

**CITY OF NEWARK
DELAWARE
PLANNING COMMISSION
MEETING**

February 2, 2010

7:00 p.m.

Present at the 7:00 p.m. meeting were:

Chairman: James Bowman

Commissioners Present: Ralph Begleiter
Patricia Brill
Peggy Brown
Angela Dressel
Mary Lou McDowell
Kass Sheedy

Staff Present: Roy H. Lopata, Planning and Development Director

Chairman James Bowman called the Planning Commission meeting to order at 7:00 p.m.

Mr. Lopata welcomed new Planning Commissioner Patricia Brill who will complete the balance of the District 1 term.

1. THE MINUTES OF THE NOVEMBER 3, 2009 PLANNING COMMISSION MEETING.

MOTION BY BEGLEITER, SECONDED BY DRESSEL, THE MINUTES OF THE NOVEMBER 3, 2009 PLANNING COMMISSION MEETING WERE APPROVED AS SUBMITTED. THE MOTION WAS PASSED UNANIMOUSLY.

2. THE REVIEW AND CONSIDERATION OF THE MAJOR RESUBDIVISION AND SITE PLAN APPROVAL OF THE 18.37 ACRE VILLAGES AT TWIN LAKES, AND THE REZONING FROM AC (ADULT COMMUNITY) TO RR (ROW OR TOWNHOUSE) OF AN 8.08 ACRE PORTION OF THIS PROPERTY ON ELKTON ROAD.

Mr. Lopata summarized his report for the Planning Commission which reads as follows:

“On November 23, 2009, the Planning and Development Department received applications for the redesign of the Villages at Twin Lakes 18.37 acre adult community on the east side of Elkton Road between the Newark Interstate Business Park, Otts Chapel Road, and the Northeast Corridor Railroad right-of-way. The applicants, Iron Hill Properties, LLC, are requesting rezoning of an 8.08 acre portion of their site from AC (Adult Community) to RR (row or townhouses) zoning and, in addition, major resubdivision in order to change the site design for the project in the following ways:

- At the western side of the site, to replace the unbuilt approved pair of two story condominium buildings calling for eight adult community apartments each, with two sets of six adult community townhouses.
- To remove the outdoor swimming pool originally proposed in association with the existing clubhouse.

- At the eastern side of the site, to replace the unbuilt approved set of seven two-story condominium buildings calling for eight adult community apartments each, with 65 RR zoned townhomes [note that the “67” units referred to in the applicant’s supporting letter is not correct].

Because the site design of the proposed RR zoned portion of the property does not meet all the applicable zoning area requirements, the applicants have also applied for “site plan approval;” the zoning procedure that permits waivers or deviations from area and other Zoning Code requirements, subject to site design and related architectural conditions.

Please note that the original Villages at Twin Lakes project was annexed and approved for development by City Council on August 28, 2006.

Please see the attached Landmark Engineering rezoning, major resubdivision and landscape plans, supporting letter, other submittal documents, and proposed building elevation drawings.

The Planning and Development Department’s report on the Villages at Twin Lakes redesign proposal follows:

Property Description and Related Data

A. Location:

East side of Elkton Road between the Newark Interstate Business Park, Otts Chapel Road, and the Northeast Corridor Railroad right-of-way; south of the west branch of the Christina Creek.

B. Size:

AC zoned property:	7.75 acres
RR zoned property:	8.08 acres
OFD zoned property:	<u>2.54 acres</u>
Total:	18.37 acres

C. Existing Land Use:

The Villages at Twin Lakes property currently consists of 16 condominium apartments in two building groups near Elkton Road, associated parking, and a stormwater management area. The site also contains a portion of a small farm pond (shared with the Newark Interstate Business Park), and a large vacant area at the east side of the site. The balance of the property is wooded floodplain adjoining the west branch of the Christina Creek.

D. Physical Condition of the Site:

The Villages at Twin Lakes property slopes, in general, from high points at the south and southwest to the north and northeast toward a steeply banked demarcation of the floodplain portion of the site. The floodplain lands are relatively level with a slight slope to the bank of the west branch of the Christina Creek. As noted above, the floodplain lands are wooded. A small pond extends into the western portion of the property, with the recently constructed stormwater management facility in the central portion of the site. The western and completed section of the Villages at Twin Lakes contains apartment buildings, parking areas, an access roadway and a club house.

In terms of soils, according to the United States Department of Agriculture’s Natural Resources Conservation Service, the site contains the soils listed below. Soils’ suitability ratings for the development proposed are also shown.

<u>Soil</u>	<u>Location</u>	<u>Rating</u>
Matapeake Silt Loam [MeB2]	East End	Slight
Chester Loam [ChA]	Southeast Corner	Slight
Glenville Silt Loam Wetness [GnA]	South Central- near pond	Severe-
Sassafras & Matapeake [SmE]	North Central	Moderate
Glenelg & Manor Loams [GmE]	Central	Moderate
Elioak Silt Loam [EaB2]	West	Moderate
Chester Loam [ChB2]	West End	Slight
Mixed Alluvial Land [Mu]	Floodplain Area	Severe

Most of the “severe” rated soil is located in the portion of the property along the floodplain, within which no development is proposed.

Regarding wetlands, the applicant previously submitted the required wetlands report to the Public Works Department.

E. Planning and Zoning:

The existing AC (adult community) zoning permits the following:

- A. Adult community garden apartments, with special requirements.
- B. Nursing homes and related uses with special requirements.
- C. Hospitals
- E. Accessory uses
- F. Municipal utilities
- G. Parks, playgrounds, and community centers operated on a noncommercial basis.
- H. Street rights-of-ways.
- I. Utility transmission and distribution lines.
- J. Public Transportation, bus and transit stops.
- K. Physicians and dentists offices with special requirements.

AC zoning also permits, with a Council granted Special Use Permit, the following:

- A. Adult community high rise apartment dwellings (above three stories and not to exceed seven stories), with special requirements.
 - B. Electric and gas substations.
 - C. Police, fire stations, libraries, museums and art galleries.
 - D. Public transportation, bus or transit shelters and off-street parking facilities.
- Please note regarding the Zoning Code’s requirements for an adult community the Code limits this type of housing, subject to all applicable State and Federal regulations, to occupancy by persons 55 years or older with the following exceptions.

- “A. A spouse under 55 years of age married to one over that age.
- B. Up to two children over 18 years of age residing with at least one parent over 55 years of age whose presence is required to care for that parent.

- C. A spouse under 55 years of age who is the surviving member of the household, if the over 55 years of age occupant dies.
- D. An employed member of the apartment staff and his/her family; not to exceed one unit per 100 dwelling units, or portion thereof in the project.
- E. A live in nurse or similar caretaker whose presence is required for a 55 years of age occupant(s).”

The requested RR zoning permits the following:

- A. One family row and townhouses, with special requirements.
- B. Garden apartments, with special requirements.
- C. Accessory uses.
- D. Churches or other places of worship, with special requirements.
- E. Public and private schools.
- F. Municipal parks, playgrounds, and community centers.
- G. Municipal utilities.
- H. Street rights-of-way.
- I. Public and private swimming pools.
- J. Utility transmission and distribution lines.
- K. Public transportation bus and transit stops.
- L. Nursing homes and related uses with special requirements.
- M. Day care centers with special requirements.
- N. The taking of nontransient boarders or roomers in a one family dwelling by a family resident on the premises, with special requirements.
- O. One family detached and semi-detached dwelling.
- P. Student Homes, with special requirements

RR also permits, with a Council granted Special Use Permit, the following:

- A. Physicians and dentists offices with special requirements.
- B. Parking for adjacent business or industrial uses.
- C. Police, fire stations, libraries, museums and art galleries.
- D. Golf courses and country clubs with special requirements.
- E. Customary home occupations with special requirements.
- F. Electric and gas substations.
- G. Public transportation, bus or transit shelters and off-street parking facilities.

Regarding the requested “site plan approval,” Zoning Code Article XXVII stipulates that waivers or deviations from the area requirements within a zoning district may be approved, “. . . based upon distinctiveness and excellence of site arrangement and design including, but not limited to:

- (1) Common open space;
- (2) Unique treatment of parking facilities;
- (3) Outstanding architectural design;
- (4) Association with the natural environment including landscaping;
- (5) Relationship to neighborhood and community and/or;
- (6) Energy conservation defined as site and/or construction design that the Code Enforcement Division of the Planning and Development Department has certified meets or exceeds the “certified” level as stipulated in the LEED (Leadership in Energy and Environmental Design) United States Green Building Council Program or a comparable Code Enforcement Division approved Energy Conservation Program.”

The applicants have submitted the attached documentation – Site Plan Approval Attributes for the Villages at Twin Lakes – regarding the site plan approval criteria.

Regarding comprehensive planning, Newark Comprehensive Development Plan IV calls for “single family residential (medium density)” land uses at the Villages at Twin Lakes. The Plan defines “single family residential (medium density),” as, “areas designated for dwellings occupied by one family, either detached, semi-

detached, or townhouses, with overall densities of four to ten dwelling units per acre.” Please note that the RR zoned portion of the site, if approved, would have a density of 8.04 units per acre.

In terms of zoning and the land uses of nearby properties, the land immediately to the south of the Villages at Twin Lakes property is zoned MI (general industrial) and contains the Interstate Business Park. Lands further to the south on Elkton Road contain a large Cecil County, Maryland, garden apartment complex. The “I” industrial zoned Northeast Corridor Railroad right-of-way is located immediately east of the site. The “I” County zoned Leon’s Garden World and Ewing Auto Repair/Towing Service site, containing a garden center, gift and machine shop, and auto repair and towing and parking area, is located just north of the site at the Elkton Road/Otts Chapel Road intersection. BC (general commercial) City zoned property lies west of the portion of the property fronting on Elkton Road and contains, among other things, a Dunkin’ Donuts coffee shop. “NC21” County zoned property is located across Elkton Road from the site. “NC21” is a “neighborhood conservation” district intended to preserve the, “residential character of existing properties.” In this case, the site contains a residential structure and the west branch of the Christina Creek floodplain.

