

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

August 4, 2015

7:00 p.m.

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

Chairman: Alan Silverman

Commissioners Present: Bob Cronin
Frank McIntosh
Robert Stozek

Commissioners Absent: Willard Hurd
Edgar Johnson
District 4 - Vacant

Staff Present: Maureen Feeney Roser, Planning and Development Director
Mike Fortner, Development Manager
Tom Fruehstorfer, Planner

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

1. ELECTION OF PLANNING COMMISSION VICE CHAIRMAN.

Mr. Alan Silverman: The first item on the posted agenda tonight is the election of a Planning Commission Vice Chairman. However, not having a full quota of appointed members present, if there is no objection, we will postpone this action until the next meeting. Hearing no objections, we will postpone the election of the Vice Chairman.

2. THE MINUTES OF THE JULY 7, 2015 PLANNING COMMISSION MEETING.

Mr. Silverman: The next item on our agenda is the adoption of the minutes of July 7, 2015 Planning Commission meeting. If there are no objections or corrections, those minutes will stand as corrected, posted on the internet and distributed. Hearing no objections, the minutes are approved.

Before we get into the last item, and I want to read this, and it will take about a minute and a half. Over the last several Planning Commission meetings, maybe extending back in time further than that, we have had occurrences where elected Newark City Councilmen have taken an active part in the Commission's discussion. At this point in time, I'm not quite sure how I feel about that but I believe it is an issue. I have given it considerable thought. We as a Commission have a definite role and responsibility. They are defined in State statute, they are defined through Charter legislation for the City of Newark, and they are also defined within City Code. My question is, is it proper for a Council person to participate in a discussion that becomes part of a recommendation back to that Council person. It seems circular, and I think there may be some other issues involving ex parte.

I believe the role of a Council member in the planning process is to consider the recommendation made by the Planning Commissioners and use the detailed transcript to the Commission hearings as background, then Council's public hearing process becomes another opportunity to gather more information and to provide a forum for additional discussion between the Council members. I understand there can be a first amendment

issue with regard to a Council member's rights during public discussions at planning hearings. However, I believe the planning process and our residents are better served by Council members who listen at our meeting, review our recommendations, have our detailed transcript available, and then deliberate at their own Council meeting. I propose that we place on a future agenda as a topic of discussion whether a Council member should participate actively in Planning Commission hearings. I don't know how the rest of the Commissioners feel on this, but it makes me very uneasy when a Councilman seems to be driving or directing our discussion by their particular comments. This is not aimed at any particular Council person; it is something that I understand from talking with others had not been generally done in the near or distant past? It is something new that has come on the scene.

Mr. Bob Cronin: Do you want to discuss that tonight or defer this until another meeting? I'm not sure what your preference is.

Ms. Feeney Roser: You may want to let the City Solicitor give you his opinion so you will have that for your discussion. So, if you wanted to put it on an agenda, I can ask the Solicitor for an opinion if he doesn't already have one and make sure that goes out in your packet so you will have that prior to your discussion.

Mr. Silverman: I would rather have it at our next meeting, if possible.

Mr. Bob Stozek: Are you concerned that they participate at all? I think we had a discussion before about saying if they are bringing up issues that they have heard from their constituents or if they are asking questions for clarification.

Mr. Silverman: I have listened very closely to Maureen's interaction with the Council people. Like I say, I'm not familiar with that particular relationship. It seems that when the Council person starts making recommendations as to what direction we go in or agreeing with a commissioner that I think Commissioner So-in-so's position is the right position. That is when I think the line is crossed. At least sitting here for the moment, I don't have a problem with a council person coming in saying, I'm here tonight conveying to you the concerns of these three civic associations in my district. I was at some meetings and these are the concerns that exist at the moment in my community. I think that is very different from saying I agree or I disagree kind of thing.

Mr. Frank McIntosh: I have not discussed this with you. I just want to be clear about that, but I will tell you that that bothers me as well that we have council members coming here and telling us what they think. It is okay that they can think about anything but when it comes before them is when they should be thinking about it and not trying to influence how we are thinking about it. We are supposed to be an independent body and we are supposed to make a recommendation to that council and them being here in any way trying to influence our thinking is not appropriate; it is improper and should be stopped. I feel very strongly about that, and if they want to represent other civic associations or whatnot within their district, then they should resign from the Council and they can represent them any way they want. But, in the meantime, if there is somebody from those civic associations that feel badly about something, they should come before us as an individual representing their constituency. It is just not appropriate, in my opinion, that the Council member comes before us and tries to influence what our thinking is. I just don't know how that could ever be okay.

