

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

January 7, 2014

7:00 p.m.

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

Chairman: James Bowman

Commissioners Present: Patricia Brill
Bob Cronin
Angela Dressel
Andy Hegedus
Edgar Johnson
Alan Silverman

Staff Present: Maureen Feeney Roser, Planning and Development Director
Polly Sierer, Mayor
Mike Fortner, Development Supervisor

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

1. THE MINUTES OF THE DECEMBER 3, 2013 PLANNING COMMISSION MEETING.

The minutes of the December 3, 2013 were approved as received.

2. REVIEW AND CONSIDERATION OF THE ANNEXATION AND MINOR SUBDIVISION AT 428 PAPER MILL ROAD. THE MINOR SUBDIVISION OF THE PROPERTY IS BEING SOUGHT TO CREATE A NEW BUILDABLE LOT OFF OF LASALLE WAY AT THE REAR OF THE PROPERTY.

Ms. Feeney Roser summarized her report to the Planning Commission which reads as follows:

“On August 27, 2013, the Planning and Development Department received an application from Ralph B. Bush for the annexation of his property at 428 Paper Mill Road. The applicant is requesting annexation primarily to make sanitary sewer available to the existing home now under renovations in New Castle County. The applicant is requesting RS (one family detached residential) zoning, and a minor subdivision to divide the land into two parcels thereby creating a buildable lot fronting on Lasalle Way, in addition to the existing single family home lot fronting on Paper Mill Road. Approvals will provide two Code compliant RS lots, with the existing lot (Parcel 1) to receive water and sewer service from the City, while retaining the DP&L provided existing electric service. If approved, the new Lasalle lot (Parcel 2) will be totally serviced by the City of Newark. The property is adjacent to the City at Paper Mill Road and at Lasalle Way in the Pine Meadow subdivision.

Please see the attached minor subdivision and annexation plan, and Planning and Development Department Exhibit A concerning this annexation and minor subdivision request.

The Planning and Development Department's report on 428 Paper Mill Road follows:

Description and Related Data

1. Location:

428 Paper Mill Road is located on the east side of Paper Mill Road approximately 190 feet north of the T intersection of Paper Mill Road and Wynclyff Lane.

2. Size:

.73 acres

If subdivided, Lot #1 (fronting on Paper Mill Road) will be 14,810 sq. ft., and Lot #2 (fronting on Lasalle Way) will be 16, 988 sq. ft.

3. Existing Land Use:

Lot #1 now contains a single family home fronting on Paper Mill Road. The rear of the lot is vacant grass area.

4. Physical Condition of the Site:

The site contains a 1 ½ story single family home with an enclosed porch and detached garage. Access to the home is provided via asphalt driveway from Paper Mill Road. A foundationless wood frame shed is located in the rear yard, along the northern property line. The remainder of the site is grassed lawn area, which slopes to the east.

A significant tree cover lines the southern border with the back yards of homes on Wynclyff.

Regarding soils, according to the United States Department of Agriculture's Natural Resources Conservation Service, 428 Paper Mill Road consists of Glenelg Loam (GeB), 3 to 8 percent slopes, which is suitable soil for the proposed development.

5. Planning and Zoning:

The property is currently zoned NC21 in the County which allows single family homes on half an acre lots. If annexed, the applicant is requesting RS (single family detached residential) zoning which has a minimum lot size of 9,000 square feet. RS zoning permits the following uses:

- A. One-family detached dwelling.
- B. The taking of non-transient boarders or roomers in a one-family dwelling by an owner-occupant family resident on the premises, provided there is no display or advertising on the premises in connection with such use and provided there are not more than three boarders or roomers in any one-family dwelling. An owner-occupant taking in more than two boarders, however, must apply for and receive a rental permit.
- C. The taking of nontransient boarders or roomers in a one-family dwelling by a non-owner occupant family resident on the premises, is not a use a matter of right, but is a conditional use, provided there is no display or advertising on the premises in connection with such use, provided there are not more than two boarders or roomers in any one-family dwelling, with special requirements including the requirement for rental permits.
- D. Churches or other places of worship, with special requirements.
- E. Public and Private Schools.
- F. Municipal Parks and Playgrounds; non-profit community centers for recreational purposes.
- G. Municipal utilities; street rights-of-way.

- H. Public and private swimming pools.
- I. Temporary construction and real estate buildings.
- J. Private garages as accessory uses.
- K. Other accessory uses and accessory buildings, excluding semi-trailers and similar vehicles for storage of property.
- L. Cluster development subject to Site Plan Approval as provided in Article XXVII.
- M. Public transportation bus stops.
- N. Bed and breakfast, with special requirements
- O. Student Homes, with special requirements

RS zoning also permits, with a Council-granted special use permit, the following:

- A. Police, fire stations, library, museum, and art gallery.
- B. Country club, golf course, with special requirements.
- C. Professional offices in residential dwellings for the resident-owner of single-family dwellings, with special requirements.
- D. Customary home occupations, with special requirements.
- E. Electric and gas substations, with special requirements.
- F. Day care centers, kindergartens, preschools, with special requirements.
- G. Public transportation bus or transit shelters.
- H. Swimming club, private (nonprofit).

In terms of zoning area requirements, the 428 Paper Mill Road minor subdivision meets all RS zoning requirements.

Regarding adjacent and nearby properties, immediately to the north along Paper Mill Road is a New Castle County property also zoned NC21. Beyond the county parcel, and just north and east of 428 Paper Mill Road are the RH zoned homes of Pine Meadow. To the south are the RH zoned homes of Wynclyff. RH zoning is also a single family detached residential zone, with one-half acre minimum lot size. Across Paper Mill Road from the site is vacant New Castle County zoned farmland.

Regarding comprehensive planning, the Comprehensive Development Plan IV calls for single family residential (low density) uses at the site. Single family low density is defined as areas designated for dwellings occupied by one family, primarily single family detached with overall densities of one to three dwelling units per acre. Please note that the 428 Paper Mill Road proposal calculates to 2.74 units per acre.

Status of the Site Design

Please note that at this stage in the Newark subdivision review process, applicants need only show the general site design for a minor subdivision. For the site design, specific details taking into account topographic and other natural features must be included in the construction improvement plan. That is, initial Council subdivision plan approval means that the general site concept has received City endorsement, with the developer left with some limited flexibility in working out the details of the plan -- within Code determined and approved subdivision set parameters -- to respond in a limited way to changing needs and circumstances. This does not mean, however, that the Planning Commission cannot make site design or related recommendations that City Council could include in the subdivision agreement for the project. The applicant is not required to submit color scale elevations for minor subdivision and, therefore, no elevations of the proposed home are available at this time.

Be that as it may, the 428 Paper Mill Road plan calls for the annexation of .73 acres of land to the City of Newark with RS zoning, and a minor subdivision of the parcel to create two tax parcels out of one. The existing home on Parcel #1 will

remain and will connect to City water and sewer. If approved, the resultant Parcel #2 will be a buildable lot with access off of Lasalle Way. Parcel #2 will be required to connect to all City utilities when built.

Providing Services

The Electric Department indicates that electric service will not be provided to the 428 Paper Mill Road site (Parcel #1). However, electric as well as other services, can be provided for the parcel #2 to be serviced from Lasalle Way. As a result City refuse collection and leaf collection will not be provided to the parcel fronting on 428 Paper Mill Road. The Lasalle Way lot will receive full City services, including snow removal, when built. If electric service is eventually provided to Parcel #1, services may be available at that time. All costs related to the connection to City systems, as well as any other costs regarding Comcast cable and Verizon service will be at the property owner's expense.

Subdivision Advisory Committee Comments

The Subdivision Advisory Committee – consisting of the Management, Planning and Development and Operating Departments – has reviewed the 428 Paper Mill Road annexation and minor subdivision and has the comments below:

1. The Public Works and Water Resources Department indicates that the City has the capacity to serve both water and sewer to both lots.
2. The Public Works and Water Resources Department notes that depending on the proposed design, maintenance and access easements and agreements will be necessary for water and sewer utilities, and should be noted on the plan. The plan should be revised to show all applicable easements before Council consideration.
3. The Electric Department indicates that the developer will be responsible for the costs of hooking Parcel 2 to the City's electric system off of Lasalle Way.
4. The Electric Department indicates that the developer must pay \$13,000 to have the underground high voltage lines and a transformer installed to the property line on Lasalle Way.
5. The Planning and Development Department notes that for Lot #1, the existing garage is 4.6 ft. from the nearest side lot line, and the existing shed is right on the nearest side lot line. These conditions are existing nonconforming, and will be permitted to remain unless the property is abandoned for more than one year. For Lot #2, when the new home is constructed, it will be required to meet all RS zoning area requirements, as shown on the plan.
6. The Planning and Development Department notes that the City of Newark developments on either side of the 428 Paper Mill Road site are zoned RH with minimum lot size of half acre (21,780 sq. ft.). The proposed lots are a bit smaller in size .34 acres (14,810 sq. ft.) and .399 acres (16,988 sq. ft.) respectively, hence the request for RS rather than RH zoning. While the lot size is a bit smaller than the surrounding area, both lots exceed the minimum lot size for the RS District, and the plan meets the Comprehensive Development Plan's designations for the area as far as density and use.
7. The Department notes that the Lasalle Way parcel (#2) will be part of the Pine Meadow subdivision. As such, the same covenants recorded on the deeds of the homes in that subdivision should also apply to the new home, when constructed.

8. The Code Enforcement Division of the Planning and Development Department indicates that when the home on Parcel #2 is built, it must comply with all currently adopted ICC Codes, with amendments. In addition, a separate two inch fire line and 3/4 inch domestic water service lines will be required to service the home.
9. No other City departments have comments regarding this annexation and minor subdivision.

Recommendation

Because the proposed annexation of 428 Paper Mill Road does not conflict with the purposes and land use recommendations of the adjacent area plans of the Comprehensive Development Plan IV, because the continuation of single family zoning at the site will not have a negative impact on adjoining properties and on the nearby community, and in light of the request provide sanitary sewer service to 428 Paper Mill Road and the opportunity to serve Parcel #2 with all City utilities, the Planning and Development Department suggests **that the Planning Commission recommend that:**

- A. City Council approve the annexation of the .73 acres at 428 Paper Mill Road with RS zoning, as shown on the attached Planning and Development Department Exhibit A, dated December 3, 2013 with the following conditions:**
 - **The applicant agrees to a recordable annexation agreement to be appended to the property deed of 428 Paper Mill Road which will stipulate that City leaf collection, snow removal and refuse collection will not be provided to 428 Paper Mill Road; and if City electric service is provided it will be at the property owner's expense; and,**
- B. Approve the minor subdivision plan as shown on the East Coast Survey Minor Subdivision Plan dated February 20, 2013, with the Subdivision Advisory Committee conditions."**

The applicant is here. I will be happy to answer any questions you have for me.

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

Mr. Hegedus: As I read this, I didn't understand why there is a lot hinging on us not providing electricity to 428 Paper Mill Road. I was just curious as to why we wouldn't provide electricity to parcel #1.

Ms. Feeney Roser: The property is currently served by DP&L. It is very expensive to buy DP&L out, not only for their current facilities, but also for future revenues. It is extremely expensive. I don't even know what the calculations for this site were, but, I know Mr. Bush had a conversation with the Electric Department about it and it is just not worth it for him or the City. Therefore, what we do is because the City makes a lot of money off the sale of electricity, we limit the non-essential services that we provide. We have done this in a lot of other places like the annexations in Christina Manor and at Valley Road. People annex for sewer service but we can't serve them electricity so we limit the services they receive if they are non-essential services. In this case, it is just leaf collection and trash removal because the property is on Paper Mill Road, which will be plowed anyway.

Mr. Hegedus: I understand. It just seems a little strange. Isn't there electric competition these days?

Ms. Feeney Roser: If DP&L already serves it, it is very expensive to buy them out.

Mr. Hegedus: This is my first annexation discussion since I have been on Planning Commission so this just struck me as a little strange. I thought that homeowners had rights not within the City limits buy outside the City limits to choose different providers of electricity so I didn't know that it would be so expensive for them to buy out their contract when they could just switch.

Mr. Alan Silverman: This can be a topic of discussion at the Comp Plan meeting coming up next week when we are discussing annexations. It is a rather arcane way of distributing electricity.

Mr. Bowman: Are there any other questions from anybody? The applicant is here.

Ms. Feeney Roser: Mr. Bush, if you could come to the microphone, the Commission might have some questions for you; or if you have something you would like to say, now would be the time.

Mr. Bowman: Please state your name and address for the record.

Mr. Ralph Bush: 310 Vanier Drive, Newark.

Mr. Bowman: Is there anything you would like to add to the annexation report?

Mr. Bush: I'm not sure it is germane but I have done a lot of work on that existing house. I redid it almost in its entirety – the interior of the house. The house was heated with an oil fired boiler hot water system. I have taken that out and put in a gas fired hot air system with air conditioning, now fed with Delmarva natural gas.

Mr. Bowman: Are there any questions for the applicant from the Commissioners?

Mr. Silverman: I notice on the survey drawing provided by East Coast Survey, it appears that you are not only responsible for the future owner for parcel #2, you both are responsible for taking any sewage off site and then along Lasalle Way to the first available manhole.

Mr. Bush: That is true. I understand that.

Mr. Silverman: I'm most concerned that although there is a commitment and there is a reference to dollar value in the letters for electric service that whoever purchases lot #2 will learn through the annexation drawing through a note that they have a very clear financial responsibility; and your sewer agreements, easements, cross access agreements for servicing those sewer lines should be very clear in your document, so when somebody is buying the property, they don't come back to the City and say where is my sewer service. So, that needs to be spelled out very clearly in a note. In addition, it is unclear as to whether you have a septic system onsite. Is the house currently on septic or public sewer?