Regarding AC zoning area requirements, the revised AC zoned portion of the site meets or can meet all the applicable AC zoning specifications. The requested deviations from the RR area requirements are listed, parcel by parcel, on page CR-03 of the subdivision plan submittal.

Status of the Site Design

Normally at this stage of the subdivision review process applicants need only show the general layout of the project. Specific building locations and site design details, taking into account topography and other natural features must be included in the staff reviewed and approved construction improvement plan. In this case, however, while some minor deviations resulting from field and related conditions may be permitted, because the applicants are requesting site plan approval, the proposed site layout and architectural design must conform to that submitted for Planning Commission review and City Council approval. In any case, any construction improvement plan that does not conform to the site plan approval/subdivision plan will be referred back to City Council for further review and re-approval.

Be that as it may, as the Commission can see from the subdivision plan and building elevation drawings, the applicant proposes to construct at the western portion of the site 12 additional condominium townhouse age restricted dwelling units, in two sets of six townhouses each, and seven sets of buildings with 65 fee simple townhouses clustered at the property’s eastern half (for a total of 93 units). The existing stormwater management basin separates these two building groups, north of the small pond that straddles the Newark Interstate Business Park and Villages at Twin Lakes property boundary. Parking areas are located near each of the buildings. Access to the site continues through the existing 50 foot right-of-way to McIntire Drive in the adjoining Newark Interstate Business Park. The resubdivision plan also calls for a public to-be-dedicated to the City roadway at the RR zoned townhouse portion of the site, with the remaining access way continuing to be private, serving the adult community.

The landscape plan shows a mixture of deciduous planting spread throughout the site. The plan also includes a pedestrian walkway linking the AC and RR zoned portions of the property. A solid six-foot wooden fence will be installed separating the east side of the site from the Northeast Corridor Railroad right-of-way.

The Planning Commission should consult the applicant’s site plans, building elevation drawings, and supporting materials for additional site design details.

Subdivision Advisory Committee

The City's Subdivision Advisory Committee – consisting of the City's Management, Planning and Operating Departments – has reviewed the revised Villages at Twin Lakes plan and has the comments below. If necessary, the subdivision plan should be revised prior to its review by City Council. The Subdivision Advisory Committee comments are as follows:

1. Regarding the proposed change of an 8.08 acre portion of the site from condominium to fee simple development, the Planning and Development Department believes that as a result the remaining 28 condominium units (including 12 proposed new townhouse condominiums) will have difficulty generating adequate maintenance fees for the common areas on that portion of the site. Therefore, the Planning and Development Department will recommend that, if the Planning Commission is inclined to recommend that City Council approve the requested rezoning and resubdivision, that prior to the plan's review by City Council, the common areas within the RR portion of the property be changed to private condominium/maintenance association ownership so that the full site would be maintained privately through a joint condominium/maintenance association for all owners of Villages at Twin Lakes property. In other words, the plan can be revised so that the townhouse units continue to be sold on an individual basis but the overall site would continue to operate in the condominium sales and maintenance format.
2. In order to ensure that the proposed RR zoned portion of the site remains owner occupant, insofar as possible, the Planning and Development Department suggests that the Planning Commission recommend that the units be deed restricted so that as rentals they are limited to occupancy by one family or no more than two unrelated individuals. This stipulation has been used in other townhouse developments in the City and, as a result, has limited their sale primarily to owner occupants.
3. The Planning and Development Department has serious reservations regarding the proposed site plan approval request. We do not believe that the materials submitted for Planning and Development Department and Commission review, justify the deviations from the RR Zoning Code area requirements. As a result, we suggest that the Planning Commission recommend that prior to its review by City Council, the plan be revised to conform to all applicable RR Zoning Code requirements.
4. The Planning and Development Department believes that the applicant has not submitted materials that justify an increase in the overall number of units for the site. That is, we believe the total number of Villages at Twin Lakes units should be capped at the 88 units approved by City Council when the property was originally annexed and subdivided. On the other hand, presuming the Planning Commission recommends in favor of the proposed RR rezoning and the resubdivision of the property, we have no objection to the applicant distributing this total number of units in any manner they desire with the caveat that, at a minimum, the additional 12 AC zoned townhouse condominiums are included on a final revised plan.
5. The Planning and Development Department notes that the subdivision plan and the subdivision agreement for the site should continue to specify that the architectural design of all proposed buildings should be carried out throughout all portions of the facilities visible from public rights-of-way. The property, as a result, should be deed restricted to specify the following:
 - Any new mechanical equipment or utility hardware on the ground shall be screened from public view with materials harmonious with existing buildings or should be located so as not to be visible from adjoining properties or streets;
 - Refuse bins or storage areas shall be screened from public rights-of-way in a matter similar to the requirements for mechanical equipment;

- Any new exterior lighting shall be designed as an integral architectural element of the proposed buildings. All such lighting shall be shielded to limit the visual impact on adjoining properties.
6. The Planning and Development Department suggests that appropriate noise attenuation measures shall be included in the proposed buildings adjacent to the Northeast Corridor Railroad right-of-way and the Newark Interstate Business Park.
 7. The Planning and Development Department also suggests that the originally proposed swimming pool at the clubhouse location should be included in the resubdivision plan for the site.
 8. The Planning and Development Department also notes that the lands within the Open Floodway District (OFD) should be designated as “conveyed to the City,” as shown on the original Villages of Twin Lakes subdivision plan.
 9. Regarding site design comments for the revised Villages at Twin Lakes resubdivision plan the Public Works Department has the following comments:
 - Parking should be indicated as not being permitted at South Twin Lakes Blvd.
 - Total private open space should be shown on the Data Column.
 - Access to the passive open area shown between lots 13 and 14 should be relocated to between lots 22 and 23 to take advantage of the flatter contours at this location.
 - The driveways must be 18 feet wide to allow for two vehicles for each townhouse unit and must be at least 20 feet in length from the garage to the inside of the sidewalk.
 - The deck shown for lot 19 must be removed since it is shown within the natural gas line easement.
 - Deed restrictions will be required to stipulate that sheds, fences, decks, pads, patios, and landscaping other than lawn area, will not be permitted within required easements. Similarly, there will be no changes in grade within these easements without Public Works Department approval.
 - Overflow guest parking places should be at least 20 feet in length.
 - All street trees will need to be located at least seven feet from the inside edge of the sidewalk and will have to be limited in terms of their canopy spread.
 - The garages must be of sufficient size to house the City’s refuse carts and to be accessible without having to remove vehicles from garages.
 10. The Public Works Department indicates regarding stormwater management the following:
 - The easement running from lots 33 to 47 should be widened to 20 feet wide to include the entire swale area and labeled a, “stormwater quality management and drainage easement. Similarly the 20 foot easement between the sets of buildings at lots 48 through 56 and lots 57 through 65 should be labeled as a, “stormwater quality management and drainage easement.” The swale between lots 23 and 30 also will be required to be shown as a 20 foot wide drainage easement.
 - The steep cross slopes at lots 18 through 21 need to be evaluated to ascertain their potential impact on the nearby 30 foot wide natural gas pipeline

easement. Lot reconfigurations will be necessary and an approval letter from the natural gas company will be required regarding any grading changes associated with this easement.

- A 20 foot wide drainage easement is also required between lots 41 and 42.
- The language in note #15 in the Data Column should be revised to refer to all stormwater and drainage facilities.
- The applicant should review several related stormwater management comments with the Department, prior to the plan's review by City Council.

11. The Public Works Department also has a series of construction improvement plan related comments. The applicant should review these with the Public Works Department prior to the plan's review by City Council.

12. The Electric Department indicates the following:

- The developer will be required to incorporate the City's underground electric distribution plans into the subdivision plan to ensure there are no conflicts with the proposed water and sewer mains and laterals.
- The developer will be required to pay for any relocation costs of existing electrical distribution equipment.
- The developer must pay \$36,000 towards the cost of transformers and underground high and low voltage cables.
- The developer must pay \$65 for each radio read electric meter.
- Meters on proposed new condominium buildings must be placed in one location as close as possible to the padmount transformer.
- The developer will be responsible for all trenching and backfilling to City specifications, for the installation of all road crossing conduits; and for the installation of conduit and underground secondary cable on condominium buildings. The developer will also be responsible for conduit installation of all house services at the proposed townhomes.
- The developer must ensure adequate space exist for meter box installation on the townhouses.

13. The Water and Waste Water Department indicates that water and sanitary sewer service can continue to be provided to the site. Final review of the proposed resubdivision plan will occur through the construction improvement plan process, including an examination of the adequacy of the proposed lift station to accommodate the sewage from the revised site design.

14. The Code Enforcement Division indicates the proposed new structures must meet all applicable City Building and Fire Code requirements. The applicant should review fire hydrant and related requirements with the City Fire Marshal. The new homes will be required to be sprinklered.

15. The Police Department agrees with the Planning and Development Department that the property should be restricted to limit rentals on the site in order to ensure that the proposed townhomes, insofar as possible, are owner occupant rather than off-campus student housing. The Department also notes that this will help minimize on-street parking issues.

