opportunity to be heard. She noted that there were public comments submitted but felt that some residents were left out of the process.

Mr. Lawhorn admitted the project was not in his district but on the border and noted that he attempted to get feedback from constituents beginning in December and had a well-attended Town Hall meeting discussing the topic and received no negative feedback. He described most residents as indifferent because it was a simple project and most residents wanted student housing located downtown and away from suburban neighborhoods. He understood there was feedback from multiple sides regarding 7A but did not believe it was the same for the other project. He wanted to address the agenda item that evening.

Mr. Horning appreciated Council's comments and admitted he had not received the same level of participation from District 1 as he had before the virus. He stated his district had a large older population and understood not all of them had internet access or smartphones. He was in favor of tabling the discussion.

Ms. Hughes understood that the format was different from meetings in the past but noted that meetings regarding large projects had never been standing room only. She thought the virtual format would yield the same results as a meeting in Council Chambers under the same notifications, challenges and discussion. She believed Council was fulfilling its duty, just under a different format. She thought it was important to proceed as expected.

Mr. Markham did not think it was fair to table one without the other.

The Chair opened the floor to public comments and Ms. Bensley revealed there were none. The Chair returned the discussion to the table.

MOTION FAILED. VOTE 2 TO 4.

Aye – Horning, Wallace.

Nay – Hamilton, Hughes, Lawhorn, Markham.

Absent – Clifton.

19. 7-B. 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 (SEE 8-A) (45 MINUTES FOR 7B AND 8-A)

1:24:57

Ms. Bensley read the items 7-B and 8-A into the record.

MOTION BY MR. LAWHORN, SECONDED BY MS. WALLACE: FOR SECOND READING AND PUBLIC HEARING OF 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, AND REQUEST OF NEW LONDON AVENUE ASSOCIATES, LLC FOR A MINOR SUBDIVISION WITH SITE PLAN APPROVAL TO CONNECT THREE EXISTING LOTS INTO ONE PARCEL AND CONSTRUCT TWO NEW FIVE-BEDROOM UNITS BETWEEN THE THREE EXISTING FOUR-BEDROOM HOMES TO CREATE A TOTAL OF FIVE TOWNHOUSE UNITS WITH 22 TOTAL BEDROOMS AND TO EXPAND THE PARKING LOT TO ACCOMMODATE THE NEW UNITS AT THE PROPERTY LOCATED AT 118, 126 AND 130 NEW LONDON ROAD.

Ms. Bensley stated that John Tracey was the attorney for the applicant and would present. Mr. Tracey said it was his understanding that Ms. Gray was going to go first. Mr. Markham stated Council would consider items 7B and 8A together and the Comprehensive Plan required individual reasons.

Ms. Gray stated the land use application was request for a minor subdivision by site plan approval for 0.475 acres of property located at 118, 126, and 130 New London Road. The plan required a Comprehensive Plan amendment to change the land use designation from residential low-density to residential high-density. The plan proposed connecting the three existing lots into one parcel and connecting the three existing detached homes with two new homes to result in five townhome apartments. The property currently included three single-family homes used as rental homes and were zoned RM, multi-family dwellings garden apartments. The proposed use was for the connection of three existing structures with two new structures to result in five townhome-style garden apartments with five bedrooms each. The proposal included the addition of six required parking spaces for a total of fifteen spaces for the development.

Ms. Gray continued that the density for the project was 10.53 units or 11 units per acre and the applicant requested to realize the site plan approval provision for relief from several area requirements including lot coverage, minimum lot size, building setback from the street, building setback from the lot line, and building side yard. The building setback and minimum lot size relief were due to existing conditions presently on the property. She stated the plan did not conform to the Comprehensive Development Plan V and would need to be revised to change the land use designation from residential low-density to residential high-density. She pointed that the Comprehensive Plan defined low-density as residential dwelling units that included single family detached and semi-detached row or townhomes with density of 11 or fewer dwelling units per acre and the high-density residential definition was multi-family residential dwelling units with density between 11 and up to 36 units per acre. She continued that housing types included garden apartments, townhouse apartments, and condominiums but did not include dormitory or mixed urban developments. She noted the proposed development could be designated low-density because it was on the border of the low-density number designation. She noted that density definition also included housing type and because the development was a multi-family townhouse style garden apartment, it clearly met the definition of high-density.

Ms. Gray stated the New London Road community was included in Planning Section A of the Comp Plan. The recommendation of the New London Road area in the Planning Section A of the Comp Plan was residential low or high density compatible with architecture of the surrounding residential area as well as compatible institutional uses. She stated the project was compatible with the density and architecture on the surrounding residential area and conformed with the Comp Plan recommendations and would have negative impact on traffic.