Mr. Bush: It is on septic.

Mr. Silverman: Okay, because there is no reference to it on the plan and I have no idea whether it is located on what is going to be lot #2.

Mr. Bush: It is not.

Mr. Silverman: So, it is still self-contained within your property boundaries.

Mr. Bush: Yes, it would be on lot #1, but it will be abandoned and filled once we get permission to annex and, therefore, tie both of those lots into the City sewer system.

Mr. Silverman: Your intent is to do that as soon as technically feasible.

Mr. Bush: Yes. I believe that is the only way I can get the value out of that property; to keep from losing any more money.

Mr. Silverman: I was going to suggest that the City might have a difficult time creating a legal substandard lot with respect to sewer systems and septic systems and DNREC regulations.

Mr. Bush: I'm not sure I understand your last comment.

Mr. Silverman: Right now, if they broke your parcel up and created parcel #1, which is your existing house and parcel #2, which is the new house, parcel #1 would probably lose its grandfathered status and would become an illegal parcel with respect to an onsite system.

Ms. Feeney Roser: But, that is why he is annexing.

Mr. Silverman: And, that is why I am asking about the timing so five years from now he is still not on a septic tank.

Ms. Feeney Roser: We wouldn't allow the installation of a new septic tank at the new lot.

Mr. Silverman: But it is not spelled out in the document, but it is clear that the intent is as soon as possible to eliminate that septic system.

Mr. Bowman: Thank you, Mr. Bush. I have several written requests from the public. The first one is from Ruth LaJoy and Sharyn Wingate. Would one of you please step to the microphone and state your name and address, please.

Ms. Ruth LaJoy: I live at 207 Lasalle Way right across from the empty property that Mr. Bush is considering building on. My concern and our development has a lot of concerns, one being the restrictions that we have in our deed and whether or not Mr. Bush is going to be able to meet those restrictions. The other thing that I have is something that is a concern, I think, probably to everyone, and that is the erosion that my property has begun to show in the easement that I have, that I was required to have at 207. Adding one more driveway or more concrete that is going to go down to Lasalle Way, which then goes down my property, down the easement, back to the stream behind my property, which is greenway for Newark. Last year I actually called the City of Newark and asked them to send someone out to help me with this erosion issue. The gentleman was very nice but he basically said that since it was our property that it is our responsibility to control the erosion. Unbeknownst to me, over restrictions, he gave me some ideas most of which were rather expensive. So, what we have tried to do is to keep the grass growing in that area, make sure that if I get a bare spot that I immediately try to either sod it or to regrow the grass. We have put rocks in the gullies that have actually cut through the grass and it's still eroding. The heavy rain we have had just comes down that hill of Lasalle Way and then all of the water from there goes through our property and we do have a 20 foot easement – 10 foot for the house and 10 foot for the property line. So, adding another house to the back of that property that we will face, I think will actually push it over the edge as far as trying to keep control of the erosion.

Mr. David Drew: I live at 203 Lasalle Way. I'm presently the president of the Pine Meadow Home Owners Association. The item on the agenda looks very small compared to some of the other things that come before the Commission,

but I assure you that for us it is very big. We have no objection to the annexation of the lot at 428 Paper Mill Road. It is a single family home on .73 acres. The average lot size in Pine Meadow is, in fact, about .73 acres. As you have heard, the lot at 428 Paper Mill Road is surrounded on three sides by properties that are a minimum of one half acre zoning at the present time. If the lot is subdivided then we end up with two lots of about .4 acres, which are smaller than any of the other lots in the immediately vicinity except, of course, for the agricultural zoning across the street which might still be NC21. I'm not really sure. I'm not an expert on this.

We do question the statement by the Department regarding "Because the continuation of single family zoning at the site will not have a negative impact on adjoining properties and on the nearby community, . . ." And, then it goes on. That sort of assumes that all single family homes are created equal. If you have driven out to Pine Meadow, you would notice, first of all, there is a lot of open space in the development and that is because the average acreage is .73. Two lots immediately across on Lasalle from where parcel #2 would be are, in fact, one acre in size. My lot is .85 acres and I am also on Lasalle. So, this new lot on Lasalle will be less than one half the size of the other lots on Lasalle Way at the present time. It implies that the value is not going to be the same as it is for the other homes on Lasalle Way.

Let me take you back to 1991. At that time Wilmington Trust was acting on behalf of the S. Hallock duPont Estate and was selling the lots – 14 lots – in Pine Meadow. You have heard about the deed restrictions, 14 pages of mind numbing legal ease regarding these restrictive covenants. Why would they do that? I think they did that because they wanted to ensure that the value of the properties were going to be maintained while they were selling them so that potential buyers would know that in the future the value of the lots would be maintained. So, what are some of these restrictions? There is an architectural committee that must review new construction. There is no overnight on-street parking. Parking must be in garages or on the driveways of the respective properties. No RVs or trailers may be parked outside. Fences are restricted to a height of no more than four feet. No fences may be in front of the property, for example. By-the-way, it is my contention that this is all directed to maintaining the value of the properties in Pine Meadow. I would like to refer you to page 4. I do have an extra copy that I can share with you if you like. By-the-way, these are recorded on all 14 lots. There is this statement, "The property and any portion thereof or lot therein shall not be rezoned or subdivided." Why did Wilmington Trust care, once I bought my lot, that I couldn't try to rezone it or subdivide it. Two of the lots are one acre in size and could easily be subdivided to make individual one half acre lots that would still be RH zoning. Why did they say that? I contend that they said that because they were trying to maintain the value of the properties. This new parcel #2 that we are talking about that will become part of Pine Meadow will be the smallest lot by about 50% - 50% of the average of the other lots. I contend to you that that will reduce the value of our homes. Thank you for your consideration.

Mary Claire Matsumoto: Thank you for allowing me the opportunity to speak tonight. I agree with everything that Dave Drew said and, again, I want to point out that we moved into this development because of the open space. We have an acre lot. Did we build the grandest house and use up every available space? No, we wanted to maintain the character of the neighborhood which was open space. And, yes, even though the deer get a little annoying sometimes, it is going to be that much less space for them. The other thing is, I understand that the City feels that this meets all the requirements. RS is okay, yes, we are RH but things could be RS. I do have a lot that could be subdivided except that in our deed restrictions we can't do that. I can't break my lot into two so, again, why would we want this lot, which is less than the size of my lot to be broken into two?

I am also really concerned about the erosion. We have Jenny's Run behind us and even though I'm not seeing water running down my property like

Ruth and Sharon do on theirs, but we were all blocked and not able to go down Paper Mill Road this year with the severe rain when Jenny's Run could not make it to White Clay Creek. So, I think the erosion issue really is an issue and maybe that was part of HS DuPont's vision for the neighborhood that his property that he had that he wanted us to continue his vision for the neighborhood.

I do appreciate Mr. Bush spending a lot of money upgrading the house that is on the property. If he bought this and knew that he needed to upgrade this property to help finance or get more for the money to divide it into two, that is how I kind of see that, it really doesn't benefit us as a neighborhood and a community and even the city. I just see it possibly benefitting Mr. Bush. I am proud of living in the City of Newark and I really appreciate all the benefits that we receive as members of the City, but just because it is okay doesn't necessarily mean that it is okay to make it as dense as it possibly can be when it ultimately hurts our community and the environment that we are trying to maintain in our city.

Mr. Roger Matsumoto: I live at 205 Lasalle Way. The only comment that I would have is the ruling for putting an RS zoning in amongst all the other RH zoning could make things very arbitrary. I don't think it was very well explained.

Mr. Bowman: Are there any other members of the audience who wish to add their comments? If you would, Sir, please come to the microphone and state your name and address.

Mr. Michael Hassman: 1 Wynclyff Lane. I am in the neighborhood directly before you get to 428 Paper Mill. Our lot actually bumps right up against Mr. Bush's lot. I agree with everything that the folks before me said and I won't go over and repeat everything they said, but a couple of points. Home value, that is a major concern. We have a strict minimum on square footage in our neighborhood. Our lot is .66 acres. We just recently built a home there and it was with the intent to make an investment for our children. So, that is a concern of ours that if he doesn't have to follow any kind of HOA restrictions then we may have to forego any kind of financial benefits.

The other thing is the water pressure in our area is terrible, and I realize this is just one more home but right now our water pressure is 24 PSI and that is ridiculous. Any additional strain on the existing system is just going to make matters worse. Everybody in our area has to have booster pumps and it is just going to make the matter worse.

Susan Hassman: 1 Wynclyff Lane. The question I have is since we did just build, we had to put a whole house sprinkler system. Is that is something that he is going to have to abide by, and again, it is the whole water pressure. Since he has an existing home, if you annex the other property, will only that home have to meet the City requirements or will he then have to meet requirements for both homes? We were held very accountable as we built our home. We were even held accountable for the number of trees in our yard and drainage, so I just want to make sure that if he is annexed in he has to follow all the guidelines as well.

Ms. Feeney Roser: The new home will be required to be sprinklered. All new construction in the City of Newark has to be sprinklered. I'm not sure what New Castle County regulations are or, whether they required Mr. Bush to sprinkle that home. We would not require sprinkling to annex.

Mr. Bowman: We will bring it back to the Commission for further discussion.

Mr. Silverman: Is Mr. Bush part of the Pine Meadow subdivision?

Ms. Feeney Roser: Yes, in that he is on Lasalle Way, which in my view makes him part of the subdivision. Pardon me?

Resident: Inaudible.

Ms. Feeney Roser: We know that. The Commission asked me if I considered it to be part of your subdivision and, what I said in the comments just now is that because of its location, we believe that it is part of the subdivision. Therefore, should it be annexed, he should have to comply with the covenants and the deed restrictions. I sent those deed restrictions to Mr. Bush when Mr. Drew sent them to me, so he is aware of what they are. I don't know that you have any problem with that being part of the approval process. Yes, I believe it is a part of that subdivision. We can have a philosophical argument because there are only 14 lots in that subdivision, etc., but location-wise it is.

Mr. Silverman: I'm just asking from a technical point of view. This is not a resubdivision of Pine Meadows to include Mr. Bush's property?

Ms. Feeney Roser: No.

Mr. Silverman: Okay, I just want that clear. Second point, when Pine Meadows was designed did the drainage easement on the property that is in question opposite Mr. Bush's proposed lot, it was designed by the site engineers to take into account all water flows upstream whether it was on the Pine Meadows property or, in this case, above the Pine Meadows property. So, it should have been designed to handle the entire drainage basin.

Ms. Feeney Roser: Yes, it should have been. I wasn't involved at the time.

Mr. Silverman: Okay, from a technical point of view.

Ms. Feeney Roser: Yes.

Mr. Silverman: So, that should not be an issue here.

Ms. Feeney Roser: Mr. Bush must not increase the runoff from his property by building beyond what is leaving that property now. So, there has to be management of that stormwater runoff.

Mr. Silverman: Understood, but downstream, the part of the drainage easement that is part of Pine Meadows, the engineer, in all likelihood would have taken into account building out of those lots upstream. There would have been impervious surface calculation in there, etc.

Ms. Feeney Roser: As I said, I don't have it in front of me but that is the way a development is reviewed at this point.

Mr. Bowman: Is the movement in the City towards more City control over these drainage easements vis-a-vis the stormwater management fee that has been discussed?

Ms. Feeney Roser: The City continues to discuss that. I think it has been very clear that the City understands it needs to be addressed. How we go about addressing it is still under discussion.

Mr. Bowman: Addressing drainage problems we have in the City downtown and even in the City suburbs that are in the City limits?

Ms. Feeney Roser: Yes.

Mr. Bowman: Are there any other questions or comments from the members of the Commission?

Mr. Hegedus: I am a little confused and am trying to understand. I look at the site map that is on here and it looks like it would make sense that Mr. Bush's

property would be part of the subdivision, just the way it all flows and where Lasalle Drive ends. It looks like it would be a lot that would be there. But, there is a house that has been on it and my impression is that that house has been around for awhile.

Mr. Silverman: Since 1953 according to the public records.

Mr. Hegedus: Is it usual that somebody takes a house that was built in 1953 and that lot and then just includes it into a subdivision somehow.

Ms. Feeney Roser: We are not talking about including 428 Paper Mill into the Pine Meadow subdivision, only the covenants applying to the house that fronts Lasalle Way, because that is how it is going to be served.

Mr. Hegedus: But, in the original Pine Meadows it would not have included the entire lot because that was a Paper Mill Road lot at the time. Is that correct?

Ms. Feeney Roser: Yes, in the County.

Mr. Hegedus: Mr. Bush's lot is not included in the original Pine Meadows subdivision.

Ms. Feeney Roser: Right, exactly.

Mr. Hegedus: Anybody that was doing any work to do design for the subdivision or drainage for the subdivision or anything else for the subdivision would not have had to consider that lot because it wasn't part of the subdivision. Is that right or wrong? I don't know.

Mr. Silverman: Is Mr. Bush's engineer here?

Ms. Feeney Roser: No.

Mr. Silverman: His engineer would be the one to answer that question.

Mr. Bush: You seem to indicate that the engineer for Pine Meadows would have taken into account upstream drainage. . .

Mr. Silverman: For a reasonable distance.

Mr. Bush: For a reasonable distance which would cover my now property at 428 Paper Mill Road; it would have covered that property because that is upstream.

Mr. Silverman: That is customary.

Mr. Bush: I have no idea whether he did or not, but that would be customary.