16. The Parks and Recreation Department indicates the following regarding the proposed landscape plan:

- On the right side of Edwards Drive the plan calls for four Oak Trees; these should be changed to London Plane trees to match those on the opposite side of Edwards Drive.
- There is a healthy stand of mature evergreens in the area of lots 19-22. If at all possible, preserve all or as much of this cluster. For those that can be saved, show a “Tree Protection Zone” and include the detail in the construction improvement plan.
- For better tree diversity, change the eight Honey Locust trees at the north and south end of the interior area encircled by South Twin Lakes Boulevard with eight Yellowwood trees.
- There are three Oak trees located to the east of the stormwater management area that should be shown on the plan.
- Regarding deciduous tree planting detail, delete “Tree Wrap” from detail.
- Regarding evergreen tree planting and guying detail, the wording under Burlap Wrapping should be changed to read:

“After tree has been placed in the hole at the proper depth and plumb, if there is a wire basket cut and remove 1/3 or 1/2 of the basket. Cut and remove twine and fold down burlap 1/3 to 1/2.”

This wording should also be listed in the Deciduous Tree planting detail.

- Regarding Planting Schedule, the Department suggests changing the Pin Oaks for Chestnut Oaks.

17. Regarding other comments, the Parks and Recreation Department indicates the following:

- A monument should be placed at the corners of the 2.54 acres to be dedicated to the City.
- The developer should set aside the required percent of parkland for active recreation. The Parks Department will work with the developer to create this plan. The active recreation improvements will be owned and maintained by the homeowners/condominium association. The recreation area should be located near the existing club house and should be installed in the early stages of subdivision construction.

Recommendation

Because the proposed Villages at Twin Lakes rezoning and resubdivision plan, with the Subdivision Advisory Committee recommended conditions, will not have a negative impact on nearby and adjacent properties, because the project with the recommended conditions, conforms to the land use guidelines in Comprehensive Development Plan IV, because the proposal can meet all applicable Code requirements, and because the proposed use does not conflict with the development pattern in the nearby area, the Planning and Development Department suggests that **the Planning Commission take the following actions:**

- A. Recommend that City Council approve the rezoning of an 8.08 portion of the Villages at Twin Lakes property from AC (adult community) to RR (row or townhouse), as shown on attached Planning and Development Department Exhibit A, dated February 2, 2010; and,**
- B. Recommend that City Council approve the Villages at Twin Lakes major subdivision plan, as shown on the Landmark Engineering, Inc. plan, dated November 25, 2009, with the Subdivision Advisory Committee conditions.**

As also noted in our report, however, because the Planning and Development Department believes the applicant's submittal does not justify the Zoning Code area deviations permitted through the site plan approval process, the Planning and Development Department suggests that **the Planning Commission recommend that City Council not approve the request for site plan approval, as shown on the Landmark Engineering, Inc. plan, dated November 25, 2009.**"

Mr. Bowman: Are there any initial questions for the Planning and Development Department?

Ms. Peggy Brown: Would you explain items #3 and 4 a little more, the site plan approval process?

Mr. Lopata: The site plan approval process requires that the applicant has to submit materials that show excellence in site design. In our view, what was submitted doesn't justify a deviation from the Zoning Code. It has some nice attributes, but it certainly isn't outstanding in architectural design or site design. We think the site approval process – used and reviewed here before – should be used for very special projects that have outstanding attributes. This is a fine plan; not a bad plan, but outstanding is another matter. So, if you are going to deviate from the Zoning Code, you need to make a strong case, and I don't think they have made that case. That was #3. Number 4 is somewhat related. It is just asking for more units. It is based on the "more is better" theory. I'm not sure they have made that case either.

Ms. Angela Dressel: I went on the Villages of Twin Lakes website and in their documentation there, it says that it is going to be 80 total units originally. So, it looks like to me that it has gone up by 13 units.

Mr. Lopata: Never judge by what is on a website.

Mr. Ralph Begleiter: Roy, I just want to make sure I understand the condo fee recommendation. Are you essentially saying that the owners of the proposed townhouses that their condo fees that they pay when they buy into that townhouse development would go into a fund that would support the common areas in both sides of the property? Is that correct?

Mr. Lopata: Let me give you a good example – the roadway system internally. It is hard to fathom how it would work where the roads on the adult community side would be maintained by the individuals in common but the other side would be maintained by the City. That is actually what this plan calls for. We thought that didn't make a whole lot of sense. In addition, you had the stormwater facility right in the middle of the project. How is that going to be handled? In fee simple developments, the City has often taken over the stormwater management. In this case, the homeowners are supposed to be maintaining it. So, you have this mix of different types of cooperative management and private management all within the same development.

We are not talking about front yards and back yards and whatnot for the townhouses. There is going to have to be some delineation of what is common in that case and what is common for the adult community. There will be some variation, one would think, depending on how it is laid out because the adult community, at least as it stands now, are apartment buildings. Then they are going to have 12 town units if it is approved. Those might be set up a little differently. I'm not sure. What I am concerned about is the road, the stormwater facilities and the real common areas – not the front and backyards – and the pool.

Mr. Begleiter: What I was concerned about – and this, I think you have just answered it – is, if you don't do what you are proposing then the much smaller number of residents of the adult community who are maybe not entirely yet but soon to be fixed income residents, are burdened with all of the costs of maintaining the condominiums.

Mr. Lopata: That was really the main point. It is not so much the physical problems, it is the financial problem. You want to be sure you generate enough money to do it. The best way to do that, of course, is for the development to sell out and to have lots of folks paying into a kitty rather than have a small little development that struggles just to get the snow plowed.

Mr. Begleiter: One other thing that you didn't mention but it came up in my mind when you started talking about exceptional communities that get the site plan process approval. I can't imagine how you could sell this as an exceptional community if many of the units abut a four track railroad system. It may be exceptional but not in a good sense.

Ms. Dressel: I have a question about the maintenance organization because it seems to me that along with the retention situation and the roads, you also have the two buildings that are already there, which are the condo style apartments. It seems that a maintenance organization is going to have to maintain that in some way. I don't know how that will be separated out.

Mr. Lopata: Let me just also say, because we are talking about it, but in fairness to the applicant, we have already discussed this and it is my understanding is they recognize that that has to be changed. They don't disagree with doing that. The homeowners may have a different point of view, but I think it makes a lot of sense to have one maintenance association in one development rather than two.

[Secretary's note: The applicants, Planning Commissioner and public referred to visuals brought by the applicants for their presentation to the Planning Commission.]

Mr. Jeff Lang: From a history perspective of the project, here is the originally approved site plan – four buildings on this side, new pond, twin lakes, and the proposed buildings on the right side. The project was approved in 2006, construction was started in 2007, and our initial residents moved in 2008. Due to the economic restraints in the present environment, we have not been able to obtain as many owner occupants as we would have liked to have had. We have one new buyer owner in 2009. As you know, this is the first building we built, this is the second building proposed originally to do these two additional buildings. Part of the presentation and application is to modify these two buildings to townhouse units, which might have more marketability, more flexibility in the present credit environment. We have come into a concern in the credit market with condominium units. The townhouse units tend to be a little bit easier for the condo market to understand and potentially lend money on. So, what we have been trying to do is figure out a way to make our product as attractive as possible in the market place. Part of the dynamics of the residential market and one of the things we have educated ourselves on is that the age restricted market has been impacted negatively, not because of the demographics, but really because of the inability of the buyer of the units to sell their present houses. The dynamic in the marketplace presently is an opportunistic situation where you build a product which is really for a first time homebuyer and/or a relocating buyer which we are trying to target.

One of the pluses that we think is a great idea for this project is the geographic diversity of the two sites. You come in one road and turn left and you would have the age restricted Twin Lakes project and to the right you would have the new nonage-restricted or townhouse project. This is just a dynamic for you to look at which displays how the layout would look in a rendering form. Obviously we did not re-render then entire site but just this loop. Much of the blacktop behind the units has been eliminated. It is now backyards. We have a couple more driveways because of the way the units are laid out. We think it is a very attractive compromise for the community.

What we are obviously hoping to do is keep all our present residents happy and build a complement to them.

We have some architectural renderings to give you a comparison. Here is the original "Big House" rendering which has been built in two forms and here is the proposed townhouse rendering which does complement (we feel) very nicely the stone. We will carry a lot of the same colors around and really make it a nice community with a lot of landscaping. And, almost when you drive in you wouldn't necessarily know that one side

was age restricted and one side wasn't. It is really a dynamic in the market place that would allow us to continue the positive focus with the project.

Mr. Lopata: Mr. Chairman, if I can interrupt for a moment, I neglected to read something into the record from a resident. This is from Jean Williams who lives at 203 N. Twin Lakes Blvd. She asked me to read this to the members of the Commission.

"I am writing in support of the rezoning of the 18.3 acre Villages at Twin Lakes. I supported the zoning of this land to age restricted from its initial application. Not knowing at the time I would one day live there. When I chose to live at Twin Lakes, it was not because it was an age-restricted community. Rather I chose it because of the design that gave me three bedrooms on one floor, an oversized garage, outside entry, and very pleasant surrounding with ponds and wildlife.

The economy has changed a great deal since then. The business plan that appeared to work then is not as feasible now. My interests are in getting the phase of age-restricted housing finished. Changing the business plan seems to be the best way for that to happen.

I support deed restrictions in the rezoned area to include restrictions on fences, out buildings, and parking of boats and motors homes. I also expect that there will be some open areas. The owners of these residences should pay into a fund for snow removal, road repair and maintenance of common areas.

My desire to live in a multi age community would be realized with this rezoning. Perhaps then when I need something heavy moved I would be able to find the person to do it just down the street.

Sincerely, K. Jean Williams"

Ms. Sheedy: Jeff. In the submittal you talk about energy efficiency and unique designs, but under the energy efficiency piece there is nothing about energy star appliances. It just says energy efficient.

Mr. Chris Locke: They are energy star appliances.