Ms. Gray declared that the proposed development met all the requirements detailed in the municipal code for sub-divisions with site plan approval provision. Following the Subdivision Advisory Committee Review of the proposal, the Planning and Development Department recommended approval of the Comprehensive Plan Amendment Minor Subdivision with Site Plan Approval with a series of Subdivision Advisory Committee conditions for the land use project because the plan complied with City code, with the Subdivision Advisory Committee recommended conditions, should not have a negative impact on adjacent and nearby properties, and because the property proposed use did not conflict with the development pattern in the nearby area. At their February 5, 2020 meeting, the Planning Commission voted 5-0 to recommend that Council revise the Comp Plan V land use guidelines from residential low-density to residential high-density and voted 5-0 to recommend that Council approve the minor subdivision by site plan approval.

John Tracey of Young, Conaway, Stargatt & Taylor thanked Council for proceeding with the agenda and recognized Council and staff for adapting as needed. He stated that Kevin Heitzenroder, the property owner and developer was also present, and noted it was possible to conference engineer Mark Zeigler into the meeting if necessary. He stated the department created a thorough overview of the project and had been available for some time. He noted the Planning Commission recommended approval of the project at the February meeting. He described the project as an infill project and reiterated Ms. Gray's description of the development and noted it was not necessary to rezone because the current RM zoning

was accurate. He repeated the project needed a Comp Plan amendment but noted the project was on the border of low- and high-density at 11 units per acre. He stated it was considered high-density because of the type of development it became upon completion of the two new units.

Mr. Tracey presented a PowerPoint presentation depicting the current buildings constructed in 2000 as student rentals. He stated the buildings were consistent with the type of development on New London Road and noted that high-density residential buildings were across the street from the parcel and recalled Campus Walk II had a similar zoning but also required the same Comp Plan amendment.

Mr. Tracey pointed that there were no connections between the existing homes and New London Road and no landscaping save for a few trees. He revealed the homes would not intrude closer to New London Road and stated that sidewalk connections would be added between the new and old homes to New London Road. In addition to providing sprinklers in the two new homes, the three existing homes would be retrofitted, and the parking lot was redesigned for compliance with no additional vehicular access proposed by the plan. He noted that four of the five deviations requested represented existing conditions that would remain regardless of project approval and the only new relief requested was a minor increase in lot coverage.

Mr. Tracey noted the proposed architecture would be consistent throughout the five buildings and noted substantial landscaping, soil rehabilitation and reclamation would also be added to the property to enhance drainage. He revealed the applicants had no issues with the subdivision agreement as proposed and committed to the church that construction would happen during services or events.

The Chair opened the floor to discussion from Council.

Mr. Hamilton reiterated the applicants' points that the project had the same zoning and owner and was a small change of connecting the existing buildings. He believed it addressed the issue of drawing rentals from the neighborhoods in order to maintain quality of life for residents. He asked how many additional beds would be added and Mr. Tracey replied ten beds would be added, five each in the two new units. Mr. Hamilton asked if the old units were maintaining status and Mr. Tracey confirmed. Mr. Hamilton asked how many parking spots would be added and Mr. Tracey replied there would be two spaces added beyond the current number and would be striped and code compliant and Mr. Hamilton repeated that ten beds were added with only two parking spots. Mr. Hamilton noted he had not heard negative input regarding the project. Mr. Tracey interjected that the applicants had conversation with the adjacent church prior to and immediately after the Planning Commission meeting and would continue to communicate after the quarantine was lifted.

Ms. Wallace did not have questions but noted she had not received any comments about the project.

Mr. Lawhorn understood the church had issues with parking and noted the developers reached out and were working with them to discuss traffic patterns and construction traffic. He referred to his Town Hall meeting and reiterated there was only positive feedback and agreed with Mr. Hamilton in drawing student housing away from neighborhoods. He noted the high number of nursing students in the area and hoped the location continued to ease the burden on suburban residential areas.

Mr. Horning agreed with prior Council comments and added that he appreciated the applicant agreeing to voluntarily deed restrict the property to prohibit residents from requesting residential or guest parking permits from the City. He noted the proposed setback would remain current and likened the proposal to additions to the structures. He appreciated the consideration to the church and had not received any feedback from constituents.