Mr. Hegedus: And, that seems to make sense. If I was an engineer, I would be looking at where all the water is coming from that has gone to the subdivision and would take that into account. I believe that was asked and answered that just didn't make sense to me and the lot as it stands today is not part of the subdivision, but Maureen, your suggestion is that when it gets subdivided that parcel #2 would then become part of the subdivision. Is that correct? Because it runs Lasalle Way.

Ms. Feeney Roser: As far as the deed restrictions, because there are 14 units already there. People have bought into that development and there were deed restrictions. They thought that is what they were going to get in their development, and I think it is only fair to make those same deed restrictions apply to any new construction on the parcel that is going to front on Lasalle Way.

Mr. Hegedus: Are there any deed restrictions that would apply to Pine Meadows that cannot be met by parcel #2 given that parcel #2 is somewhat smaller?

Ms. Feeney Roser: I read over them and I think Mr. Bush did, too, and he thought he could meet all of them. I am not an engineer, but I believe that they can – the parking, the RVs and the fencing. They are more aesthetic.

Mr. Hegedus: Are there percent coverages?

Ms. Feeney Roser: Mr. Drew could probably tell us more. Are there percentage coverages in your deed restrictions? You did send them to me, I reviewed them before sharing them with Mr. Bush, but I don't have them committed to memory.

Mr. Drew: There is a square footage requirement for homes of 2,200 sq. ft. minimum. I don't think there is a single home in the subdivision at the present time that is not larger than 2,200 sq. ft. In general, if you have a large lot I think a realtor would agree that it doesn't make much sense to put a small house on a large lot. It is not economical. So, in general, the homes are much larger than 2,200 sq. ft.

Ms. Feeney Roser: It is our understanding that Mr. Bush can meet that requirement.

Mr. Hegedus: So, he can build a 2,200 sq. ft. house and meet all the other zoning requirements in terms of lot coverage.

Ms. Feeney Roser: Yes.

Mr. Edgar Johnson: My only concern is that you have an island of RS zoning surrounded by RH zoning.

Ms. Feeney Roser: Yes, with NC21 zoning in there as well.

Mr. Johnson: Why would we do that?

Ms. Feeney Roser: Because the Comprehensive Development Plan calls for residential uses at a certain density for the property and RS zoning meets that density. It is just a recommendation. If you don't feel that it is appropriate, that is fine, but it is single family residential next to single family residential with a little bigger lot.

Mr. Johnson: What you are really talking about is the size of the lot. The differential in the size of the lot. RS to RH.

Ms. Feeney Roser: Yes.

Mr. Hegedus: This may be a question for Mr. Bush. I'm not sure. One option is to approve the annexation and not the minor subdivision. The other option is not do any of it.

Ms. Feeney Roser: I don't want to speak for Mr. Bush, but I don't think Mr. Bush wants to be annexed without the subdivision. Normally, we wouldn't do that. We would annex with a development plan in mind so we know what we are getting when we annex. It would be up to Mr. Bush to decide whether or not he would like to be annexed without a subdivision. I don't know how he feels about that.

Mr. Bush: I am not sure I have thought about that enough. I want to be annexed because I want to hook to City sewer and City water, but on the other hand, I need to be able to sell that other lot in order to come out somewhat whole. Now, whether that lot needs to be a part of Pine Meadows subdivision or not, I'm absolutely neutral on that. As far as I am concerned, it doesn't have to be, but I don't know if that has anything to do with the argument, if you will.

Mr. Bowman: Just a point of fact. The City does not enforce deed restrictions. Deed restrictions go with the subdivision and the people who run – the developers, the buyers – the subdivisions. While we ask for deed restrictions, the City does not enforce them. That is up to the individual subdivisions.

Ms. Feeney Roser: The City could require that it be deed restricted, but you are exactly right, we do not enforce deed restrictions.

Mr. Bowman: We don't send Code Enforcement officials to enforce deed restrictions.

Mr. Cronin: I think I heard discussion earlier that if a house is built on the proposed second lot in the rear, it is supposed to be effectively neutral with regard to stormwater run-off, somehow self-contained. I think that is a pretty tall order given driveways and roofs and so forth. Are you going to have retention ponds so you have no additional water running into the gutter? It is probably to me a bit of a reach that it is reality to expect that.

Ms. Feeney Roser: The stormwater management techniques and strategies are done at the Construction Improvement Plan phase. At this point, Public Works didn't indicate that there was any concern that they had that Mr. Bush wouldn't be able to meet the requirements. They didn't really go into how it would be done.

Mr. Hegedus: Is that stormwater run-off provision for single family homes as well as for other commercial construction? Does it apply to all?

Ms. Feeney Roser: That is my understanding – yes.

Ms. LaJoy: I'm sure that when the engineers decided about the stormwater and drainage, they took into account the houses because my house is here at the bottom of the hill – 207 Lasalle Way. Anything that is from here, which is our house and the Matsumoto's house, just those two, are the only two that are actually running the stormwater down into that area. The two properties across – one is grass and the other one is grass and apple trees – and then there is a property that sits right on the hill. At the bottom of that hill to Cook Way there is a drainage. There is no drainage this side, which is why all the water goes down our easement. I heard that you are going to do something about it. Well, I was told that I am responsible for that and I am concerned about another driveway and another roof to come down there.

Mr. Bush: The water from my property doesn't all flow toward 207 Lasalle. It, instead, flows what I call south toward Wynclyff where there is a retention area - a big depression there – and much of the water from my property goes there. It doesn't go across the street to 207.

Mr. Bowman: Is there anyone on the Commission who would like to comment before we ask the Commission to take action.

Mr. Cronin: If I were, back in the beginning, to consider locating in Pine Meadows on day one, I would take a look at these two parcels that are in New Castle County and say, yes they are both more than half an acre and consistent and compatible with what we are doing in Pine Meadow; and, certainly this sort of subdivision would thwart any perception folks had at that time. Secondly, the lot to the north, which apparently is owned by folks named Barto. It seems to me if this is subdivided with a second lot on Lasalle certainly invites a future subdivision one day of that parcel and this similar situation may yet be extended and arise again. I don't know where the house is situated on the parcel whether it is closer to the highway or not, but just thoughts that I wanted to verbalize and share with fellow Commissioners.

Ms. Angela Dressel: In full disclosure, I live in Wynclyff, too. So, I'm very close to this property. One of the concerns that I keep hearing is the size of the proposed second lot that it does not meet the requirement of the half acre. We just looked at the square footage and if you were to move that property line a couple of feet, then lot 1 would be smaller which would still fit the RS zone but lot 2 would move to half an acre, and then you would meet the RS zoning restrictions but also meet the Pine Meadow size and ambience, etc., for that property.

Mr. Silverman: Just so I understand you, you are saying move the common lot line between lot 1 and lot 2?

Ms. Dressel: Yes.

Ms. Feeney Roser: West.

Mr. Silverman: Westerly toward Paper Mill Road.

Ms. Feeney Roser: The idea is to make the Paper Mill Road lot smaller and the Lasalle Way one larger.

Mr. Bush: I established that lot line between parcel #1 and parcel #2 to make sure that parcel #2 met the larger qualification – 9,000 sq. ft – for RS.

Ms. Dressel: That does meet it for RS because it would become part of Pine Meadow, it seems to me that it should be the half acre lot. The one on Paper Mill Road makes sense that it would be the smaller lot. Because all of the other lots are half acre, it seems to me that makes sense.

Ms. Feeney Roser: If you look at the Paper Mill Road lot, the square footage is about 14,810 sq. ft. and the lot on Lasalle Way is nearly 17,000. I guess the Commission is wondering if you move that lot line west and you could pick up enough square footage to make it very close to a half acre, whether that would make a difference to the community, and would Mr. Bush be interested in doing it?

Mr. Mike Fortner: I think that was looked at. I can't remember the specifics but when you move up to the RH to conform to that there were other things in terms of setbacks – lot width – I don't think he could have met. So, you would be annexing a parcel in the zoning that would already need a Board of Adjustment review.

Ms. Dressel: Thank you, but it could still be zoned RS.

Mr. Fortner: Yes, it could be zoned RS.

Ms. Dressel: I'm not suggesting changing the zoning, I'm suggesting changing the size.

Mr. Bush: You wouldn't even recognize that. The only way you recognize that is to see a line on a drawing. When you are looking at the actual property all you see is open space there and you don't where the lot line is and it really doesn't look any different. Visually, it doesn't look any different. The location of the lot line doesn't help you visually at all. It is still an open space between these two houses.

Mr. Cronin: However, when somebody puts a fence up on their property line then that changes the visuals, would it not?

Mr. Bush: It could.

Mr. Bowman: I am going to bring it back to the Commission for a recommendation for the action.

Ms. Dressel: I would recommend that the Planning Commission recommend to City Council that we approve the annexation of the .73 acres at 428 Paper Mill Road with RS zoning as shown on the attached Planning and Development Department Exhibit with the following conditions; that the applicant agrees to a recordable annexation agreement to be appended to the property deed of 428 Paper Mill Road which will stipulate that City leaf collection, snow removal and refuse collection will not be provided to 428 paper Mill Road; and if City electric service is provided it will be at the property owner's expense; and – this would be a change from what is in the report right now – that the Planning Commission recommend to approve a minor subdivision plan with the change that the lot #2 would be a minimum of half acre to then become part of the Pine Meadow subdivision.

Mr. Silverman: I can't support that. This is not becoming part of the Pine Meadow subdivision. Rephrase your last statement.

Ms. Dressel: Without it being part of the Pine Meadows subdivision.

Mr. Silverman: You don't even need to say that for the record. The 9,000 sq. ft. reflects the lot size.

Ms. Feeney Roser: Pine Meadows is half acre.

Mr. Silverman: I'm sorry. You want it to reflect the size of the typical lot size.

Ms. Dressel: Right, so that lot #2 is a minimum of half an acre.

Ms. Feeney Roser: It is a minimum half acre, not closer to?

Ms. Dressel: No, a minimum of half acre.

Mr. Bowman: I have a second, now the discussion.

Mr. Cronin: Don't you need a second?

Mr. Bowman: Actually, technically, it has already been seconded when you asked the question so it is open for discussion.

Mr. Silverman: I will formally second it.

Mr. Bowman: Okay, we have a formal second.

Ms. Brill: How does Mr. Bush feel about that?

Mr. Bush: I really feel like that will make a considerable problem for the sewer system to go through there. An easement through that second lot causes problems to do that. I don't know what that dimension would be. I can't do it in my head right here.

Mr. Bowman: A half acre is 22,000 sq. ft.

Mr. Hegedus: Since we are having questions and discussion, I am leery of stipulating the minimum in there without knowing the consequences. I think that is where Mr. Bush is coming from, too. And, there may be a whole bunch of things that come with that in terms of easements and ability to put things in. I don't know and if that is where it is going, I would rather have that be reviewed by the architect and the Planning and Development Department first before it is approved here and moves on to Council as our recommendation. I don't think we have enough information to make that be our advice at this time, personally.

Mr. Bowman: We have a motion. Are there further questions or comments on the motion?

Mr. Cronin: If it is passed, does that mean that somehow the Pine Meadows deed restrictions will travel with this lot #2? I thought I heard conversation earlier that Mr. Bush was amenable to that.

Ms. Feeney Roser: Our recommendation is that the deed restrictions be placed on lot #2.

Mr. Cronin: But, I don't see that in the text here.

Ms. Feeney Roser: It is in the Subdivision Advisory Committee recommendations. It says that because it is fronting on Lasalle Way, it is technically part of it so therefore . . .

Mr. Cronin: I guess the question I have is, should it to be restated in the motion?

Ms. Feeney Roser: You can certainly restate. The intension was to make sure that the Pine Meadows deed restrictions would apply to parcel #2.

Mr. Cronin: So, it is understood that it is included with your original recommendation.

Ms. Feeney Roser: Yes.

Mr. Bowman: We will call for the question. Does everybody understand the motion? All in favor of the motion, please signify by saying Aye. Opposed no.

Vote: 1-6

Aye: Dressel

No: Bowman, Brill, Cronin, Hegedus, Johnson, Silverman

Motion Fails

Mr. Bowman: Your options are to basically have a new motion or to postpone for further information. That can be postponed to the next Planning Commission meeting for further review by the Planning and Development Department.

Ms. Brill: I would like to make a motion to postpone this item for further review.

Mr. Silverman: Second.

Ms. Feeney Roser: Normally you would postpone for a specific reason. To make sure I understand, you want to see if it is possible for the lot line for parcel #2 to be moved west so that would make that lot larger.

Ms. Brill: Mr. Bush, himself, does not favor the direction that this is going so I think it would give him more time to think.

Ms. Feeney Roser: I guess the question to you is, would you rather the Commission vote on what you have proposed before you; or would you want Mr. Bush to go back and resubmit a different plan for the next meeting?

Mr. Bush: What I would like for the Commission to do is to vote on what I have proposed with the lot sizes the way we have proposed with the deed restrictions on lot #2 being that, that is in Pine Meadows. Now, whether or not lot #2 needs to be a part of Pine Meadows is immaterial to me. I think it is important that the deed restrictions of Pine Meadows be applied to lot #2.

Mr. Bowman: We have a motion on the floor.

Mr. Silverman: I withdraw my second.

Mr. Bowman: The second is withdrawn. The motion is no longer appropriate. Back to the table for the third time.

Mr. Hegedus: I have a procedural question. If I make a motion to do the annexation alone, can we then have another motion after that to talk about splitting the parcel?

Mr. Bowman: As far as I know you can. It is dividing the question.

Mr. Hegedus: Correct. So, I would like to make a motion that says the Planning Commission recommends that that City Council approve the annexation of the .73 acres at 428 Paper Mill Road with the RS zoning, as shown on the attached Planning and Development Department Exhibit A, dated December 3, 2013 with the following conditions:

- The applicant agrees to a recordable annexation agreement to be appended to the property deed of 428 Paper Mill Road which will stipulate that City leaf collection, snow removal and refuse collection will not be provided to 428 Paper Mill Road; and if City electric service is provided it will be at the property owner's expense.