Ms. Dressel: Can you explain why it has gone from 88 to 93 units?

Mr. Lang: The proposed design was not a function of how many exact units we were looking to put on the site. It was more of Joe doing a design that we thought worked. From a technical perspective to accommodate the requirements of the Parks and Recreation Department, we are going to need to put open space in. From Roy's perspective 88 units seems to make more sense from an approval and by reducing the five units we can accommodate the requirements of the Parks and Recreation Department. We are in agreement with your thought process.

Ms. Dressel: I believe that if you reduce it by five units you could revise everything and you wouldn't have to go for the variances on each unit. Is that correct?

Mr. Lang: I think part of the discussion I originated with Joe was that he had some variances from the Code which then he fixed lost some of those units anyway.

Mr. Lopata: It fits together – more open space, less units, and no site plan approval. It all works.

Mr. Lang: We are all in agreement and we thought that instead of changing the plan and coming to you tonight with a plan that met that requirement, we would listen to the Commission and comments. We have already talked internally about which units we were going to lose. We might have open space behind the clubhouse so we would lose a couple of units there. We are just trying to figure out how to do it.

Ms. Dressel: The four units by the clubhouse will be, I think, the easiest to lose and then allows all the space.

Mr. Lang: Part of the discussion that we had with Charlie Emerson is that we might rotate these, eliminate one or two, make this a four unit, and we would end up with a little more space and a lot of space here. We would change our walking path to go through here. Yes, there is going to be more space around the clubhouse.

Ms. Dressel: I think everybody knows that I have a concern with the railroad tracks. Can you tell me, for the units that jut out in the back, what is the distance from there to the railroad tracks?

Mr. Lang: Say this unit is 50 feet deep, you are probably 100 feet from the railroad tracks and these railroad tracks are down. There are trees here and we are going to put a fence up here all the way along the whole thing. We will have a buffer. It needs to be maintained correctly but we will have one continuous fence down here along with the tree buffer.

Ms. Dressel: My thought had been originally that if you were to remove those four units that are right by the clubhouse, then your whole square would move more towards the pond which would then eliminate all the variances for those units that are backing up to the railroad tracks.

Mr. Lopata: He has to do that anyway regardless of which way you are shifting. We are recommending that he get no more site plan approval.

Mr. Joe Charma: Landmark Engineering. It could make a difference. You could shift it, but with respect to the railroad tracks, I think what we looked at is placing a minimum number of units against the tracks. Jeff is correct. It is about 100 feet. In addition the grade difference is about 12 to 15 feet down.

Mr. Begleiter: Minimum amount of units -- I count ten units that you would say would be about the same distance as all the others of those ten units from the tracks. The eight are horizontal and then the last two on the ends that come that way. I assume that you have already done this, but have you played with a nonsymmetrical alignment on the road and the overall development in such a way that you could move more of the open space toward the area where the tracks are and fewer of the houses within those 100 feet of the tracks? To me it looks like if you did something on a diagonal, you could take advantage of that little corner of open space in the upper right and advantage of the corner at the bottom and the other side as well, but I am not an expert at that sort of thing. Did you already play with all that or did you sort of plop down a rectangle and say, oh this is the way we can get the largest number of units on the site?

Mr. Charma: Some of the things that are driving the dynamic here is the existing topography that is out there. This area that you pointed to here drops off significantly. As a matter of fact, if you look at these units on the plan some of those units are shown with walk-out basements. In order to utilize that, you would have to fill 15 feet of fill there to get that grade up. So, that really doesn't make a lot of sense. What we tried to do is honor the existing approved land plan as much as practical. Part of the issue is that area was rough graded as part of Phase I.

Mr. Begleiter: And you don't want to do it again.

Mr. Charma: Right and some of these utilities have already been placed -- sanitary sewer set up, set up with a circular concept. Things work with a certain geometry that we have already established. We are trying to honor that so we are not recreating the wheel and (inaudible).

Mr. Begleiter: Jeff made a point of saying that you were moving the blacktop out from behind the units. To me what that means is you move the units closer to the tracks. Instead of the space the blacktop would have provided, you put a house there and you put the blacktop on the other side where it would be nice to have a house.

Mr. Charma: What I really think his point was is this plan is a less impervious surface cover. That was part of our site plan approval process. We were looking at some of the attributes -- narrow streets, narrower driveways, less pavement, less blacktop impact, less

hard surface impact. That is one of the things that merits the site plan approval. That is what we were trying to accomplish.

Mr. Begleiter: Again, I am certainly not an expert at site design. You guys have done it all a million times, but I have seen a number of communities with townhouses like this where the walking access to the house (the front entrance) is from a sidewalk and maybe a very narrow alley or street and the garage access, where you place you drive your cars in and out of the house, and the place where the garbage gets picked, and the place where those sorts of things occur is behind the house. Have you looked at that?

Mr. Charma: We have a certain amount of land to work with here. I have worked on plenty of projects and have done plenty of projects where we have alleys in the rear and that whole concept of a neo-traditional approach to the land plan. That is a great approach but for this particular site given the restraints that we have and the infrastructure being in place, if you put alleys in the rear of this particular configuration you would end up with more little roadways.

Mr. Lang: Ralph, I take this stuff home all the time. I suggested putting an alley here and the entrances to the garages off the back. The problem with putting the alley in the back is that it then has to be a certain width because trash trucks from the City have to drive through there. If we put a road in there then all of a sudden we would have to do the whole water recharge area.

Mr. Begleiter: Well, then, you take the road away from the other side. You might be able to find a way to do it.

Mr. Lopata: The problem here is that essentially this was an approved subdivision.

Mr. Begleiter: I see that. That I hadn't thought about is that you have already laid your sewer pipes, electricity line, conduits and perhaps, your water lines. I recognize that. I'm not so sure I agree with the fact that you're making a major change in this site. You could go ahead with the old plan then all of your infrastructure would be in the right place, but you are not doing that. You are making a big change because you want to make a big change for economic reasons.

Mr. Lang: It is a similar design.

Mr. Begleiter: It is a similar design but it is not the same loop road. You put two rows of houses in the middle of that loop road now and moved the others closer to the tracks.

Mr. Lang: (Inaudible).

Mr. Charma: This road is essentially in the same place. This got pushed this way. One other thing –we had detailed discussions with the Public Works Department to the point of conflicting design concepts. If you look at the City Code, it would have required for this to be a 30 foot wide street with a five foot sidewalk and an 18 foot parking bay (inaudible). That is the standard City design for our zoning. That is the road section. This is a departure from that. We had a lot of discussions with Public Works and that is one of the reasons why we are coming for site plan approval also. Again, we are trying to minimize the impact on the environment and try to reduce pavement. There is a comment in there about the width of the driveways. They want 18 foot driveways. We are saying that a 16 foot wide driveway is really adequate to get your cars in the driveway and park. The Code says 9 ft. We are struggling with that. I think we are going to see this as time goes on and we start to embrace green technology and green design concepts. The Codes conflict.

Mr. Begleiter: We have talked about the existing adult community owners who bought into the project. They bought into the project on the basis of the proposal that you made and was approved by the Commission and then by the City Council and was advertised and that was what they bought. Among other things it included a swimming pool and it included the concept that there would be in an adult community fewer auto trips in and out, fewer or no children in the community, and all those kinds of things that come with that. So, they bought that and it is a small number of them that bought it, admittedly. What, if anything,

are you going to do for the people who bought that concept and now discovered that's not what they got at all? It is something completely different.

Mr. Chris Locke: We have had meetings with the current homeowners. There are seven homeowners. There will be 16 units in those two buildings. We have sold seven. On a personal note, one of those units is owned by my own parents. I am personally attached to this project, to say the least. The main concern of the homeowners was trying to balance the economic reality of this new project to, hopefully, give us the economic strategy to complete this project for the 55+ community. What we have done here is two separate communities. We have the Villages at Twin Lakes, which will remain 55+ and we want to make sure this is not the Villages at Twin Lakes. We want to make sure there is a 55+ community and a non55+ community. In our discussions with Greg and some of the homeowners and thought about naming the new phase, the Woods at Twin Lakes. We still have the Twin Lakes idea but it will be two separate communities similar to Fairfield and Fairfield Crest.

The number one issue, too, was, of course, the swimming pool that was looked at. The economic reality is when this project is done there will be 28 homes. To have a sizable pool and the insurance for that, it is just not feasible for 28 homeowners to maintain it. So, what we have come up with is the clubhouse would remain exclusively for the 55+ community at this point. The 55+ community wants a clubhouse. They want a place to socialize and a place to interact with their fellow neighbors. So, the clubhouse will be exclusively for the Village at Twin Lakes homeowners. Instead of having the pool, we have agreed to do an in-ground hot tub that would be completed in the back of the clubhouse with a nice patio and a barbeque area for them.

Mr. Begleiter: Does the clubhouse exist now?

Mr. Locke: The clubhouse has been built. It is a beautiful clubhouse, fully furnished with a fitness center.

Mr. Lang: For clarification, we are either going to locate in the back or locate it on the side closest to the present (inaudible).

Mr. Locke: That was the main concern in the sense of maintenance issues and fees. We do have two separate buyers – a group of 55+ who are willing to pay a substantial monthly fee to make sure their lawn is taken care of and have the amenities, etc., and then you have a new type of buyer (first time home buyer) who is not looking for the same thing. So, the condo association of Villages at Twin Lakes has decided to keep the amenities to themselves and then have a new homeowners association that would be based on the maintenance of the new road as well as maintenance of the parkland that would be required.

Mr. Begleiter: And you think that the stormwater management and the ponds and that part of it can adequately be funded from the adult community side?

Mr. Locke: Based the budget that we already had with the 28 units full, yes, we believe that can be taken care of.