Ms. Hughes asked if the church voiced concerns other than parking. Mr. Tracey stated that only one person addressed the Planning Commission regarding construction processes and traffic. Ms. Hughes asked for the timeline and Mr. Heitzenroder replied that the schedule depended on tenants. He hoped to vacate the buildings and have 90 days over a summer to build the foundations, frame the new buildings and retrofit the sprinklers to the old building. He thought it was possible that the schedule could be more aggressive and hoped they were able to build this summer. He thought the project could be completed in nine months if it was started over a summer. He revealed his firm completed Cleveland Station in twelve months and this project was less complex. Ms. Hughes believed construction could impact traffic and Mr. Heitzenroder disagreed. He hoped to have all equipment parked on site during foundation construction and had no intent on parking on New London Road. He hoped to have the excavating equipment in use during the summer and only small tradesman on site afterwards to have minimal impact on traffic. Ms. Hughes asked if the new construction would impact the height of the building and Mr. Heitzenroder

replied it would not. Ms. Hughes asked if the construction would dwarf the church and Mr. Heitzenroder said it would not and stated the project sat at the lowest point of the Ray Street/New London Road intersection.

Ms. Hughes asked for clarification regarding three waivers mentioned by Ms. Gray and Mr. Tracey explained there were five deviations requested through the site plan approval process and repeated that four of the five reflected existing conditions and the lot coverage was increasing from 20% to 22.3%.

Mr. Markham asked Ms. Gray if the residents of Ray Street were notified and Ms. Gray replied that the property owners within 300 feet of the project were notified via mail. She explained the project was originally scheduled for January, so the residents received at least two mailings for the Planning Commission hearing. Mr. Markham asked if the City put up signage for minor subdivisions and Ms. Gray replied it was not required by code.

Mr. Markham noted the project called for parking lot expansion and asked how the applicants would manage large crowds. Mr. Tracey did not anticipate large crowds and Mr. Heitzenroder added that the new parking lot was virtually identical to the old and did not anticipate large gatherings. He believed better construction correlated to better applicants but had no issues alerting police with any problems. Mr. Markham was pleased to learn that the exterior of the existing and new buildings would match.

Mr. Markham pointed to page eleven of the Planning Department Development Report and asked Mr. Coleman what happened if the hydraulic analysis of the storm water conveyance system failed. Mr. Coleman understood that if the system required upgrades, the applicants would make upgrades to the existing drainage system. Mr. Tracey added that the analysis was completed and explained the applicants agreed to the test to demonstrate there would be no adverse impact from the project to the downstream systems. He stated they were fully prepared to comply with the City.

Mr. Markham asked Ms. Gray to confirm that all the amendments to the subdivision agreement were included and she confirmed.

The Chair opened the floor to public comment and Ms. Bensley indicated that no comments had been submitted. The Chair moved the discussion back to the table. He explained that Council would vote individually with reasons. He asked Ms. Bensley if any other motions were necessary and she replied that Council needed a motion for approval of the bill and then Council would vote individually on the motion.

Mr. Hamilton appreciated Mr. Markham's efforts in conducting the meeting and noted that Council typically made motions based on district. Mr. Markham noted the project was in his own district said he would ask Mr. Lawhorn for the motion given the project was on the border and he had held a Town Hall meeting on the topic.

Mr. Horning asked Ms. Gray if the Police had negative input about the application and Ms. Gray confirmed the Police were part of the Subdivision Advisory Committee and staff always asked for comments and questions during the review. Mr. Horning noted the February 4, 2020 Planning Commission meeting where Jean White from District 1 asked multiple questions and received answers.

MOTION BY MR. LAWHORN, SECONDED BY MR. HAMILTON: THAT COUNCIL APPROVE BILL 20-09 AS PRESENTED.

Mr. Lawhorn supported the motion for the reasons described in the Planning Department Report dated January 6, 2020.

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

MOTION PASSED. VOTE 6 TO 0.

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

(ORDINANCE NO. 20-06)

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

- A. Request of New London Avenue Associates, LLC for a Minor Subdivision with Site Plan Approval to Connect Three Existing Lots Into One Parcel and Construct Two New Five-Bedroom Units Between the Three Existing Four-Bedroom Homes to Create a Total of Five Townhouse Units with 22 Total Bedrooms and to Expand the Parking Lot to Accommodate the New Units at the Property Located at 118, 126 and 130 New London Road (**Agreement and Resolution Attached**) (See 7-B)

2:12:28

(Secretary's note: The public hearing for this item was held under item #19)

MOTION BY MR. LAWHORN, SECONDED BY MR. HAMILTON: THAT COUNCIL APPROVE A MINOR SUBDIVISION WITH SITE PLAN APPROVAL TO CONNECT THREE EXISTING LOTS INTO ONE PARCEL AND CONSTRUCT TWO NEW FIVE-BEDROOM UNITS BETWEEN THE THREE EXISTING FOUR-BEDROOM HOMES TO CREATE A TOTAL OF FIVE TOWNHOUSE UNITS WITH 22 TOTAL BEDROOMS AND TO EXPAND THE PARKING LOT TO ACCOMMODATE THE NEW UNITS AT THE PROPERTY LOCATED AT 118, 126 AND 130 NEW LONDON ROAD.