Mr. Silverman: For procedural reasons, I will second it.

Ms. Feeney Roser: In order for us to annex, it has to be zoned. So, when you annex it you are zoning it.

Ms. Dressel: It says that.

Mr. Hegedus: Right.

Ms. Feeney Roser: You said that. I'm sorry. I thought you said you just wanted annex it.

Ms. Dressel: Without the subdivision.

Ms. Feeney Roser: That zoning is going to be RS, right?

Mr. Hegedus: That is a good question because it would meet the RH zoning at the .73, right.

Ms. Feeney Roser: It doesn't meet other area requirements for RH; and if you just zone it RS, then it is a by-right plan.

Mr. Cronin: It wouldn't.

Ms. Feeney Roser: That is why we don't generally annex without a subdivision because you make it RS zoning, then it is going to be a by-right plan to subdivide it in the future.

Mr. Hegedus: If it was RH zoning and annexed in as RH, right, that is the larger size.

Ms. Feeney Roser: As Mike pointed out earlier, and during this discussion, I looked it up in the Code and, it doesn't meet RH for lot width and maybe there are some other things. That is why RS was selected.

Mr. Hegedus: So, even for the entire property, it does not meet the RH?

Ms. Feeney Roser: I don't think it does. I don't think it is wide enough.

Mr. Fortner: It's not wide enough. It has to 90 feet. So, if you annexed it in as RH, it would be nonconforming.

Mr. Hegedus: Thank you for the clarification. I will withdraw my motion for a minute while I think about it.

Ms. Brill: What are our motion options again?

Mr. Bowman: That motion is off the table. We can recommend as the Planning and Development Department recommends and basically say let City Council deal with it. That is one way to do it.

Mr. Silverman: That is my inclination. Mr. Bush would like to move forward as proposed. He has heard the objections. He knows the risks. He knows the rewards. It is up to Council to decide whether the second part of his subdivision plan reflects the subdivision on Lasalle Way. It meets the density. It meets the zoning requirements. It meets all the regulations. It is a matter of flavor as opposed to is it legal or not.

Mr. Bowman: Let me point out to the folks who have spoken tonight, the function of the Planning Commission is that it is a recommendation body. We recommend. We could recommend against this plan. Mr. Bush has the perfect legal right to take that as it is written here to Council with our "no" recommendation and the Council could say that they are going to accept it. The reverse is true. We can recommend it as it is written here. Mr. Bush is still going to have to make his case to the City Council. You folks can go to City Council and make your case and they can decide one way or the other. Our job here is to measure these plans against a written Code. Unfortunately, your subdivision deed restrictions are not part of our written Code. We appreciate that they are there, but this is a land use issue and the land use issues are judged against the Code and standards that the legislative body in this town has promulgated.

Ms. Dressel: We just had a discussion and Maureen has suggested that I could restate my original recommendation with the statement that the developer would look at the possibility of increasing lot #2 to half an acre rather than making that a requirement because of the issues that may arise down the line. I am putting it out there as a suggestion to see if that is more palatable.

Mr. Bowman: The question is that it still has to meet RS. It can't meet RH, but it can be a larger RS lot.

Ms. Dressel: Exactly.

Ms. Feeney Roser: If, in fact, you make the motion in that way, it will allow Mr. Bush an opportunity to take a look at the area requirements and where the sewer is and what can happen and then when he comes to Council he can either say, yes, I can do that and I agree to move it 10 or 15 ft. or it is not possible for me to do that. Council will have the advantage of knowing that you had suggested it and that Mr. Bush had given it a try. It doesn't require that he does it, but it does require that he look at it.

If you wanted to do that, I think that you would use the recommendation as it is written here with the additional condition that between now and Council review that Mr. Bush explore making parcel #2 larger in order to be closer to the lot size in Pine Meadow.

Mr. Cronin: Not closer, a minimum of half acre.

Ms. Feeney Roser: The difference is that because you don't know whether or not Mr. Bush is going to end up with two Code conforming lots. By requiring it to be considered, it will alert Council that you would like to see that lot size increased; and then Mr. Bush can consider how much he can increase it and

then Council can make the decision on whether or not that makes sense, and it's in conformity with the neighborhood.

MOTION BY DRESSEL, SECONDED BY BRILL THAT THE PLANNING COMMISSION MAKES THE FOLLOWING RECOMMENDATIONS TO CITY COUNCIL:

- A. THAT CITY COUNCIL APPROVE THE ANNEXATION OF THE .73 ACRES AT 428 PAPER MILL ROAD WITH RS ZONING, AS SHOWN ON THE ATTACHED PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT A, DATED DECEMBER 3, 2013 WITH THE FOLLOWING CONDITIONS:
 - THE APPLICANT AGREES TO A RECORDABLE ANNEXATION AGREEMENT TO BE APPENDED TO THE PROPERTY DEED OF 428 PAPER MILL ROAD WHICH WILL STIPULATE THAT CITY LEAF COLLECTION, SNOW REMOVAL AND REFUSE COLLECTION WILL NOT BE PROVIDED TO 428 PAPER MILL ROAD; AND IF CITY ELECTRIC SERVICE IS PROVIDED IT WILL BE AT THE PROPERTY OWNER'S EXPENSE; AND,
- B. THAT CITY COUNCIL APPROVE THE MINOR SUBDIVISION PLAN AS SHOWN ON THE EAST COAST SURVEY MINOR SUBDIVISION PLAN DATED FEBRUARY 20, 2013, WITH THE SUBDIVISION ADVISORY COMMITTEE CONDITIONS; AND, WITH THE ADDITIONAL CONDITION THAT THE DEVELOPER EXPLORE MOVING THE REAR LOT LINE OF LOT #2 TO CREATE A PARCEL AS CLOSE TO HALF AN ACRE IN SIZE AS POSSIBLE TO CONFORM TO OTHER DEVELOPMENT IN THE AREA, WHILE MEETING ALL RS ZONING REQUIREMENTS.

Mr. Bowman: Is there any discussion?

Mr. Cronin: Regardless of the growth in size of lot #2, it still leaves lot #1 even that much smaller in a sea of RH properties or half acre or greater properties already which includes the two parcels in New Castle County and I think it is somewhat more detrimental to end up with a smaller RS property when in concept they are perfectly fine the way they are and compatible with the rest of the RH zoned neighborhoods because they are already a half acre or larger as they presently are divided into tax parcels.

Mr. Bowman: I don't think there is any free lunch in this one to tell you the truth.

Mr. Cronin: I just wanted to express that point of view.

Mr. Hegedus: It has taken me awhile to get this, I think. So, I would really like to get Mr. Bush to annex it so that he can get sewer and water and get off the septic. It seems to me that the problem with that is that the only way to do that is put it in RS zoning and if we put it in RS zoning then he could simply just subdivision the land because it is RS and move forward. So, I don't know if there is a way to do the annexation without doing both parts for the benefit of the community.

Mr. Bowman: The motion solves that problem and puts it right back, in many respects, where it belongs in the hands of the legislators.

Mr. Hegedus: It is either that or nothing it seems.

VOTE: 5-2

AYE: BOWMAN, BRILL, DRESSEL, HEGEDUS, SILVERMAN

NAY: CRONIN, JOHNSON

MOTION PASSED

3. REVIEW AND CONSIDERATION OF A REZONING, SPECIAL USE PERMITS AND MAJOR SUBDIVISION OF THE 6.77 ACRE SITE ON TERRACE DRIVE JUST OFF OF CLEVELAND AVENUE TO RAZE THE EXISTING BUILDINGS ON THE SITE AND CONSTRUCT 13 NEW THREE-STORY BUILDINGS WITH A TOTAL OF 56 AFFORDABLE HOUSING APARTMENT UNITS. SPECIAL USE PERMITS ARE ALSO REQUESTED FOR AN AFTER SCHOOL CARE/DAYCARE USE IN A RESIDENTIAL ZONE AND FOR COMMERCIAL PARKING IN A RESIDENTIAL ZONE. THE PROPOSAL ALSO CALLS FOR THE VACATION OF TERRACE DRIVE.

Ms. Feeney Roser: First of all let me say that we should note that after the advertising deadline for this agenda, but before the Planning and Development Department report was completed, we found out that the applicant was no longer interested in the special use permit for commercial parking in a residential zone, so while the ad and hence therefore, this agenda has it listed but it is no longer being requested. So, it is one special use permit.

Ms. Feeney Roser summarized her report to the Planning Commission which reads as follows:

“On September 19, 2013, the Planning and Development Department received applications from the Newark Housing Authority and Newark Housing Redevelopment, LLC for the redevelopment of 6.77 acre property located at McKees Lane and Cleveland Avenue, also known as Cleveland Heights. The applicants are requesting development approval to demolish the existing structures on the site and build 13 new, three-story buildings containing a total of 56 apartments, along with other site amenities and improvements, to create an affordable housing project. To accommodate the development, the applicant requests the City vacate Terrace Drive, a City owned and maintained street in favor of a privately owned and maintained access way. In addition to the residential uses proposed, the project includes a 3,500 sq. ft. community center for social activities and community services, including after school and daycare programs, for the residents of the new development and other Newark Housing Authority managed properties in the City. The daycare center requires a special use permit. Finally, the applicants have also applied for a rezoning from the current RS (single family residential) to RM (garden apartments) in order to accommodate the development proposal.

The Planning and Development Department report on the Cleveland Heights project follows:

Property Description and Related Data

1. Location:

North side of E. Cleveland Avenue adjacent to and northwest of the intersection E. Cleveland Avenue and McKees Lane.

2. Size:

6.77 acres, which includes 1.21 acres of public right-of-way (currently Terrace Drive), which the applicants request the City vacate.

3. Existing Land Use:

The site is currently vacant but contains 21 existing buildings with 42 apartments. The site was originally developed in the mid 1960s as an affordable housing project, which was owned and operated by the Newark Housing Authority. The site has been vacant for many years now. Part of the site is also a former City of Newark land fill which has been classified by the State Department of Natural Resources and Environmental Control (DNREC) as a Brownfield.

4. Physical Condition of the Site:

The Cleveland Heights property is a developed site containing 21 residential buildings for a total of 42 apartments. The currently vacant buildings are accessed via City right-of-way on Terrace Drive. The remainder of the property is open grass-covered area, with a small wooded area and sidewalks.

In terms of topography, the entire site slopes from south to north towards the White Clay Creek.

Regarding soils, according to the United States Department of Agriculture's Natural Resources Conservation Service, the Cleveland Heights property consists of Urban Land (Up). This soil is a disturbed soil with no development limitations. A portion of the site, specifically the northeast portion adjacent to McKees Park, has been determined to contain contaminated soils. A proposed plan of remedial action has been filed with DNREC, and the developer will be required to mitigate the effects of redevelopment on the site in strict conformance with State Brownfield regulations.

5. Planning and Zoning:

The site is currently zoned RS. RS is a single family residential zoning which permits the following uses:

RS are single family residential zones that permit the following:

- P. One-family detached dwelling.
- Q. The taking of non-transient boarders or roomers in a one-family dwelling by an owner-occupant family resident on the premises, provided there is no display or advertising on the premises in connection with such use and provided there are not more than three boarders or roomers in any one-family dwelling. An owner-occupant taking in more than two boarders, however, must apply for and receive a rental permit.
- R. The taking of nontransient boarders or roomers in a one-family dwelling by a non-owner occupant family resident on the premises, is not a use a matter of right, but is a conditional use, provided there is no display or advertising on the premises in connection with such use, provided there are not more than two boarders or roomers in any one-family dwelling, with special requirements including the requirement for rental permits.
- S. Churches or other places of worship, with special requirements.
- T. Public and Private Schools.
- U. Municipal Parks and Playgrounds; non-profit community centers for recreational purposes.
- V. Municipal utilities; street rights-of-way.
- W. Public and private swimming pools.
- X. Temporary construction and real estate buildings.
- Y. Private garages as accessory uses.
- Z. Other accessory uses and accessory buildings, excluding semi-trailers and similar vehicles for storage of property.
- AA. Cluster development subject to Site Plan Approval as provided in Article XXVII.
- BB. Public transportation bus stops.
- CC. Bed and breakfast, with special requirements
- DD. Student Homes, with special requirements

RS zoning also permits, with a Council-granted special use permit, the following:

- I. Police, fire stations, library, museum, and art gallery.
- J. Country club, golf course, with special requirements.
- K. Professional offices in residential dwellings for the resident-owner of single-family dwellings, with special requirements.
- L. Customary home occupations, with special requirements.
- M. Electric and gas substations, with special requirements.
- N. Day care centers, kindergartens, preschools, with special requirements.
- O. Public transportation bus or transit shelters.
- P. Swimming club, private (nonprofit).

The use of the site as a 42 unit apartment complex was an existing nonconforming use. The applicant seeks to rezone the property to more closely align with its previous use and the potential redevelopment by rezoning it to RM. RM is garden apartment zoning which allows the following uses.