Mr. Lang: Greg is actually working on another project – Hudson Village – behind University Plaza shopping center. He has an assessment over there very similar for a common area space. So, as Chris said, we are more than agreeable to have a joint association with two different fee structures. One will be associated with the common amenities of the age restricted community, and the other one will be associated with the common amenities here. Obviously, there are going to be a walking path, there are going to be roadways, there is going to be stormwater. All of that will be across the whole group. There might be some specific fees associated with one group that will be different from the other group. (Inaudible)

Mr. Begleiter: Jeff, I would like to ask one economic philosophical question about the primary argument you make in favor of this major change which is when we proposed this project, the economy was X and now it is X+Y and the world has changed since 2006. All of us can recognize that. But, that is the fundamental argument you make for this big change. Without sounding snide – I am serious about this – how will you react when, let's

say, five years from now the economy is X+Y, it is booming along again, we are back in a real estate boom. I'm not making a prediction about it or being silly about it. It is possible. We don't know what is going to happen. At that point would you be amenable to the City coming back and saying, now you are booming along. You got this break that the City gave you at the time to change the plan. What is it that you are going to give back when the economic times are flush? You are perfectly happy to take advantage of the opportunity when the economic times are bad to get this rearrangement request, is there something that you can say, when times are good, we are going to funnel it back into the community or to the City in some way? Just to pick something completely at random off the top of my head, contribute several million dollars toward an electric utility burial fund, or something crazy like that. My point is, you can't make the economic argument, it seems to me, in one direction only and not in the other direction as well.

Mr. Bowman: Ralph, if I can interrupt. In all due respect, I don't think, really, that is pertinent to the argument and to the things we are trying to deal with tonight.

Mr. Begleiter: It is the primary argument they made for this change.

Mr. Bowman: We understand that, but our job here is to deal with the Code issues and the plans issues. I don't believe that we should be speculating out four or five years on economic issues, to be very honest with you. If Mr. Lang wants to answer the question, go ahead, but that is up to him.

Mr. Lang: We are not trying to capitalize on any economic scenario. We are trying to make a project viable given the dynamics of today's economy. What we are coming to you for is that this is not just a benefit for us, but a benefit to our community as a group. We as a group benefit from having a project like this developed, in my mind. We are going to have new residents in our community. We are going to have new youths in our Parks and Rec. programs which are on the downswing. There are many new families that want to come to Newark and there are not any viable projects. I spoke with some people who are looking to come here from BRAC and they wanted to come and look at new communities. They asked what new communities we have. We are looking at it from a -- how do we make our project work given the existing situation. The economic benefit that we are giving back to the City is we are bringing new potentially long-term residents into our community. They are going to move into here. They might potentially then move into Fairfield, the person in Fairfield might say, now I can sell my house, and I am going to move back into the other side of the community. This is cycle we are trying to continue.

I try to give back to the community in every project we do. I am looking at not just how it works for us, but how does it work of everybody. I try to do that within every project. I understand what you are saying. I am just trying to make something viable in today's economic scenario, which will benefit the entire Newark community.

Ms. Dressel: I have a question for Chris about the maintenance organization. You were talking about Greg having experience with two separate maintenance organizations and having had personal experience within two neighborhoods where one was smaller and the other one was larger with more expensive issues. The smaller section of the neighborhood felt railroaded frequently. How can that be separated? I think that it needs to be very structured.

Mr. Lopata: The City winds up dealing with these problems, so we are very concerned. That is why we made the recommendation we did. We will make sure, presuming this is approved, that this is structured in a way that the existing residents are protected and that the new residents also contribute to the fund to make sure that the common areas are kept in an appropriate manner. That is really the point we are trying to make. We can't structure this in a way that was originally proposed by the applicants. We didn't think that was viable at all. In my view, the simpler way to do it -- and this remains to be seen -- would be one maintenance association with two sub-groups. But, that is up to the folks to structure this. I think that would work better in the long run. But, having said that, our goal is to make sure it works.

Mr. Bowman: Roy, are there State regulations that enter into this?

Mr. Lopata: There are a whole series of State rules about condominiums.

Mr. Locke: Really, you would have a condo association that would be responsible for their side, and then you would have a Woods of Twin Lakes homeowners association. We really can't have two subcategories in the condo association. You would have two entities and clearly delineate in the agreement what each is responsible for and what the fees are. This going to be a homeowners association which is fee simple and the Villages at Twin Lakes would be a condo maintenance association.

Mr. Lopata: The point I was trying to make is it is our responsibility to make sure this works. I don't want to rely on the developers to do that because they have one set of interests and that is to sell units and get out. Ours is to be here and serve the community.

Mr. Bowman: If there is nothing further from the members of the Commission, we will open the discussion to the public.

Mr. Peter: Resident of the Villages at Twin Lakes. We have been promised a lot of things when we first went in that place. For a year and half now, we have been promised a swimming pool, walking trails, a fountain in the ponds. Nothing has transpired. The next thing we hear is that they are going to make carriage houses right next to us. As far as I am concerned, I am looking at a hodge podge of these buildings, carriage homes, these buildings, which I have been over to see and they are absolutely gorgeous. My biggest concern with this whole thing is we are over here with 28 units and they are now all occupied. I don't think we are going to have enough money to handle this. Chris showed me what was going on. If we have any major problems, our little association is not going to be able to afford it. I would welcome that if they would pool their money with us. It is a private road. Eventually, we are going to have to take care of snow plowing. If it comes like this, we get four or five snow storms, we are done for the year. We don't have enough money. That is my biggest concern. We have been promised and promised. Now they are saying build this and then we will work on yours. This is my life. This is where we wanted to live. This is not what we are happy with.

Ms. Kay Lutz: 306 Twin Lakes Blvd. I personally feel I have been conned. When I first knew of this, I've been snookered. I have \$300,000 invested. I even bought my own elevator because I thought I would be there awhile. I'm disappointed now because I'm not sure what direction I will take, but I'm not pleased with the idea of what is happening. I don't have a solution. Who knows what the economic situation is going to be. I did notice that without any previous knowledge, Mr. Begleiter's comments were very fitting to how I felt. My house was on the market for a year. I went through it. I finally sold it, but I definitely wanted a 55+ community and now I'm not going to have it. I'm not sure what direction I will take.

Ms. Mary Jo Frolich: 205 N. Twin Lakes Blvd. When Chris mentioned he was thinking about putting something in the back because of the economic climate, I really didn't have any objection to that because it seemed to me that you were at a standstill. We haven't had anything going on. His parents bought in 2009, but we haven't for the whole year had anybody to buy into this. There has been a little bit of traffic of people coming in a looking at it, but no one buying. Just knowing how difficult it was for me to sell my home, it took us months to sell our home. I understand their situation. I don't have a problem with a new development with younger people because it does look like there is a pretty good division between our place and their place. There are a couple of concerns I had. Angela you mentioned something that I was happy you mentioned, right here where our community house is, if we have these townhouses right there, we are not going to have privacy. So, I would not like to have townhouses over there. I think that would be intruding on what we had as our little area. We did make it pretty clear to Chris when we had meetings that we would like to have it separated out. We bought into a 55+ community. We bought into a condo so that we could from time-to- time take off for a month or two. So, we have a way of looking at this community as a person who is going to retire fairly soon. To reiterate, I had no problem with this.

What I do have a problem with is, as Pete mentioned, we were told we were going to have a pool, we were going to have this and going to have that. So far, we have not received

any of those things. It is my concern that we agreed to this as a community of Twin Lakes and we still don't get what we've been told that we would have. The other thing that Pete brought up was, are we really going to be able to afford all the maintenance and everything that goes along with condos with only 28 units. I certainly don't want my condo fee to go up any further. It is a bigger piece of land than this is. It is ten acres vs. eight acres.

Mr. Lopata: Despite what Mr. Locke said, let me just try to make sure you understand this. I agree with you and that is my major concern. 28 units is too small. It cannot work that way. We have to structure this so that everybody on that property whatever name it has, all 88 units contribute to the common areas. It cannot work any other way. That is what I have been trying to say. We are not going to design it tonight, but you can have my assurance that the Planning and Development Department is not going to support any legal structure out there that doesn't ensure that the common areas are maintained. That is my biggest fear. I don't care how the lawyers put it together, but I guarantee you it is going to have to be done that way. It is just not viable with 28 homes. You are absolutely right.

Ms. Frolick: We did have a conversation and we looked at it in two different ways, one being a condo association for all of us that we all put the money into; and then the fee simple and condo for us. The consensus was that it might be the maintenance of young people with kids and lots of animals, that their houses would deteriorate faster than a 55 and over where we are active, but we might not be as active as they are. That is what Chris mentioned that he would like to see fee simple. That made a lot of sense.

Mr. Lopata: I am talking about common areas. That is what I am trying to stress here. That is my major concern. You will have to pay extra fees, of course, for the exterior maintenance of your building that the fee simple folks won't. The fee will be different. I am concerned about the stormwater management, the snow removal, the road, and those kinds of things. I think everyone on the developer's side understands that that is what we are trying to do, however it is structured so that you are made whole in that regard.

Mrs. Jean White: 103 Radcliffe Drive. You can see by my address that I do not live at the Villages at Twin Lakes, however, I have taken an interest from the time. It came in 2005 and 2006. At that time I opposed it because it was not actually annexed at that time and the adjacent areas plan of the Comprehensive Plan called for office research light industrial as did it in the County were it then existed. Whether I opposed it was not important but at that time there were at least three State agencies that opposed this strongly which were DelDOT, State Planning Office, and the Delaware Economic Office because they felt that land was needed to preserve for economic development and that was the ideal place. Council approved changing the Comprehensive Plan to allow it to be residential instead and Council approved the development as it originally came to you.