MOTION PASSED. VOTE 6 TO 0.

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

Nay – 0.

Absent – Clifton.

(RESOLUTION NO. 20-B)

21. 7-C. **BILL 20-10 – AN ORDINANCE AMENDING CHAPTER 2, ADMINISTRATION, CODE OF THE CITY OF NEWARK, DELAWARE, BY EXPANDING THE ETHICS BOARD TO SEVEN MEMBERS, CREATING A STAGGERED APPOINTMENT STRUCTURE AND INCREASING THE QUORUM REQUIREMENT (5 MINUTES)**
-

2:14:03

Ms. Bensley read Bill 20-10 into the record by title.

Ms. Bensley explained the ordinance was a follow-up to the discussion Council had on the February 10th meeting where Council provided direction to staff to submit the proposed changes to the Ethics Board to the State Public Integrity Commission. The State Public Integrity Commission reviewed the changes at the February meeting and issued their approval. She explained the ordinance was necessary to codify the changes as presented to Council at the February 10th meeting.

MOTION BY MS. WALLACE, SECONDED BY MR. LAWHORN: FOR SECOND READING AND PUBLIC HEARING FOR BILL 20-10 – AN ORDINANCE AMENDING CHAPTER 2, ADMINISTRATION, CODE OF THE CITY OF NEWARK, DELAWARE, BY EXPANDING THE ETHICS BOARD TO SEVEN MEMBERS, CREATING A STAGGERED APPOINTMENT STRUCTURE AND INCREASING THE QUORUM REQUIREMENT.

The Chair opened the floor to comments from Council.

Mr. Horning noted the Mayor's support of the ordinance and supported the measure.

Mr. Lawhorn, Mr. Hamilton, Ms. Wallace, and Mr. Markham appreciated the action and supported Mr. Horning's comments.

The Chair opened the floor to public comment. Ms. Bensley stated there was no public comment but reminded Council that if the ordinance was adopted, Council members would be responsible for submitting a nominee to the newly reconstituted Board of Ethics. Mr. Markham stated believed the nominations should come from the newly elected Council members.

The Chair returned the discussion to the table.

Ms. Hughes asked for the time frame and Mr. Markham replied that it took immediate effect.

MOTION BY MR. LAWHORN, SECONDED BY MR. HAMILTON: THAT COUNCIL APPROVE BILL 20-10 – AN ORDINANCE AMENDING CHAPTER 2, ADMINISTRATION, CODE OF THE CITY OF NEWARK, DELAWARE, BY EXPANDING THE ETHICS BOARD TO SEVEN MEMBERS, CREATING A STAGGERED APPOINTMENT STRUCTURE AND INCREASING THE QUORUM REQUIREMENT.

MOTION PASSED. VOTE 6 TO 0.

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

(ORDINANCE NO. 20-07)

Mr. Horning asked if it was necessary to announce where each Council member was attending. Mr. Markham asked members from where they were attending. Ms. Wallace, Mr. Hamilton, Mr. Lawhorn, Mr. Horning, and Ms. Hughes were attending from home while Mr. Markham attended from Council Chambers with Mr. Coleman, Ms. Bensley, and Mr. Bilodeau.

MOTION BY MR. HAMILTON, SECONDED BY MR. LAWHORN: TO 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 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 COLLECTIVE BARGAINING, BUT ONLY WHEN AN OPEN MEETING WOULD HAVE AN ADVERSE EFFECT ON THE BARGAINING POSITION OF THE PUBLIC BODY.

MOTION PASSED. VOTE 6 TO 0.

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

Council entered Executive Session at 9:28 p.m. and exited at 9:48 p.m.

22. RETURN TO PUBLIC SESSION

2:24:52

MOTION BY MR. LAWHORN, SECONDED BY MR. HAMILTON: THAT COUNCIL AUTHORIZE STAFF TO ENTER INTO A TEMPORARY LEASE AGREEMENT WITH 96 EAST MAIN ASSOCIATES, LLC, AS OUTLINED IN EXECUTIVE SESSION.

MOTION PASSED. VOTE 6 TO 0.

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

MOTION BY MR. LAWHORN, SECONDED BY MR. HAMILTON: THAT COUNCIL AUTHORIZE STAFF TO ENTER INTO A CONSTRUCTION AND ACCESS EASEMENT AGREEMENT WITH 96 EAST MAIN ASSOCIATES, LLC, AS OUTLINED IN EXECUTIVE SESSION.

MOTION PASSED. VOTE 6 TO 0.

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

23. Meeting adjourned at 9:52 p.m.

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

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