- A. Garden apartments, subject to special requirements.
- B. One family, semidetached dwelling.
- C. Boarding house, rooming house, lodging house, but excluding all forms of fraternities and/or sororities, provided that: The minimum lot area for each eight, or remainder over the multiple of eight residents, shall be the same as the minimum lot area requirements for each dwelling unit in this district.
- D. Nursing home, rest home or home for the aged; subject to special requirements.
- E. Accessory uses and accessory buildings customarily incidental to the uses permitted in this section and located on the same lot, including a private garage, excluding semi-trailers and similar vehicles for storage of property.
- F. Cluster or neo-traditional types of developments, included uses that many not be permitted in this district, as provided in Article XXVII, Site Plan Approval.
- G. One-family detached dwelling.
- H. The taking of nontransient boarders or roomers in a one-family dwelling by a family resident on the premises, is not a use as a matter of right, but is a conditional use subject to special requirements, including the requirement for a rental permit, and provided there are not more than three boarders or roomers in any one-family dwelling.
- I. Church or other place of worship, seminary or convent, parish house, or Sunday school building, and provided, however, that no lot less than 12,500 square feet shall be used for such purposes.
- J. Public and private elementary, junior, and senior high schools.
- K. Municipal park, playground, athletic field, recreation building, and community center operated on a noncommercial basis for recreation purposes.
- L. Municipal utilities, street rights of way, treatment plant.
- M. Temporary building, temporary real estate or construction office.
- N. Utility transmission and distribution lines.
- O. Public transportation bus or transit stops for the loading and unloading of passengers.
- P. One-family town or row house subject to the requirements of Sections 32-13(a)(1) and 32-13(c)(1).
- Q. Student Homes, with special requirements

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

- A. Conversion of a one-family dwelling into dwelling units for two or more families, if such dwelling is structurally sound but too large to be in demand for one-family use, and that conversion for the use of two

or more families would not impair the character of the neighborhood, subject to special requirements.

- B. Substation, electric, and gas facilities, provided that no storage of materials and trucks is allowed. No repair facilities are allowed except within completely enclosed buildings.
- C. Physicians' and dentists' offices, subject to special requirements.
- D. If approved by the council, property in a residential zone adjacent to an area zoned "business" or "industrial" may be used for parking space as an accessory use to a business use, whether said business use be a nonconforming use in the residential zone or a business use in said adjacent area zoned "business" or "industrial."
- E. Police and fire stations, library, museum, and art gallery.
- F. Country club, regulation golf course, including customary accessory uses subject to special requirements.
- G. Professional offices in residential dwellings for the resident-owner of single-family dwellings permitted subject to special requirements.
- H. Customary Home occupations with special requirements.
- I. Public Transit Facilities.
- J. Private (nonprofit) swimming clubs.
- K. Day Care Centers with special requirements.

Please note that apartment uses in RM district require lots of a minimum of one acre in size.

Regarding RM zoning area requirements, the Cleveland Heights plan meets all applicable Zoning Code requirements. In addition, regarding RM requirements, the proposal will require a special use permit for the daycare center in a residential zone.

Regarding nearby properties, the Cleveland Heights project is adjacent on the east to McKees Lane. On the other side of McKees Lane to the east is the Porter Chevrolet Sales and Service Center. Directly adjacent to the west, is the Nissan Sales and Service Center. Both of these properties are zoned BC. Across Cleveland Avenue to the south of the site are the BC zoned Enterprise car rentals and Porter Hyundai. To the northeast of the site is McKees Park, which is zoned parkland (PL) and floodplain (OFD).

Regarding comprehensive planning, the Newark Comprehensive Development Plan IV calls for residential single family medium density uses and commercial auto oriented uses at the site. Residential single family medium density uses are described as 4 to 10 dwelling units per acre. The proposed Cleveland Heights redevelopment project calls for 8.27 dwelling units per acre. This density not only meets the RM zoning maximum of 16 dwelling units per acre, but it is also far less dense than most of the residential rental unit development that has been approved in the recent past.

Status of the Site Design

Please note that at this stage in the Newark subdivision review process, applicants need only show the general site design and the architectural character of the project. For the site design, specific details taking into account topographic and other natural features must be included in the construction improvement plan. For architectural character, the applicants must submit at the subdivision plan stage of the process color scale elevations of all proposed buildings, showing the kind, color and texture of materials to be used, proposed signs, lighting, related exterior features, and existing utility lines. If the construction improvement plan, which is reviewed and approved by the operating departments, does not conform substantially to the approved subdivision site and architectural plan, the construction improvement plan is referred back to City Council for its further review and reapproval. That is, initial Council subdivision plan approval means that the

general site concept and more specific architectural design has received City endorsement, with the developer left with some limited flexibility in working out the details of the plan -- within Code determined and approved subdivision set parameters -- to respond in a limited way to changing needs and circumstances. This does not mean, however, that the Planning Commission cannot make site design or related recommendations that City Council could include in the subdivision agreement for the project.

Be that as it may, as you can see from the Cleveland Heights rezoning, major subdivision and special use permit plans, supporting letter and applicant's color elevation drawings, the proposal calls for razing the 21 existing buildings containing 42 apartments at the site. In their place, the applicant proposes to construct 13 new, three-story buildings for a total of 56 apartment units along with other site amenities and improvements to create an updated affordable housing project. The project also includes a 3,500 sq. ft. community center in the southeastern corner of the site to serve social activities and community service needs for the community, as well as after school and daycare programs for the residents of the new development and other Newark Housing Authority properties. The use requires a special use permit. Please see the applicant's attached narrative concerning the special use permit. The plan also calls for the vacation of Terrace Drive, a City street, and its replacement with a privately owned and maintained access way. In addition, there are 148 parking spaces on the plan, which exceeds Code by 11 spaces.

Regarding the proposed architecture and site design, please consult the applicant's submitted elevation drawings and supporting letter for additional information. To evaluate the proposed architectural design, the Planning Commission should consult the design criteria in Municipal Code Chapter 27, Subdivision and Development Regulations, Appendix XIII(d). The applicants did not meet with the Downtown Newark Partnership's Design Committee to review the architectural design because the property is located beyond the limits of downtown Newark.

Special Use Permit

Zoning Code Section 32-78, Special Use Permits, stipulates that Council may issue a special use permit provided the applicants demonstrate that the proposed use will not:

- "A. Affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;
- B. Be detrimental to the public welfare or injurious to property or improvements in the neighborhood; and
- C. Be in conflict with the purposes of the comprehensive development plan of the city."

Please note as indicated above, the applicants will need a special use permit for the proposed daycare center in a residentially zoned community.

Fiscal Impact

The Planning and Development Department has evaluated the impact of the Cleveland Heights redevelopment project on Newark's municipal finances. The estimates are based on the Department's Fiscal Impact Model. The Model projects the Cleveland Heights development plan's fiscal impact; that is, the total annual municipal revenues less the cost of municipal services provided. In this case, because the project is exempt from real estate taxes and because the roadway to service the development and the open space provided will be privately maintained; and because trash pick-up will be private, the Model projects almost no net impact for the development. In other words, the revenues generated will cover the cost of

City services provided to the development, but do not result in a positive impact of note.

Traffic and Transportation

In light of the size, scale and location of the Cleveland Heights project, we have asked DelDOT to review the project. In response, DelDOT indicates:

- Depending on the use of the community center, the plan may meet the warrants for a Traffic Impact Study (TIS) in that the proposed plan's peak trip generation (combined residential and community center use) the development may meet volume based warrants requiring a Traffic Impact Study of 400 trips per day and 50 trips per peak hour. Therefore, if the proposed daycare facility and the community serves significant numbers of non-resident children, the warrants would be met. DelDOT regulations allow the payment of area wide Study fee of \$10 per daily trip in lieu of a TIS for development generation of less than 2,000 trips per day and less than 200 peak hour trips. Therefore, in any likely scenario, DelDOT could accept the fee unless the City found it more appropriate to require at TIS. The recommendation, therefore, is that the City closely define, through its special use permit approval process, what population the after school daycare center would serve and have the developer's engineer adjust their trip generation calculations on that basis. If a TIS is warranted based on volume, DelDOT will be willing to accept the area wide study fee.
- The plan should show whether the streets shown on the map are maintained by the State of Delaware or the City of Newark.
- E. Cleveland Avenue is classified as a minor arterial and requires 40 ft. of right-of-way from the center line. If the current right-of-way width is less than required, a dedication should be shown on the record plan.
- A 15 ft. permanent easement along E. Cleveland Avenue should be shown on the plan.
- The E. Cleveland Avenue sidewalk along the frontage of Cleveland Heights should be made ADA compliant and five feet wide to meet current standards.
- The developer will need to improve the intersection of McKees Lane and E. Cleveland Avenue with a sidewalk, ADA compliant curb ramps and signage to meet Delaware Manual on Uniform Traffic Code Devices (DE MUTCD).

Any required revisions to the plan based on the above DelDOT comments should be made prior to Council review.

Subdivision Advisory Committee

The City Subdivision Advisory Committee – consisting of the Management, Planning and Operating Departments – has reviewed the proposed development plan for the site and has the comments below. Where appropriate, the subdivision plan should be revised prior to its review by City Council. The Subdivision Advisory Committee comments are as follows:

Electric

1. Electric Department indicates that the developer must pay \$44,000 towards the cost of materials and meters for the electric distribution onsite.
2. The Electric Department indicates that the developer must incorporate underground electrical distribution on the drawing to ensure there are no conflicts. The developer should contact the Electric Department and

coordinate the preparation of the distribution plans and provide an electronic copy of the plans.

3. The Electric Department indicates the developer will be required to pay the costs associated with repairing remote radio reading equipment if any completed building construction interferes with the smart meter system. This comment was echoed by the Public Works and Water Resources Department. (Please see Plan Note #38).

Planning and Development

1. The Department notes that the proposed project meets the Comprehensive Development Plan recommended uses for the site, and the rezoning is appropriate considering the proposed and previous uses of the property. Further, the Department notes that the redevelopment of the long abandoned site will be a welcomed improvement in the area.
2. The Planning and Development Department notes that the applicant would like to change the name of the development, and recently submitted the name "White Clay Run" for 911 review. Upon review, the new name was denied for 911 addressing because it is too similar to other names in the area. Therefore, should the developer wish to submit another development name for consideration, it must be approved for 911 addressing prior to Council review so the plans reflect the new name – or – the applicant may follow the recently adopted process to submit a name change post Council review.
3. The Planning and Development Department notes that the engineer's response to questions concerning the utilization of the daycare center indicates that the after school/daycare facility will serve almost exclusively the residents of the Cleveland Heights development, but will also allow some off-site Newark Housing Authority residents to use the community center for after school care programs for their children. Should the daycare center be restricted to residents of Newark Housing Authority sites, the Department does not feel that a transportation impact study will be necessary based on DelDOT's calculations for the center and the restricted use. Instead, the Department believes a contribution to DelDOT's area wide study fee is appropriate, and according to Plan Note #32, the fee has already been paid to DelDOT. In addition, in this regard, the special use permit should limit the daycare facility to NHA residents only and to a total number of clients. The Commission may want to discuss this restriction with the applicant at the meeting.
4. The Department, while recognizing that the units requested are proposed as affordable housing units and will be authorized through the Newark Housing Authority, had previously expressed concerns regarding the number of residents who might occupy these units. In response, the developer has indicated that the policy of the Ingerman Management Company, which is the managing company, is to allow a maximum of two persons per bedroom in accordance with the Fair Housing Policy and the US Department of Housing and Urban Development. These requirements also do not permit owner or management to rent households that are entirely comprised of fulltime students. The only exceptions are:
 - Households which contain two students who are married;
 - Households with a single parent who is a fulltime student that is not claimed as a dependent of anyone else;
 - Households with a fulltime student who was previously within foster care within the past five years; or,
 - Households with a fulltime student who is receiving aide under temporary assistance for needy families or federal/state job training programs.

While these requirements are tied to the funding for the redevelopment, the Department believes that the developer should voluntarily deed restrict the property as noted above to insure future occupancy restrictions remain in place.

5. The Planning and Development Department notes a resolution of Council will be necessary to vacate Terrace Drive.
6. The Department notes that Data Column #9 will need to be corrected to reflect the requested RM zoning. The bulk area requirements listed are correct, but the heading is incorrect (BB).
7. The Department notes that Data Column #10 will need to be revised to reflect the actual number of parking spaces on the plan. The note indicates that there are 157 parking spaces and there are 148. This amount still exceeds the Code requirements based on the information provided (52 apartments of three bedrooms or less; 4 apartments of more than three bedrooms; and a 3,500 square foot community center).

Code Enforcement

1. The Code Enforcement Division of the Planning and Development Department indicates that all buildings shall be designed and constructed in accordance with the applicable ICC Codes with amendments in place at the time of construction. At this point, the City of Newark is using the 2012 IBC, 2012 IFC and the current Delaware State Fire Regulations. Note #30 on the plan covers this aspect.
2. The Division also notes that excavated contaminated material has to be properly disposed of off-site. The City acknowledges that contaminated soils and materials will be managed in accordance with a DNREC approved plan of remedial action.
3. The Division indicates an additional fire hydrant will be necessary between the daycare play area and unit 5A. Exact placement of the hydrant will be determined during the CIP process.

Police

1. The Police Department indicates that it has concerns regarding residential uses at this site, including a proposed daycare center, as residents will have to cross Cleveland Avenue to reach all amenities. Therefore, crosswalks and pedestrian safety improvements are strongly encouraged for the site. As these improvements will be managed through DelDOT, the Department recommends that the Developer work with them to ensure the improvements are planned for and installed. Verification will be required through the CIP process.

Parks and Recreation

1. The Parks and Recreation Department indicates that the project must provide at least 17% of the total acres for designated parkland/open space. The Department will require that the open space be privately owned and maintained.
2. The Parks and Recreation Department further indicates that the open space acreage must be suitable for use as a playground, play field or other passive or active recreation. In this regard, the Department notes that 50% of the designated area must not exceed a 5% grade and the remaining area must not exceed a 3% grade. All open space acreage must drain adequately. These requirements will be addressed through the CIP process.