I do not live there but I actually think it is a better plan to have two types of residents living there, both 55 and older and in the south back part those that could be of any age. The reason I feel that is that I actually do not necessarily think it is good to have large areas of single older residents together. My exception to that is continuing care retirement communities which offer full services as people get quite elderly. However since I am not living there it is up to the ones living there to either agree or disagree with that point.

I have some points to make about the plan put forth. A few months ago I walked in to see the two big houses that were built. I thought they were very nice looking. I am actually disappointed to hear that the plan now is to stop and not to build the other two.

Mr. Lopata: They are going to build townhouses there but not two large buildings.

Mrs. White: If I were living there I would think that driveways with cars parked in the front would be less attractive than having two more of these eight plex condominiums. I wondered who the builder was for that. I presume it is a different builder than the current builder that you are getting for the townhouses. Of the 16 units, are the seven that have been sold on the first or second floor? The point is, are the people not buying the second floor because they don't want to walk up stairs to the second floor?

Mr. Bowman: What is already built in those existing buildings is really not relevant to the discussion tonight. The discussion tonight is around the subdivision and the site plan approval.

Mrs. White: I think there are too many units in the back. You are actually adding nine units in the back. They are asking for five more units than originally.

Mr. Lopata: We are recommending against that.

Mrs. White: But, you are moving it back to 88 and that still is four more units in the back than you originally had.

Mr. Lopata: As I said in my recommendation, they can redistribute those any way they like. They could put four back on the adult community side, which I would prefer for some of the reasons Angela is concerned about.

Mrs. White: The other thing I wanted to say is that the 55 and older condominium units are basically going to have one person or two people in them. Your southeast back part near the railroad tracks, which are going to be open to any age, could be families with children. So, it is going to be denser with people and units. Denser by nine more units. I would be for reducing those in the back to 50 so that you are not having that so dense in the back.

In addition, originally where the club house is is a very good location because it was central to the condominiums on both sides. The club house is now actually on the wrong side. It is going to be closest to all the townhouses right here. I thought it was going to be for everyone but saw in the Planning and Development Department report that it would still remain for the condominium owners. I understand why they who bought into it would want it to be used for just them. I understand their point of view holds the greatest sway.

The swimming pool use is not year round, maybe five months. There is a lot of maintenance for a swimming pool for that five months of the year. If your swimming pool is not going to be located in the condominium section then it is going to be an attractive nuisance for children that might be living over here. I can see that this will create a problem.

There might be a need for a small playground also.

I have one more point that has not only to do with the noise but the danger of the railroad tracks. When one has a group of 55 and older people, they are not going to be running across the tracks. We have wise people that are living there. The developer says he is going to put up a six foot high wooden fence. I would submit that wooden fences do not last long. I could take pictures all around the City where that is true. I feel it should be an eight foot high chain link fence for safety now that we will have all ages living back there.

Ms. Eileen Emig: 308 N. Twin Lakes Blvd. I have a question about when a road becomes and it becomes private and the snow removal on that. Can someone explain that to me?

Mr. Lopata: We are recommending that the road stay private. We want the roads to stay private just as originally proposed, and the snow removal would be handled by the condominium association/maintenance association just like in any typical townhouse apartment development in the City that doesn't have public streets.

Ms. Emig: How is it allocated that it becomes private vs. public and why would you want it to stay private?

Mr. Lopata: Because of the hybrid nature of the revise project. The problem is you have a condominium association already set up for the roadway. This was designed and supposed to be a private road from the beginning. We don't want to put a public road on the other side and have the City plow for the "fee simple" folks and not the adult community.

Ms. Emig: That was my concern.

Mr. Lopata: That is why we're not doing that.

Ms. Emig: Okay, so why can't it become all public?

Mr. Lopata: That is something that would have to be considered down the road, so to speak. That is not totally outside the realm of possibility. It has happened where roads and common areas have been turned over to the City. You remember, I mentioned before, in passing, discussing this whole issue, that the City, at times, has taken over these types of facilities. We are certainly not going to do it in the subdivision when only seven homeowners are there. We have to see how this plays out.

Ms. Emig: But it is a possibility.

Mr. Lopata: It is a remote possibility. I don't want you to hold out great hopes for that. It is somewhat remote because of the nature of this project.

Ms. Emig: That was one of my concerns as far as being able to afford snow removal in that area if we are only a unit of 28.

Mr. Lopata: Let me give you an example of what has happened. Abbotsford, for example, is a townhouse and single family development – a mixture. Very recently the stormwater facility was turned over to the City because the homeowners could no longer afford to maintain it. The Planning and Development Department has historically favored that because we think they are too expensive for homeowners to maintain, but we don't do that until the developer is gone. In the short run -- in this case, it may be a very long run -- the developer is going to be maintaining your stormwater facility and roadway.

Ms. Emig: On average, what would that cost be for maintaining the stormwater facility?

Mr. Lopata: I can't say because they vary dramatically, but they are not cheap.

Ms. Emig: Is there any way we could find out?

Mr. Lopata: Yes, the Public Works Department can give you a sense of what they cost in other locations.

Mr. Bowman: Keep in mind the cost to maintain them doesn't disappear because it transfers from you to the City. It ultimately comes out of your pocket and others as well. It is called taxes.

Mr. Lopata: But on the other, other hand, some of us who live in the older neighborhoods, we don't have stormwater management and yet the folks who have the new and better facilities, their doing the right thing for stormwater management and paying for it. I, who am doing the "wrong" thing, I'm not paying for it.

Ms. Emig: I was concerned with the management of it that it wasn't left to people who don't have the experience in doing it.

Mr. Lopata: Plowing and the streets are relatively easy compared to stormwater facilities for homeowners to maintain.

Ms. Brown: It was unclear whether the Planning and Development Department was saying keep the pool or not keep the pool.

Mr. Lopata: The Planning and Development Department was saying keep the pool because the residents were promised a pool, but if there is some other arrangement that the residents who are there now have made, it is not clear from the record before us tonight because we have a handful of residents speaking. I assume they have had discussions about the hot tub. I think that is an amenity that people were promised. I think it is something going forward that we are going to have to deal with. On the face of it, my sense is that the pool is a part of the deal, there should be a pool there. That is what people were promised.

Ms. Brown: Either that or a concession made.

Mr. Lopata: Or something else.

Ms. Brown: Is it possible that the clubhouse can be moved over to the 55+ area? Is there room there?

Mr. Lang: Maybe I can clarify some of these issues. We actually talked about building a new clubhouse on the side where the residents exist presently. Chris had a number of meetings with the residents, and I wasn't at the meetings so I am sort of summarizing what I think happened. The discussion was, instead of building a new clubhouse over there, let's keep the clubhouse here, and instead of building a pool, let's put a hot tub in because the long-term maintenance of a pool is very excessive for a small community. So, what we are trying to do in part of our proposal to your group is in response to conversations we have had with their group. Obviously, we are hearing some different things tonight from what was represented at the previous meetings. So, we are looking for direction from them. What we originally talked about was building another clubhouse, eliminating this clubhouse, turning this clubhouse into maybe one or two units. Then, at one point we talked about keeping the clubhouse for the benefit of the entire group but then we heard that the residents did not want to share it with the entire group. So, we said, okay, we will keep it just for them, but they have to maintain it. So, that is sort of the give and take of this whole dynamic. We built the clubhouse as a marketing advantage to us. Instead of bringing them to a trailer, we could bring them to a clubhouse, plus for the benefit of the residents early on because we didn't have enough buyers for the rest of the project. We thought we would build the clubhouse. It would be a nice amenity. There are only two buildings here. Most people don't ever build a clubhouse until they are 60 percent built out and the pool goes in last. In any case, I'm trying to figure out what our residents want and, obviously, you are trying to respond to us.

I know, and Roy has pointed it out, we are all in agreement that all the residents in the entire project need to share the common space, need to share the roadway maintenance, need to share in the common area maintenance, need to share in the stormwater management maintenance. The dynamic that we haven't addressed yet is if the age restricted condo owners want to maintain the clubhouse and the pool -- that is going to be their expense. If they are not going to let anyone else in it, it is a 3,000 sq. ft. building, pool or a hot tub, and the monthly maintenance fee. Just the electric in that place is \$500 or \$600 a month, let alone running a pool or a hot tub, you could have a \$1,000 electric bill. You have to think 28 units, \$12,000 electric bill every year. How are you going to make those numbers all work? We can assist them in managing this. We are committed to managing this at minimum for five years from the commencement of when we installed it.

When it gets to public roads, Joe had something that he wanted to bring up with regards to public/private roads that the Public Works Department has commented on. I know we have actually talked to the City at length about public/private roads -- maintaining the roads, maintaining the stormwater management. The City will not take over the roads until the project is finished.

Ms. Brown: I have another question for Roy. Can we require the developer to leave a substantial (and I mean substantial) amount of money with the caveat that it is for the homeowners association together? Is that something that can be required?

Mr. Lopata: We have guarantees in the Code for common areas that they have to bond a certain amount of it. That is already in the Code, if that is what you are talking about.

Ms. Brown: Is it a substantial amount?

Mr. Lopata: It is to make sure the project is completed.

Ms. Brown: But, we can't require that.

Mr. Lopata: We have a fee for the stormwater also. There are fees that we have set in the Code that are required, but not an additional fee. That would be unusual.

Ms. Brown: My question results from the fact that I am really concerned, like you are, about this project being able to be maintained over time.

Mr. Lopata: If I could make a suggestion in that regard. It is almost immaterial regarding what is before us tonight. It is an issue we have and I keep raising it because I want to reassure the residents. In terms of what you have to vote on, the odds are, quite frankly, if it is changed to townhouses, it is more likely in the current market that there will be more money generated on the site to help pay for these things.