3. The Parks and Recreation Department advises the developer must comply with Chapter 27 – Subdivision, Appendix IV, Parks, Playground and Recreational requirements and Chapter 32 – Zoning, Article XXV, for landscaping area requirements. The Department will provide more comments during the CIP process.

Public Works and Water Resources

1. The Department notes that storm and sanitary pipes in the landfill area are conduit, which DNREC would not allow on the City parcel adjacent to the site. DNREC approval for these pipes will be required.
2. The plan must be revised to show the drainage easement. The storm drain lies on private property and at least a 10 foot drainage easement should be shown on the private property side of the right-of-way.
3. The sidewalk at the entranceway from McKees Lane is not shown. The plan needs to be revised to show the sidewalk along with removal of curb returns/at the handicapped ramps.
4. The Department notes that the developer acknowledges that the site was previously used for a wastewater treatment plant, as well as a dump. The developer also acknowledges that they are aware of this condition and the remediation plan will be monitored by DNREC. Soils and waste materials must be handled according to DNREC's direction.
5. Prior to City Council review, the City will have to receive DNREC's approval that the stormwater approach proposed is acceptable to DNREC. While final approval by DNREC can be accomplished during the CIP process, the City will require a comfort level that stormwater design and approach is acceptable to the State before allowing the project to go to City Council for subdivision approval.
6. Regarding water resources, the Department has the following comments:
 - Due to the site being a Brownfield, the waterlines should be ductile iron. In the event that waterlines are installed using PVC, the City will require a meter pit be installed at the right-of-way line.
 - Projects that generate 2,000 gpd (gallons per day) of sewage will require a DNREC "Construction of Wastewater Collection and Conveyance Systems" permit. The permit will need to be submitted prior to the CIP approval.

Recommendation

Because the project conforms to the land use guidelines of the Comprehensive Development Plan IV, and because the rezoning, subdivision and special use permit for a daycare facility, with the Subdivision Advisory Committee conditions, will not have a negative impact on adjacent and nearby properties, the Planning and Development Department suggests **that the Planning Commission take the following actions:**

- A. **Recommend that City Council approve the rezoning of the 6.77 acres of property currently zoned RS (single family residential) to RM (garden apartments) as shown on the attached Planning and Development Department Exhibit A, dated December 3, 2013;**
- B. **Recommend the vacation of Terrace Drive to be replaced by a privately owned and maintained access way for the Cleveland Heights development;**

- C. Recommend that City Council approve the special use permit for the daycare center;**
- D. Recommend that City Council approve the Cleveland Heights major subdivision as shown on the landmark Engineering plan, dated September 19, 2013 with revisions through November 22, 2013, including all Subdivision Advisory Committee recommendations.”**

[Secretary's Note: The developer, Planning Commissioners and members of the community refer to visuals brought by the applicant for their presentation to the Planning Commission].

The developer and their team is here and I will be happy to answer any questions you may have for me.

Mr. Bowman: Are there any initial questions for Maureen from the Commission?

Mr. Hegedus: I was looking at your report, page 8, item 4 that talks about the requirements to not have fulltime students in there with certain exceptions and then, you were recommending that the developer should voluntarily deed restrict the property as noted above to ensure that those restrictions remain in place. Having dealt with federal law in a couple of jobs I have had, federal law tends to change over time. So, then we get law that might be more restrictive or less restrictive and not exactly match the deed restrictions. Is it easy to change deed restrictions and what other options did you consider besides saying to put that language in the deed restriction?

Ms. Feeney Roser: Our main concern is the maximum number of individuals who can reside there because of RM zoning, if the Housing Authority should zone and subdivide it now and decide 10 years from now they don't want to operate it anymore and it becomes available for regular sale, there will be no restriction on the number of individuals that can live there. That was my main concern. I think the student issue came up because that was offered from the developer – the engineer's response to the question about how many people can live there. I am open to what the Commission thinks is fair, or you may want to wait to hear what the developer has to say to talk about those restrictions.

Mr. Cronin: I think we are looking at this because the Housing Authority presently owns the land and we are doing our Comp Plan review and so forth. I think in a more perfect world if they didn't already own it, we wouldn't say this is a very good location for this sort of use. It probably would be BC and hopefully, the Housing Authority would have a more appropriate site elsewhere that is not on a busy Cleveland Avenue and so forth.

Ms. Feeney Roser: I think they will address that in their comments.

Mr. Cronin: It seems to me we are trying to make a silk purse out of a sow's ear because that is what we have to work with.

Ms. Feeney Roser: Yes, although the current Comp Plan does say residential uses and, basically, that is because of the previous use.

Mr. Cronin: Thank you.

[Secretary's Note: The applicant, Planning Commission and residents refer to a visual brought to the Planning Commission for the applicant's presentation].

Mr. William Rhodunda: With the firm of Rhodunda and Williams. It is our pleasure to be here this evening on behalf of the Newark Housing Authority. We do have a team here tonight. We are not going to have a lengthy presentation but certainly we want to answer any questions that you have. With me this evening to answer any questions you may have is Marene Jordan, Executive Director of the Newark

Housing Authority; Joseph Charma from Landmark Science and Engineering who designed the plan; we also have two gentlemen here from Ingerman Company. After a very competitive process, Ingerman Company was selected to manage the construction and upon the completion, manage the project going forward. They have an outstanding and extensive history in managing this type of housing and that is why they were selected. I would like them, after Mr. Charma speaks about site issues, to just briefly address you and explain how they manage these types of projects because they are highly successful and we believe this project is going to be an absolutely incredible improvement, certainly over what is there today, but an incredible project for the City of Newark – something to be proud of – and we expect it to be award winning.

One question that came up was the location. This land that is owned by the Housing Authority. I have actually worked with the Housing Authority over the last couple of years as all options were thoroughly vetted as to how we can best accommodate the need for affordable housing in the City of Newark. In light of the development of student housing, this has become a more complex and challenging problem. I can tell you that in my experience we went and we looked at whether we could sell the property. We looked at that. We had some bidders, but their price was so low there was no possible way to buy 6.7 acres in the City of Newark to develop the type of units that we like to develop.

The current project is 42 units. This project actually has 56 units. So, we are able to increase the number of units of affordable housing. The demand far outpaces the supply but at least we can add somewhat to the stock of housing in the City of Newark. In addition to having 14 additional units, we also do have a community center which will largely be for the benefit of this particular community. We do need a special use permit for that. There could be some very limited use by other Housing Authority residents but it is largely for this community.

The property, obviously, has been the subject of much discussion. While Council has not heard this matter, Council certainly has been at the ear of the Housing Authority to determine what could be done to meet the requirements mandated by State law for the Housing Authority to provide affordable housing. In fact, in somewhat of reverse order on October 22nd City Council and the Mayor unanimously passed a resolution to support the redevelopment of affordable housing at the Cleveland Heights location. I can tell you, based on all of the efforts of the Housing Authority – and we have several Board members here – there was an incredible, thorough and diligent process to see what is the best alternative, what is the best location in light of all the variables and this was, by far, the best option to provide the housing that was so desperately needed in the City of Newark. Is it absolutely perfect? Not really, but is it very good? The answer is yes. In fact as part of this project we had to go to the Delaware Housing Authority because they are providing some funding for this project and all the issues regarding location, amenities were very carefully vetted in that process. And, the project was approved by the Housing Authority at the highest level which enabled us to obtain significant funding for the project. We do feel like this is by far the best alternative for the land.

What I would like to do now is have Joe Charma step up and highlight for you the improvements of the property because it would not be appropriate for me to step aside and not have us not present, at least present on the record, the significant amount of improvements that will take place at this location with the development of this project.

Mr. Joe Charma: Landmark Science and Engineering. I would like to touch briefly on some of the points that are in Maureen's detailed report.

What you have before you right now is a rendering of the existing site. The site is zoned RS and it contains 6.77 acres of land including 1.21 acres at Terrace Drive. The original 21 buildings consisting of 42 dwelling units were built in the mid 1960s as part of the City's effort to create affordable housing for low and moderate income families. Part of this site, as was mentioned earlier, is occupied by the

City's former municipal landfill, but as you must recall, that the site had been occupied with residential uses until 2008.

Again, under the DNREC classification this site is classified as a Brownfield and will be mitigated and restored under strict supervision of the State Department of Natural Resources and environmental control, Site Investigation and Restoration Section. In fact, on November 21, 2013 DNREC issued a letter to the Newark Housing Authority noting preliminary approval of the Brownfield Investigation Report and Remedial Action Plan.

Now I would like to touch briefly on the proposed site. Again, what you have before you is a rendering of the same plan you have in the packet but it is rendered up to highlight the open areas of the site and openness of the site. The proposed rezoning to RM and vacation of the public right-of-way will make way for 13 new three-story garden and townhouse style apartment units totaling 56 dwelling units and a 3,500 sq. ft. community center. The proposed site density is 2.78 dwelling units per acre or about 52% of what is allowed under the RM zoning at 16 dwelling units per acre.

The new community center will be a hub of activity featuring a fitness center, multi-purpose community room and onsite management suite. The center will also serve as a convenient after school and daycare facility for residents' use.

The redevelopment of this site will feature a 2,500 sq. ft. fenced outdoor play area for children age approximately 4 – 7 expected to patronize the daycare center. And that can be seen right in this location.

Slightly more than one acre of open space – about 14.8% of the site area – will also provide passive and active recreation opportunities for the residents. Amenities such as a gazebo and outdoor grilling area with picnic tables are planned to be installed within this open area.

All new buildings will be protected by fully automatic fire protection and sprinkler systems. All new buildings will meet many of the LEED and Energy Star construction standards, and will exceed the City's minimums.

The site will feature completely replaced utility infrastructure including telephone, electric, water, gas, storm drainage and stormwater management systems. The stormwater management systems will utilize green technology best management practices as much as practicable by way of disconnection and conveyance via vegetative swales. It was mentioned earlier that we did already meet with the Department of Natural Resources Stormwater Management Section and the Public Works Department. We met with them on December 17th to talk about this site and work out a plan of stormwater action. That one provision that was in the Planning Department report has been already addressed.

The site will meet ADA accessibility requirements whereas all sidewalks will be sloped at a slope no greater than one foot in 20 feet or 5%.

Abundant conveniently located onsite parking exceeds the 123 space Code minimum by providing 148 spaces. I might note that 123 of the spaces are designated for residents with about 25 spaces remain for guest parking and other uses. Handicapped spaces are a part of the number and are distributed throughout the site.

Bicycle racks are also distributed throughout the site and located near each building to encourage alternative means of transportation – short trips to downtown and nearby College Square Shopping Center.

This concludes my description of the site. We do have also architectural rendering of what the buildings are proposed to look like. They are very attractive.

They look more like large single family homes than your traditional garden style apartments.

Thank you.

Mr. Rhodunda: As I mentioned, we have two representatives from the Ingerman Company here – David Holden and Kevin Dowd. David, please make a few comments, if you will, about the project.

Mr. David Holden: I'm with the Ingerman Group. My address is 1701 Greenhill Avenue, Wilmington, Delaware.

I am going to give you a brief background on the Ingerman Group and then talk about our proposal for Cleveland Heights. Ingerman has been operating for over 25 years and we have done over 80 transactions similar to what we are proposing for Cleveland Heights. In our projects, we serve as the developer of the project, the builder or general contractor and also as the property manager. Although we are based in Cherry Hill, we operate in four states; Delaware, Maryland, Pennsylvania and New Jersey. We recently, in the last year or so, completed projects in Newport, Delaware; Elkton, Maryland; Northeast, Maryland; we are breaking ground in Cecilton, Maryland, just west of Middletown.

Our communities provide housing for families and seniors. We do that in a combination with a variety of services and amenities to make it a rich living experience similar to the after school program that we are proposing for Cleveland Heights. Our construction company has been a part of us for about 15 years. We are what I would call a true general contractor. We don't carry any trades so we reach out to local subs and suppliers and try to spend as much of the construction contract in the community as possible.

Our management company currently manages over 5,000 units that are similar to what we are proposing for Cleveland Heights. Cleveland Heights will have two fulltime staff; a site manager and a maintenance technician, and it will be backed up by a 24 hours, 7 day a week call service. It also includes regional staff that are also available as a backup.

We are really excited about the opportunity to redevelop Cleveland Heights. We were selected by the Newark Housing Authority in 2012 after a competitive process. After we were selected, we put together the design that you see and submitted a proposal to the Delaware State Housing Authority in April of last year. We were selected through a statewide competition and basically obtained about \$12 million in federal tax credits, which we are going to use and basically sell to Capital One Bank and admit them as a partner in the project. The Tax Credit Program, which is administered by the Delaware State Housing Authority, is what triggers the housing occupancy standards that we have talked about. So, we have federal fair housing requirements as well as State of Delaware requirements regarding occupancy. I think, as you mentioned, we volunteered occupancy standards. Those are the same standards we follow at all of our Delaware properties and they are dictated by the state and federal guidelines. They are potentially subject to change but they have been pretty consistent for the last 25 years.

As far as the redevelopment, one thing we like about project is they are small buildings. Most of the buildings are only four units, so all the units are end units. So, they have windows on three sides. As Joe mentioned, they will look like a big house – a 3,500 to 4,500 sq. ft. house. All the units have their own private entrance. There are no corridors or hallways. All the units have private outdoor space like either a patio or a balcony. We use sustainable materials. The exteriors will be brick and siding. In the interiors, we will use recycled content carpet, low VOC paints, Energy Star appliances, Energy Star HVAC and Energy Star windows. Our goal is to drive down the energy costs for the residents as low as possible. The site plan also includes opportunities for passive recreation as well as the tot lot

area that is fenced in for the younger children. One thing that I don't know if it got mentioned, as part of our project we are improving the bus station at Capitol Trail/Kirkwood Highway and Cleveland Avenue. We will be adding a shelter and a bench there. I think now it is just a pad. So, that will benefit not only our residents but it will give others in the community a place to wait for the bus.

Our hope would be to start construction this spring. It will be about a year to build the buildings. We build all the buildings at once and then will open the property and start to move families and seniors in the spring of 2015.

Thank you. We will be happy to answer any questions you may have.

Mr. Bowman: Are there any questions for the applicant by members of the Commission?

Ms. Dressel: I have one question on the plan that you showed us, Joe. It looks like it is a little bit different than what we have in front of us. When you come on the curve to the back section that juts out there, that wasn't on our plan.

Mr. Charma: What we have been doing subsequent to the original filing of the plan is working on things such as trash location and that is what that is. Your plan shows the trash right here at this location of the curve. In discussions with the landscape architect, the project team, the owner and the developer, it was decided to relocate this and get it away from this area here because we want to use this more as an active area and we didn't want the trash container right next to the gazebo and the grilling area. That didn't make any sense, so we tried to move it in a location where it is still easy for a pickup. You may notice that there are minor changes to this plan. We are tweaking it as we move forward.

Ms. Dressel: The buildings look very nice. Much improved over what is there today.

Mr. Charma: The architect is not here – I will speak for them – they have done an excellent job on the building.

Mr. Silverman: Jim, I would like to proceed from the macro to the micro. Who are the players here? What role does the Housing Authority play? Are they simply a conduit and there are private investors who are building this complex? The management company, do they have ownership or are they simply a management company? And, who selects the clients? Will it be our local housing authority?

Mr. Holden: As far as the players, the Housing Authority will maintain ownership of the property. The entity, Newark Housing Redevelopment, LLC, will lease the property from them and will build the improvements. The Housing Authority has the right to buy the improvements from the entity at the end of 15 years, which is the minimum tax credit compliance period. At that time, the other entities – Capital One, Financial and Ingerman – would basically leave and the Housing Authority would step in. Ingerman Management Company is an affiliate of Ingerman which is also part of the ownership entity. So, as you saw, we are using a limited liability company so Ingerman will be the managing member of that limited liability company. Capital One Bank will be a member. As far as screening, all the applicants will come through the Housing Authority's waiting list, but they will also be subject to our management company's screening which follows those same housing standards as far as also using criminal checks and credit checks as well.

Mr. Silverman: So, there is a direct link to the people who are living in our community and accessibility.

Mr. Holden: If someone, for instance, by example, is interested in living at Cleveland Heights they would contact the Housing Authority and the Housing Authority would do the intake and refer them to us.

Mr. Silverman: With respect to maintenance, will the maintenance corporation do all site maintenance – grass mowing, snow removal as well as building maintenance and the Housing Authority is essentially out of that business.

When the former occupants of the site had their school aged children dropped off, the school bus stopped on Cleveland Avenue pretty close to the intersection of Capital Trail and that is a nightmare from a visual and driver point of view. Is the parking lot and parking area large enough for a school bus to enter this site, make a loop and have a drop-off site, getting it off of Capital Trail or Cleveland Avenue?

Mr. Charma: The short answer is yes. We can accommodate that size vehicle like a 30 or a 40 foot single unit vehicle like a bus or a large truck.

Mr. Silverman: I looked at the landscape plan and it is extremely detailed to the point of, I'm not sure whether this site is completely fenced. Is it, Mr. Charma?

Mr. Charma: Portions of the site are fenced by existing fences along the westerly side and there is fence on the northerly which abuts the City of Newark property – the former McKees Park. As part of this plan we will erect some new fence. There is going to be some more ornamental, decorative anodized aluminum fence probably along Cleveland Avenue to compliment the street trees that are up there. We also feel that it is important for the site to be secure so I've talked to the developer and the Housing Authority. They want the site to be secure, so there will be fence. It may not be very well detailed on these plans, but it will be detailed on the Construction Improvement Plans.

Mr. Silverman: I was thinking security from the point of view of people drifting into the site as well as the children on the site with the phrase “attractive nuisances” of the creek in the back and the activity of commercial uses around them, as kind of protecting the area. Also, in one of my former lives in working with the State Department of Transportation and their requirements for pedestrian crossings, the Authority needs to be alerted to the fragmentation of decision making within DeIDOT, Their decision making is not timely and I would suggest – and Mr. Charma knows some of the details of what I am talking about – that the entire issue of pedestrian crossing and who is responsible for it be ironed out tomorrow because you will get a definite maybe when you are ready to open your doors two years from now and you will get surprised by bills exceeding \$30, 40, 50,000 that are essentially tribute that you will have to put up with no commitment to do the work that DeIDOT says has to be done. It is easy for them to spend other people's money. The intersection of Capital Trail and Cleveland Avenue is maxed out from the point of view of existing right-of-way in which to work. One of the things I read in the report that has to be done is some of the sidewalks, and I believe that is along Cleveland Avenue, have to be widened to five feet to meet handicap requirements. The existing sidewalks don't meet handicap requirements that are around there. So, be careful on DeIDOT creep as far as you being the last people into the neighborhood. And, you, I mean the financial interest of the Housing Authority having to pick up the cost for what has not been done by the State for an extremely long period of time. That is a point of interest, here.

I like the project. I like the design of the project. I shared a concern of some of my colleagues that given a perfect world this project could be located somewhere else, but I think the considerations that are being reflected here with the grouping, the relatively small square footage of each housing unit, the access to the apartment units within each housing unit, and even the variety of units all lend itself to a more self-contained community. And, I hope it develops in that way. I am glad to see that the business interests that are reflected in this have shared long-term responsibility in it.

Mr. Charma: Thank you, Mr. Silverman. And, your point is well-taken about the DeIDOT issues that you and I shared not too long ago with another project, but we have plans submitted and we have gone through a couple rounds of comments

already and we will be very careful to be sure that we are leaving no stone unturned.

Mr. Silverman: My recommendation would be that a commitment on behalf of the organization to a pedestrian crossing at McKees Lane.

Mr. Charma: We could investigate that.

Mr. Silverman: Forget about trying to cross 38,000 automobile trips a day by the overpass.

Mr. Charma: I just might note that DelDOT recently completed at Winner Blvd. pedestrian signals there and it is tied to the existing traffic signals and new crosswalks are in use there. That is about 600 feet west of us. So, there are opportunities there. Cleveland Avenue, no doubt, is a busy road. We will investigate that and do some due diligence.

Mr. Bowman: Anyone else from the Commission before we open it to public comments.

Mr. Hegedus: McKees Lane itself, nothing goes on there, right? It was just a little turn-in for this place that hasn't been used since 2008. If you look at Google Earth, there are just lots of cars parked.

Ms. Feeney Roser: Those are from the car dealership.

Mr. Charma: We hope that stops. Matter of fact, in some correspondence we sent to the City, we recommended that the Police Department start policing McKees Lane. I'm sure the business owners won't be happy there.

Mr. Hegedus: Are there any improvements needed in McKees Lane itself in terms of sidewalks widening, anything like that because now there will be traffic going further up the road than has been before.

Mr. Charma: Yes, on our side of the site we are going to install new curb and sidewalk all the way down meeting current ADA with standards. At the intersection we are doing new handicap ramps meeting today's Code with a new crosswalk.

Mr. Hegedus: I wanted to follow-up with another question on the recommendation around the deed restriction, and I had asked Maureen before and she said the main concern was the max number of people in the units; and, then the parroting of the federal words into the deed restriction. In any of the other properties that you manage, do you have a deed restriction that matches the federal language? And, along with that, what other options are there to alleviate the concern?

Mr. Holden: No, we don't have local deed restrictions because usually the fair housing tends to trump local requirements. The other thing, I think, is a town might define senior as 55 and over and the federal definition is 62 so, we are bound by the federal.

Mr. Hegedus: My concern is that if you put this in the deed restriction and the federal decides that 62 is not the right age any more, now you have conflict.

Mr. Holden: The goal of the deed restriction, if I could ask, is regarding the number of residents per bedroom?

Ms. Feeney Roser: The concern really is, and you may address this because I don't know how the deal works out, but 15 years from now you are gone and the Housing Authority decides they don't want to manage the property anymore and they decide to sell it to another developer, and there is no restriction on the number of unrelated individuals that can reside there, we would have to calculate the

number of tenants per unit by the BOCA Code or the ICC Codes, which are more lenient than we might want for the location.

Mr. Holden: We will have a restrictive covenant with the Delaware State Housing Authority that I think will act like a deed restriction that will require that the property be maintained as affordable housing for 30 years. So, that will be in place and that will continue to reflect their housing standards.

Ms. Feeney Roser: And, that may do it for the Commission. I bring it up because we bring it up with every redevelopment that comes through here. So, I would be remiss to not include this project.

Mr. Holden: I just want to be careful that we don't have something locally that is going to be a fair housing issue and we have to come back and say we can't meet your local requirement because it is a federal fair housing issue.

Ms. Feeney Roser: May I ask another question then, does federal fair housing have to do with the total number of individuals who may be able to reside at the unit?

Mr. Holden: I think that is either a State or a tax credit requirements – two heartbeats per bedroom.

Ms. Feeney Roser: Two people per bedroom. So, depending on how many bedrooms you may have. The plan says you have 52 that are three bedrooms or smaller and 4 that are larger than three bedrooms, so I don't know how many bedrooms are on the site. I just think it is important that we are consistent when we are reviewing developments even though this is affordable housing that we talk about occupancy restrictions.

Mr. Hegedus: Joe, in the issue about the Traffic Impact Study and whether that is required or not, can you walk me through that a little bit? How close were the trip count numbers to where the cut-offs are and why would the daycare need them or not?

Mr. Charma: DelDOT's average daily traffic number is 2,000 trips per day. If you exceed that, they can require a Traffic Impact Study. This particular project based on the 56 apartment units will generate 372 average daily trips. DelDOT's fee in lieu of or area wide study impact fee is \$10 per trip. That is where that \$3,720 paid to DelDOT. What the discussion was was is the community center going to be like the Boys and Girls Club? Absolutely not. So, DelDOT said, if it is for residents use, which it is, and a few of other residents in Newark that reside in Newark Housing Authority units may come to the community center (there may be a meeting there some evening), they didn't feel that that was an accessory use that was going to have its own life. So, they based the traffic on the apartment use and that is why we ended up paying them the area wide study fee. 400 trips a day is way less than 2,000 and there are only 14 more units than was there previously. So, they were like, it is probably a wash.

Mr. Hegedus: Again, in the Planning and Development Department recommendation it said that we should ask you what you think about the special use permit limiting the daycare facility to NHA residents only and to a total number of clients. Do you have a perspective on that one way or the other?

Mr. Holden: That would be fine to say that the after school program will be for the benefit of the residents of the new Cleveland Heights or other residents of Newark Housing Authority.

Mr. Hegedus: I was actually on the opposite side of that fence, interestingly. Maybe there are a few families who are not part of the NHA population who could benefit from it as well, and why keep them out if there is room there and it is a good

facility. So, why put the restriction on if it is only to keep us from doing a Traffic Impact Study?

Mr. Holden: We have done this with the University of Delaware 4-H Program, and two other locations (Milford and Dover) and the square footage of the space and the staffing kind of controls the number of children that we can house. If you wanted to leave it to that, it would be limited to their licensing. If you want to say we are not fully subscribed to Newark Housing Authority, we can open it up as long as we are within the limits, that is fine.

Inaudible (something about the occupancy code).

Ms. Feeney Roser: The Zoning Code would, too. The Zoning Code governs how many children could be there because of play area requirements and things of that sort.

Mr. Charma: Just a commentary to your comment about, to get out of doing a Traffic Impact Study. First of all, this is a highly urban area already. Doing a TIS in this area, there is very little you can do at any intersection to improve anything except play with signal timing. To do a Traffic Impact Study you are talking about \$15,000 maybe more because you have the Kirkwood Highway, Cleveland Avenue and at the other end you have the five legged intersection of Paper Mill Road and North Chapel, which is a nightmare in itself. This area has been studied to death. DeIDOT has looked at Cleveland Avenue in a lot of detail over the years. So, I think they are at the point now where paying money into an area wide study fee makes more sense because they can use that money to look at little improvements like signal timing and other things.

Mr. Hegedus: I understand and I think we are all preaching to the choir. I must have misread or misinterpreted this part 3 because that is what I thought this next to the last sentence was all about. This section three of the Planning and Development Department's report was about traffic impact and not doing it and paying the area fee, and by-the-way, we should consider putting a requirement of a special use permit to limit the daycare just to people of NHA because that was the logic for not doing it. So, if we are all good about it is only 400 trips and it is almost all going to be NHA residents but a few others that Code will take care of, then I don't see why this is an issue at all.

Mr. Bowman: Is there anyone else? Public, we have not forgotten about you. Is there anybody who wishes to speak to this issue? Seeing and hearing none, we will bring it back to the Commission for their action.

MOTION BY HEGEDUS, SECONDED BY DRESSEL, THAT THE PLANNING COMMISSION MAKES THE FOLLOWING RECOMMENDATIONS TO CITY COUNCIL:

- A. THAT CITY COUNCIL APPROVE THE REZONING OF THE 6.77 ACRES OF PROPERTY CURRENTLY ZONED RS (SINGLE FAMILY RESIDENTIAL) TO RM (GARDEN APARTMENTS) AS SHOWN ON THE ATTACHED PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT A, DATED JANUARY 7, 2014;
- B. THAT CITY COUNCIL APPROVE THE VACATION OF TERRACE DRIVE TO BE REPLACED BY A PRIVATELY OWNED AND MAINTAINED ACCESS WAY FOR THE CLEVELAND HEIGHTS DEVELOPMENT;
- C. THAT CITY COUNCIL APPROVE THE SPECIAL USE PERMIT FOR THE DAYCARE CENTER;
- D. THAT CITY COUNCIL APPROVE THE CLEVELAND HEIGHTS MAJOR SUBDIVISION AS SHOWN ON THE LANDMARK ENGINEERING PLAN, DATED SEPTEMBER 19, 2013 WITH REVISIONS THROUGH

NOVEMBER 22, 2013, INCLUDING ALL SUBDIVISION ADVISORY COMMITTEE RECOMMENDATIONS, EXCEPT FOR THE DEED RESTRICTION ON OCCUPANCY LIMITATIONS AND THE RECOMMENDATION TO LIMIT THE DAYCARE AND AFTER SCHOOL PROGRAMS TO NEWARK HOUSING AUTHORITY RESIDENTS.