Ms. Brown: So, we don't have to decide about the homeowners association?

Mr. Lopata: Absolutely not. That is what I am trying to say. What's more important for you is the relations of the maintenance funding issue to the rezoning request? It is incumbent upon us as a staff to make sure that the maintenance association works if the project gets moving. With seven property owners there right now, there is nothing we can do. That is beyond everybody's purview to somehow make that work. I can't promise the folks out there that all the wonderful things are going to happen when they have only sold seven units. Let's hope the economy improves whether the rezoning is approved or not. The best thing that has to happen out there is that units get sold.

Ms. Brown: For the pond, is there a fence?

Mr. Lopata: No.

Ms. Brown: If they sell these townhouses to people with little kids, that is an attractive nuisance.

Mr. Lopata: We have stormwater facilities all over the City like that. We even have lakes and rivers in the City without fences. I keep pointing that out every time this issue comes up. White Clay Creek flows right through the City; we don't fence the reservoir either for the same reason.

Ms. Brown: Their parents just have to pay attention.

Mr. Lopata: That would be nice.

Mr. Begleiter: I think the developers in this case have made a good first run at this problem. I would like to quote Jeff Lang a few minutes ago who said, "I'm sitting here trying to figure out what we are trying to do here." I think the proposal before us is half baked at best. The Subdivision Advisory Committee has a list longer than my arm of things that have to be fixed in the proposal in order for it to meet, as Roy noted, the requirements. The developers acknowledge that they are hearing different things tonight than they have heard from the residents before. There are so many unanswered questions with this proposal that I don't think it is ready to get put in the oven yet, much less ready to be taken out.

Mr. Bowman: The alternatives are to either go with a vote tonight on what is being proposed or a motion to table. That is also within a realm of possibility, which means it goes back on an agenda at a later date and the developer can further sort it out bring it back so that this body here is more satisfied with what he brings back.

Mr. Begleiter: If you are asking me for a motion, I'll make one, but if any other Commissioners want to make comments.

Mr. Bowman: I'm not trying to steer you to make that motion. That motion is a possibility, but I will tell you that once that motion is made and seconded, it is nondebatable.

Ms. Brown: What does the Planning and Development Department recommend?

Mr. Lopata: We have already recommended in favor of the proposal with a whole host, as Ralph said, of technical changes and recommend in favor of the rezoning and the resubdivision and against the site plan approval. That means the plan has to be changed significantly. Ultimately, it is up to you.

Ms. Sheedy: I am trying to phrase this properly, as both Jeff and Ralph have said, this is very confusing as to what exactly we are trying to accomplish. Based on what Roy said, it seems like one of the things that we are trying to get accomplished collectively, the City and the developer and the homeowners, is to get something moving again. There are a number of significant questions such as the amenities people have been promised that are not there, the presence or absence of a swimming pool, the affordability or not of a swimming pool, and so on. But, are those issues such as amenity swimming pool and clubhouse, actually part of what we are trying to accomplish here? In what ways are we voting on those issues?

Mr. Lopata: You have to remember that when I make my recommendation, I don't have the benefit of the public discussion. So, you have heard from some of the residents, most of whom have raised concerns, some mildly supportive and some negative. I can't substitute my thinking for your thinking. The swimming pool, for example, we have recommended that it be included. It is not shown in the plan. To get to Ralph's point, you could argue that we would like to see where it is if you are going to put it in. Or, you could take the position that it is a recommendation, therefore, the swimming pool and/or a Jacuzzi and/or some other similar facility could be put in between Planning Commission and Council review. That is ultimately your judgment. I can't give you much guidance on that. As I was saying before, you do not have to work out the details of the condominium/maintenance association tonight or at any other future meeting. Council, quite frankly, is not going to work that out either. That is going to come to them in the form of an agreement that will ultimately come up at the staff level. But, these issues are before you. The developers typically want speed. That is not uncommon. The residents have legitimate concerns that you have heard. In fairness to the developer, some of the laundry list items are routine things, but some of them aren't. Obviously, changing the plan so it meets the Code is a bigger deal than typical. You have to make that call.

Mr. Lang: With regards to the pool or hot tub, I think Ralph summed up that we were frustrated with the comments that were made tonight. We are more than happy to agree to put a swimming pool or hot tub in based on the seven residents' decisions between now and City Council. If they as a group agree that we put a swimming pool in, we will put a swimming pool in. If they as a group agree they want an in ground hot tub, then that is what we will agree to do and we will agree to that in writing before we go to City Council. That, in the big picture of this project, is kind of a minor issue related to the club house location and an amenity piece of the package. We have built a lot of amenities as it relates to the project. We have two beautiful lakes. We have a lot of common space around their two building. We have a beautiful club house for 16 potential residents of which 88 residents are supposed to be here. So, I think, as a developer, we are way beyond where we could have been. We could have had no club house there. We could have piles of dirt over here that we have actually graded out flat. It is a very peaceful, serene, nice environment compared to many environments that you will go to look at from other developers that have had struggles in the economic environment.

Mr. Bowman: We are back to the table and are looking for a motion.

Ms. Dressel: I am probably going to be in favor of tabling this discussion primarily because there are so many things still up for decision making on the plan. We have heard from the developers that they will move some of these buildings and I believe that, but I don't feel comfortable in sending this on to City Council with so many questions and with not having a definitive plan before us. I know there has been a lot of work done on this but I just think that given that there has been some recommendations, given that there were discussions earlier and you have agreed to them but there is not a new plan before us to show us what those changes are.

Mr. Lopata: I want to make one quick comment so you can understand this. I always tell the developer -- do not submit at the last minute a revised plan because what happens is, of course, you would be reviewing a plan that isn't the plan that we have reviewed and based our recommendation on.

Ms. Dressel: But, I think this has been in the works long enough that we probably could have had a new plan and have had other situations.

Mr. Lopata: Let's try this again. I always tell them not to do that. Let me tell you why I tell them not to do that. First and foremost, because I want to give the Planning Commission a chance to make recommendations and suggestions. You shouldn't hold against them. If you want to table it, table it because you would like to see a revised plan, not that you didn't see it this evening because this evening would not be appropriate. Secondly, as I said before, a last minute revised plan results in a report to you and a plan that does not match. Finally, it is unusual for you not to make suggestions and they have to revise it again. I actually try to save them from themselves.

Mr. Lang: If you do want us to do things, the problem with the process is, if you guys say table it, we don't get anything out of it because we don't know what you want. So, we are actually more confused. If you said, okay get rid of these four units, we would know what you want. If one of you says do this, one of you says pull it this way, it is kind of meeting with our residents. If you table it and say go fix it, how do we fix it?

Mr. Lopata: You could just make the plan conform to all of our requirements.

Mr. Begleiter: Our choices on the Commission tonight are to pass it on to the City Council with our recommendation, to pass it on to the City Council with our disapproval, or to table the proposal. Those are the three choices we have right?

Mr. Lopata: Yes.

Mr. Begleiter: I think at this point the right thing to happen would be for the developer to voluntarily withdraw the proposal from consideration. In the absence of that, I am prepared to recommend that we pass it on with our rejection. I think that is the most favorable condition for the developer.

Mr. Lopata: He would be better off with tabling it. He can't withdraw it because he would have to start all over again. I mean, really start all over again.

Mr. Begleiter: Whose fault is that?

Mr. Lopata: This is the process. Typically, as Jeff knows, projects of this size often get tabled with fewer comments.

Mr. Lang: I'm not arguing with what you guys want to do conceptually, but if you have specific concerns that is what we need to address. These things all conflict with each other when you try to go and address them all. So, which ones do you have a concern about?

Mr. Begleiter: It is not my job to design these proposals. That is the developer's job. You know that. It is our job to look at them. It is our job to hear from the community. It is our job to make judgments on the bases of what the Planning Director and the Subdivision Review Committee recommended, and so on. What I see in front of us is exactly what you saw in front of us which is a very confusing situation with a plan that is really not ready for prime time.

Mr. Lang: You know what the buildings look like. You know where they are going to be located all except for five of them. Five of them are going to be someplace different.

Mr. Begleiter: Absolutely. I know what our three choices are. We can table it, we can reject it or we can recommend it. I am not in favor of recommending it because I can't see voting for this proposal. I would have no objection to tabling it because that will essentially send the developer back for reconsideration anyway and they will have to come back for it again. If the developer thinks, as Jeff suggested, that this is a perfectly viable plan and let's go forward with it, then I say we can send it forward with our rejection. I would love to hear what other Commissioners have to say about it, but if nobody wants to talk about it, I will make a choice and put forward a recommendation and then we can vote on it.

Ms. Brown: I think we need to remove some of the units, and I think all of us have ideas about that. You want concrete things, I'm telling you, a bigger fence – chain-link with razor wire at the top and lots of trees. What I am saying is, we need a barrier between these

housing units which potentially have young people in them and this railroad, and we need a substantial barrier. I agree with Jean White about the fact that wood deteriorates. It is not a good barrier, but it needs to be screened and that, I think is a given.

We also need you as developers to work with the residents to decide on where they want the club house, whether they want a hot tub or whether they want a pool. Have them sign off on it. It is not clear here tonight what they want. It is not clear from your plan. There are too many things that have come up tonight. Now, I happen to know that when I first heard about this plan, you all had not contacted the residents. It is not when I got my packet, it is a little while ago. This was maybe a month ago. You should have been working with the residents all along. What I am saying is that I know two people who happen to live in there and they had heard rumors but nobody had contacted them from Lang Development. So, I think there are those three issues that I have that I see before us. You want concrete, there's concrete.

Mr. Begleiter: As the Chairman said a minute ago, if we move to table, it is not debatable which is why I have withheld making that motion because if you want to talk, we have to do it.

Ms. McDowell: What I am wondering about is there are a number of recommendations that the Planning and Development Department has made and I support all of those recommendations. So, if we did move for City Council to consider it with all the recommendations and any other recommendations that we have, or if we tabled it, wouldn't the developers be working on improving it one way or the other to avoid this same kind of discussion at a City Council meeting? They would take the discussion from tonight and the recommendations and try to improve it.

Mr. Lopata: Either way they still have to make the changes.

Ms. McDowell: So, they would either come back to us with the changes or go to City Council with the changes.

Mr. Lopata: Unless they didn't want to do some of them. That is their option. They don't have to do them.

Ms. McDowell: One thing, I think, that's clear is they need to discuss it with the residents more. I think they were as surprised by some of the comments tonight. I kind of expected the residents to be more supportive based on the presentation that you made in the beginning about them being supportive. Did they change their minds during your meeting and tonight?

Mr. Locke: I think what you heard tonight, and I totally understand their frustration. I am a little upset with the comment of that they were "conned." I worked this project from the beginning. I conned no one. No one in real estate could ever expect that the real estate market would be what it is today in 2010 than when we sold these units in 2007 and 2008. You are talking about the worst real estate market in the history of this country. You are talking about the worst credit crisis in the history of this country.

In regards to the amenities, I think Jeff addressed that most developers don't do what has already been done. As it pertains to amenities, we have had discussions. You have three homeowners here. You have four that are not here. One supported it. I can tell you the other discussions of those have supported what we talked about which is an in ground spa, keeping the club house. That is really an internal matter between the developer and the homeowners.

MOTION BY BEGLEITER, SECONDED BY DRESSEL TO TABLE CONSIDERTION OF THE REZONING, THE RESUBDIVISION PLAN AND SITE PLAN APPROVAL OF THE VILLAGES AT TWIN LAKES.

VOTE: 3-4
AYE: BEGLEITER, BRILL, DRESSEL
NAY: BOWMAN, BROWN, McDOWELL, SHEEDY

MOTION FAILS

MOTION BY MCDOWELL, SECONDED BY SHEEDY THAT THE PLANNING COMMISSION MAKES THE FOLLOWING RECOMMENDATIONS TO CITY COUNCIL:

- A. THAT CITY COUNCIL APPROVE THE REZONING OF AN 8.08 ACRE PORTION OF THE VILLAGES AT TWIN LAKES PROPERTY FROM AC (ADULT COMMUNITY) TO RR (ROW OR TOWNHOUSE), AS SHOWN ON ATTACHED PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT A, DATED FEBRUARY 2, 2010;
- B. THAT CITY COUNCIL APPROVE THE VILLAGES AT TWIN LAKES MAJOR SUBDIVISION PLAN, AS SHOWN ON THE LANDMARK ENGINEERING, INC. PLAN, DATED NOVEMBER 25, 2009, WITH THE SUBDIVISION ADVISORY COMMITTEE CONDITIONS; AND,
- C. THAT CITY COUNCIL NOT APPROVE THE REQUEST FOR SITE PLAN APPROVAL, AS SHOWN ON THE LANDMARK ENGINEERING, INC. PLAN, DATED NOVEMBER 25, 2009.

VOTE: 4-3

AYE: BOWMAN, BROWN, MCDOWELL, SHEEDY

NAY: BEGLEITER, BRILL, DRESSEL

MOTION PASSED

3. REVIEW AND CONSIDERATION OF AN AMENDMENT TO THE SUBDIVISION AND DEVELOPMENT REGULATIONS CLARIFYING THE DEFINITION OF PUBLIC IMPROVEMENTS.

Mr. Lopata summarized his report to the Planning Commission which reads as follows:

“The Public Works Department has raised a concern with a potential loophole in the Subdivision and Development Regulations regarding completion, bonding, and related requirements for so-called “public improvements,” in condominium developments. The current definition of public improvement in the Subdivision and Development Regulations is as follows:

“Any drainage ditch, roadway, parkway, sidewalk, pedestrian way, tree, lawn, off-street parking area, lot improvement, or other facility for which the City may ultimately assume the responsibility for maintenance and operation, of which may affect an improvement for which City responsibility is established. All such improvements shall be properly bonded.”

The construction improvement plan portion of the Subdivision and Development Regulations stipulates that “public improvements,” must meet certain completion requirements, are to be properly bonded, and have a one year guarantee prior to the release of bonds to the developer. In light of the public improvements definition, however, conceivably a condominium or similar type development with “private,” facilities of the type included within the definition above, could be interpreted as not coming under these regulations.

Recommendation

In order to correct the loophole in the “public improvement,” definition, the Planning and Development and Public Works Departments suggest that the Planning Commission consider recommending to City Council the following:

Amend Subdivision and Development Regulations Section 27-18, Definitions, by adding the following italicized language to the definition of “public improvement:”

“Public improvement: Any drainage ditch, roadway, parkway, sidewalk, pedestrian way, tree, lawn, off-street parking area, lot improvement, or other facility for which the City of Newark may ultimately assume the responsibility for maintenance and operation, of which may affect an improvement for which City responsibility is established. *This definition also includes such facilities as described herein owned and maintained in common by condominium associations, maintenance associations, cooperative associations, or similar private entities. All such improvements shall be properly bonded.*”

If you have any questions, I will be happy to answer them.

Mr. Begleiter: I have a technical question. In the text of the language, both the new and the old language. . .

Mr. Lopata: Are you asking about the words -- “Of which may affect?”

Mr. Begleiter: Yes. It doesn’t make any sense.

Mr. Lopata: We can reword it if you like.

Mr. Begleiter: It is technically incorrect.

Mr. Lopata: If you have a suggestion.

Mr. Begleiter: I think it might be better to just take out the word “of” and leave it at “operation, which may affect an improvement for which the City responsibility is established.” The reason I’m asking is I didn’t know if there was some legal thing.

Mr. Lopata: No, I read it and I said this was terribly worded. I wasn’t interested in the current language, actually, I presumed Mrs. White was going to suggest changing it.

Ms. McDowell: We are lost down here. We didn’t catch the beginning of that.

Mr. Lopata: The sentence at the very end of the existing language, the main sentence says, “. . . of which may affect an improvement . . .” Perhaps, it should just should say, “which may affect an improvement.”

Mr. Begleiter: That is repeated in the new language.

Ms. Dressel: The fourth line up from the bottom.

Mr. Bowman: Are there any questions from the Commission? I have one. Roy, is this bonding for what period?

Mr. Lopata: Two year bond. It is in the Code in a different section.

Mr. Bowman: Usually those have a limit on them.

Mr. Lopata: That is that 150% I was mentioning in the previous conversation.

Mr. Bowman: It is not a perpetual forever bond.

Mr. Lopata: No.

Mr. Bowman: It expires at a certain time.

Mr. Lopata: It is an insurance type policy.

Mr. Bowman: We will open this to public comment.

Mrs. White: 103 Radcliffe Drive. I have no problem with changing something to remove a loophole because I am for removing potential loopholes, but I do not understand it and wondered if the Planning and Development Director could give one example where, with a condominium situation, where it creates a loophole.

Mr. Lopata: The loophole, for example, in the case just before us, if the developer argued that the private road in the Villages at Twin Lakes is not a public improvement because it is private. He wouldn't have to bond it.

Mrs. White: It has to do with the bonding until it is turned over to the City.

Mr. Lopata: Turned over to the City or to the maintenance association.

Mrs. White: I was also going to comment on the "of." I also looked up some English books I had. I actually think it is meant to be or. In other words, any other facility for which the City may ultimately assume the responsibility for maintenance and operation, "or" which may affect an improvement for which the City responsibility is established. So, I think the "of" is meant to be "or."

Mr. Bowman: Why don't we make the editorial change to "or."

MOTION BY DRESSEL, SECONDED BY MCDOWELL THAT THE PLANNING COMMISSION RECOMMENDS THAT CITY COUNCIL APPROVE THE FOLLOWING EDITED AMENDMENT TO THE SUBDIVISION AND DEVELOPMENT REGULATIONS:

AMEND SUBDIVISION AND DEVELOPMENT REGULATIONS SECTION 27-18, DEFINITIONS, BY ADDING THE FOLLOWING ITALICIZED LANGUAGE TO THE DEFINITION OF "PUBLIC IMPROVEMENT:"

"PUBLIC IMPROVEMENT: ANY DRAINAGE DITCH, ROADWAY, PARKWAY, SIDEWALK, PEDESTRIAN WAY, TREE, LAWN, OFF-STREET PARKING AREA, LOT IMPROVEMENT, OR OTHER FACILITY FOR WHICH THE CITY OF NEWARK MAY ULTIMATELY ASSUME THE RESPONSIBILITY FOR MAINTENANCE AND OPERATION, OR WHICH MAY AFFECT AN IMPROVEMENT FOR WHICH CITY RESPONSIBILITY IS ESTABLISHED. *THIS DEFINITION ALSO INCLUDES SUCH FACILITIES AS DESCRIBED HEREIN OWNED AND MAINTAINED IN COMMON BY CONDOMINIUM ASSOCIATIONS, MAINTENANCE ASSOCIATIONS, COOPERATIVE ASSOCIATIONS, OR SIMILAR PRIVATE ENTITIES.* ALL SUCH IMPROVEMENTS SHALL BE PROPERLY BONDED.

VOTE: 7-0

AYE: BEGLEITER, BOWMAN, BRILL, BROWN, DRESSEL, McDOWELL, SHEEDY

NAY: NONE

MOTION PASSED UNANIMOUSLY

Respectfully Submitted,

Elizabeth Dowell
Secretary to Planning Commission