Mr. Cronin: Point of information, Mr. Chairman. On Item A, as I read Exhibit A I see the date of January 7, 2014 instead of December 3, 2013.

Ms. Feeney Roser: Thank you. This was delayed.

Mr. Cronin: In Item D, I see revisions through November 26th vs. November 22nd. Perhaps that is an administrative change.

Ms. Feeney Roser: I don't see that. Where do you see that?

Mr. Cronin: Right above the CR-02 at the bottom corner.

Ms. Dressel: No it is right here.

Ms. Feeney Roser: It is last modified with revisions down here on the other side.

Mr. Charma: May I speak? To clarify that, that is confusing on our drawings. What that "last modified" means was the last time the drawing was plotted. It doesn't necessarily mean it was changed. If somebody opened the drawing, plotted it, and saved it, it is going to change that every time they save the drawing. So, the individual revisions enumerated govern.

Mr. Cronin: Thank you. So, the 22nd would be correct then.

Ms. Feeney Roser: Yes.

Mr. Cronin: But Exhibit A would be an administrative change.

Ms. Feeney Roser: Absolutely. We had it prepared for last month.

Mr. Bowman: You have heard the motion. If there is no further discussion, we will call for the question.

Ms. Brill: The reason that we would not have the language about the students would be?

Mr. Hegedus: My logic on that was there is going to be 30 years at least where this is by covenant going to be governed by federal law and regulations and state law and regulations for fair housing and in 30 years I think putting deed restrictions in place along with those regulations were bound to set up conflict in between and I would rather let the law and regulation manage that.

VOTE: 7-0

AYE: BOWMAN, BRILL, CRONIN, DRESSEL, HEGEDUS, JOHNSON,
SILVERMAN

NAY: NONE

MOTION PASSED UNANIMOUSLY

4. A COMPREHENSIVE DEVELOPMENT PLAN UPDATE DISCUSSION.

Mr. Mike Fortner: What you have is the first complete draft of the Comprehensive Development Plan. With your first draft is a disk. Many of you wanted to be able to track the changes. On that is the word file. When you bring

that up, you will be able to see all the changes. There were so many revisions that to print them all out would have looked crazy. You can go chapter by chapter and look at the revisions. I also invite you to make your own copy and take a crack at the wording. Let me know if you are working on a section and I will wait and see what your draft is like. I won't go through this with you but the next meeting will be on Land Use and Annexation on January 14th. The next meeting after that will be on January 28th – the last Tuesday of the month. That will be on the entire Comp Plan. What I was planning on doing a morning public activity where I would have donuts and coffee and people could come in and look at exhibits about the Comp Plan and learn about what is in it. Then I will have an open house exhibit during the 5 – 7 p.m. timeframe and then at 7 p.m. sit around the table and hash it out. We will have the February 4th Planning Commission meeting and then I anticipate we will need at least two more meetings. The third Tuesday in February (February 18th). We may have a recommendation available at the March 4th Planning Commission meeting. That is an artificial deadline. We will do as many meetings as we need to do to get through this and work it all out to get it exactly the way you want it. We can double up on meetings. We can meet through March. We will do whatever we need to do to get through this.

Mr. Hegedus: Can we go over the dates one more time? So, we are meeting on February 18th?

Mr. Fortner: February 18th – Land Use and Annexation.

Mr. Hegedus: You wanted the first full plan review on January 28th.

Mr. Fortner: It is like we have been meeting but, you don't have to attend, it will be an open house with exhibits, talking with people, having them look at the plan and have them give me comments in advance of the meeting on January 28th. When you get here at 7 p.m. that's when we do what we have been doing at the meetings.

Mr. Hegedus: Are we going to go over exactly what is here? It's not going to be a modified version of what's here when we talk about growth and annexation.

Mr. Fortner: Yes, that is your draft.

Mr. Hegedus: The topics were growth and annexation and land development?

Mr. Fortner: Current land use and annexation. I will have blow-up maps of the maps that you have in your draft and will be ready for you.

Mr. Silverman: Will the Planning and Development Department have any recommendations on changing some of the designated areas within the City? I am looking at the Planning Sections map.

Mr. Fortner: Changing for annexations?

Mr. Silverman: Not necessarily annexations but some of the existing planning areas. The university/Newark core, for example. One of our discussions that I was involved in was taking a look at those 15 year old boundaries that defined the downtown Newark core and maybe massaging those.

Mr. Fortner: The Downtown Newark Partnership has mainly decided those boundaries.

Mr. Silverman: Will they be bringing recommendations to us based on what I believe is the success of development where to tweak and extend those patterns next. For example, right now it is on the Main Street side of Delaware Avenue, but are we going to ignore what is happening on the Amtrak side of Delaware Avenue.

Mr. Fortner: We can do that.

Mr. Silverman: Where are the natural boundaries for that, particularly with the growth we have seen in student housing and the University Housing?

Mr. Hegedus: Sorry I have been absent a couple of meetings with traveling, though at the last meeting I was at here (Planning Commission) you talked about looking at a potential new zoning that would have some implications on student rental housing potentially like trying to make it more geared and have incentives or other things that would make it less attractive zoning for student housing and you were going to look into whether that was legal or not legal, possible, good idea, bad idea. You are looking at me like you don't remember me saying that.

Mr. Fortner: There can be a recommendation in the plan if the Commission chooses to do that. Maybe we can work at developing a proposal of an idea of what you have in mind and we can consider that as a recommendation in the plan.

Mr. Hegedus: That was my point back in November when I brought it up, that we are concerned that there is too much student housing, and I know the study is going on, but if we are going to add a new zoning type then . . .

Mr. Fortner: Are you talking about apartment zoning that would not permit students?

Mr. Hegedus: I'm not sure if it would not permit but it might put some restriction or not make it economical. So, we can work to have the zone where students are and a more attractive zone where students are not. Does that make sense? I didn't know if that was legal or not or whether that was recommended, whether there were other college towns that did things like that. So, I was asking for you to explore that and bring that back so we can think about that as we are looking at the Comprehensive Plan and zoning.

Mr. Fortner: Okay.

Mr. Silverman: It was built around trying to bring the apartment pricing level down to market level throughout the county as opposed to the artificial rental market that exists here within the City.

Mr. Fortner: That is not what I'm hearing Andy saying. He is saying doing some type of inclusionary zoning where it is sort of like Victoria Mews or Newark Housing Authority where it has to be affordable for people making under 50% of the area medium income. So, those are affordable and college students aren't able to get those kinds of housing. If you are just talking about market rate housing, generally you are able to rent that to anyone, and if you made it artificially cheaper, I don't know. It is kind of complicated. You are making market rate housing then anyone should be able to rent it if it is market rate.

Mr. Hegedus: My concept when I asked the question was not the two or three steps further than Alan had gone with it because I wasn't thinking about that stuff. I was just more thinking about trying to figure out – the study will show us – if we really believe that we have passed the tipping point where we have enough student apartments around, is there a way or is it wise to have some sort of zoning that can help us make things more attractive to young professionals and to have things more attractive to seniors who want to stay because those seem to be the places we are lacking in housing.

Mr. Fortner: Most definitely.

Mr. Hegedus: I was wondering how we can go about doing that whether it is zoning or something else.

Mr. Fortner: I don't think it would be zoning. We are doing the Rental Needs Assessment and we can, hopefully, there are some innovative proposals that can come out of that workshop. You are trying to build apartments but not for students. You don't want students to live there but you want other people to live there. It is hard to exclude. It is market rate housing so people should be able to rent it unless there is some sort of restriction on it like some affordable housing cases.

Mr. Hegedus: The place by Suburban Plaza, that came to us as young professionals, gorgeous places, high end, we approved it and within one or two months it gets sold and now it is all student. That is the market they are going after. So, wouldn't that have been interesting if they had come to us under a different zoning that was more for the young professionals and seniors and that was the zoning that was approved and then when they sold it, guess what?

Mr. Fortner: We have an over 55 zoning – AC – but to limit to young professionals through zoning I think would be very difficult.

Ms. Feeney Roser: For the Newark Shopping what this Commission did and Council approved was limiting them to two unrelated individuals per unit and that effectively takes it out of the regular student housing market, unless they are very affluent students. So, there probably will be some students who reside there but it won't be exclusively students. With the Suburban Plaza what was done was limiting them to one per bedroom, but you knew when you reviewed it and Council also knew when they considered it, there were five and six bedroom units in there. While the developer said they didn't plan to exclusively to students, it seemed pretty obvious that that was who was going to want to live in such large units.

Mr. Hegedus: And, I think that I have heard from enough people as well that seniors have said they don't necessarily want to retire to a place that is devoid of students. I'm not saying it is not students, but maybe it's a percentage limit on students. I don't know. That is why I was asking for an investigation or for some thoughts.

Mr. Fortner: We have incentives where you build one bedroom apartments in BB, for example. The best way, or most direct way of restricting students, if you give incentives to build one or two bedroom apartments and restrict it to the number of unrelateds, then it doesn't exclusively take it out of the student market. You could do it that way but you can't say we are building housing and they are going to be for young professionals. You have to build housing that is attractive to young professionals. It is hard to do that through zoning. It is just that you have to hope that the market is there and that developers see a market there and target those folks.

Ms. Feeney Roser: But, it may be that the City can create incentives for owner occupied housing or nonstudent housing that would still be legal to do. And, that is something we are going to have to talk with the City Solicitor about, as opposed to a zoning category.

Mr. Hegedus: My point was, if you are going to investigate other places that have done zoning or done other things who have struggled with the same issues we are struggling with, let's bring some of those back because that should be part of our comprehensive planning.

Mr. Fortner: There's also the New Center Village overlay, which has not taken off yet, but it is an overlay district that is to encourage home ownership. We have got to do something different there.

Mr. Johnson: I just want to counsel my friends here that students are citizens and they have rights and to be talking about trying to build housing that restricts a certain part of our population, I think, creates problems for us in our community.

What Maureen has said what happened where you restrict the number of unrelated people to apartments is, I think, the way to do it and I don't think you talk about students or young professionals or families, but you talk about unrelated people. If the students can afford to live there, then they live there. And, then it begs the question, what is the definition of a student? Can you tell me?

Ms. Feeney Roser: Yes, actually there is one.

Mr. Johnson: My wife takes a flower arranging class from the Ag School. Is she a student? Maybe she shouldn't be living with me if she is taking a flower arranging class and is a student. I don't know.

Mr. Silverman: The Internal Revenue Service defines that very clearly. I would have to go in, but it is part of the Obama Healthcare Act now.

Mr. Johnson: My point is, if you are a fulltime student which the law says taking a full load. If I take one credit less than a full load, I'm not a student. I can live in that housing. What have you gained?

Ms. Feeney Roser: The way it is written in the Code, and it is in the student home definition says, "A single family dwelling occupied by three post secondary students regardless of age, unrelated by blood or legal adoption attending or about to attend a college or university or who are on a semester winter or summer break from studies at college or university or a combination of such persons." So, it doesn't say how many credits.

Mr. Johnson: So, if I take a one credit course, I'm a student.

Mr. Fortner: Yes, but you would have to be with more than three unrelateds. You wouldn't necessarily be able to live with three other unrelateds.

Mr. Johnson: I think the way to go is the unrelated issue. I just want to counsel us to be careful about what we say.

Mr. Hegedus: Duly noted.

Mr. Silverman: And sense we are going to be discussing annexation and it came through very clear tonight on Mr. Bush's annexation and zoning, can you give us a briefing on this crazy Delmarva Power utility arrangement? I think it makes no sense with one property. Here the State has a policy of getting rid of these little islands of New Castle County in Newark but then the Public Service Commission says, well, they really aren't little islands, they are electrical service districts. And, I was involved in a project where Newark was on one side of the road, Delmarva Power was on the other side of the road, our development property was in the City of Newark. Getting that wire from City of Newark across the Delmarva right-of-way, we ended up putting a telephone next to a telephone pole because you couldn't touch, literally, you couldn't put City wires on Delmarva poles to get to the other piece of the property. Now, that is absolutely crazy and the only person that loses is the rate payer. I remember the history on this because when the City was very successfully annexing and marching down Elkton Road, Delmarva's eyes got about that big because are they going to start offering better rates to the Dupont facility there and these other big electric users. And, they ran to the legislature and got this crazy wherever we are operating under. It has had a decade or two to work itself out and maybe time to get some recommendations into our annexation document to ask the municipal electric cooperative and the other involved, the City, to go back and rework, rethink it. How many leaf pickups is so many kilowatts of electric work? That is a terrible thing.

Mr. Bowman: And we wonder why we can't get out from under regulations. Is there anything else?

There being no further business, the meeting adjourned at 9:30 p.m.

Respectfully Submitted,

A handwritten signature in black ink, reading "Elizabeth Dowell". The signature is written in a cursive style with a large, stylized "D" and a long, sweeping underline.

Elizabeth Dowell
Secretary, Planning Commission

/ED