Mr. Silverman: Since we are kind of expanding on this – and I know I am taking up staff time here – I've written down six thoughts and my first one is, A Council member can inadvertently steer a discussion, or maybe deliberately steer a discussion, depending on what they consider their purpose. A Planning Commissioner may be consciously or unconsciously influenced to take the position posed by the council member who may have appointed him or her. My third idea is a Council member does not have an opportunity to fully explore an issue, directly question the applicant or respond to the public since all of our discussion flows through the Planning Commission Chair and the Commissioners. We don't permit dialogue back and forth on the floor, which I think may be a limiting factor. Fourthly, a Council member may react to incomplete information in the sense that the Planning Commission is a public forum for the initial

step in the public planning process and the time interval between the Planning Commission hearing and our recommendation to City Council permits the discovery of additional information, public action however small or broad that may be or also may permit the applicant or the staff to respond to the questions that arose at the Planning Commission hearing. It may be a false start for a Council person to really take a position. I also believe there is a grey area in meeting requirements of ex parte and that involves being privy to or having discussions with other contemporaries, and this would be Council people, are not present. That would really be where the legal opinion comes in. And finally, when it comes time to deliberate and vote at City Council meeting, a Council member may inadvertently put themselves in a difficult position as a result of the earlier comments at the Planning Commission meeting based on possibly wrong or incomplete information. So, that creates a circumstance at Council where it may be difficult for the Councilmen. So, I would like to have us formally discuss this and get a consensus of our commissioners. It will be on the agenda if council wants to be here to hear what we are talking about, and maybe, at that time, we will decide how we want to take action on it. It could be a matter of policy for the Commission. It could be a recommendation back to the Mayor and Council that they make this one of their standing rules.

Mr. McIntosh: Mr. Chairman, the reason I spoke out at this stage is because I will not be here at the next meeting.

Mr. Silverman: Okay, you are on the record.

Mr. McIntosh: I will not change that opinion that I just stated. While it doesn't pull much weight if I'm not here. I will not be here. I will not change my opinion about this. I feel very strongly about it, and I want that on the record even though it won't be counted as a vote. I think it is just terribly inappropriate for Council members to be here when they are going to be sitting in judgement on our recommendation or lack of a recommendation. That is why we are here. We are not here to be influenced by them. They can make a decision later that is different from ours. That is fine. That is their job. If they want to keep coming then, in doing that, they are taking away, from my point of view, the privilege of the Commissioners and it shouldn't be done and I won't be a party to it.

Mr. Silverman: What we can do then is, I as Chair can essentially enter your discussion that is reflected in the minutes into the discussion when we have our meeting on this topic. Is there any objection, at this point, among the Commissioners to bring this up as an agenda item at a future meeting?

Mr. Cronin: I think we ought to get the input of the City Solicitor first as to whether it is even appropriate to have it on the agenda because he may say strongly that it's not appropriate and possibly so. So, I think we ought to get his input before we automatically assume it is something to be worthy of discussion.

Ms. Feeney Roser: The agenda won't be published until two weeks before the meeting, so we have some time to get the Solicitor's opinion out to everyone and also his opinion on that.

Mr. Silverman: We will formally ask Maureen, as the Commission's administrator to pursue with the City Attorney whether we even have the ability to bring this up as an item of discussion, and if there have been any opinions drafted in the past, assuming we can discuss it, that those opinions be a part of our packet.

Ms. Feeney Roser: That's fine. This must have come up before so, we will look into it and we will get you the information.

Mr. Cronin: It is not compelling that we consider this at the next meeting. It could even be two meetings from now, perhaps.

Dr. Morgan: May I make a brief remark to something that has been said?

Mr. Silverman: Go ahead, Dr. Morgan.

Dr. Morgan: District 1, and I would like to say that I believe this issue may have arisen because of what happened at your meeting in early March where there was a very sparse public turnout on an interest of great importance, namely Accessory Use and Neighborhood. And, it was held at a very unfortunate time because there was a terrible ice storm going on and there was speculation that the meeting wouldn't even be held. And, I think that is why there were very few people in the audience and there were some Council members present from those districts where a number of residents had some pretty strong opinions. I did listen to the audio of that meeting and my impression is that the Council members spoke near the end of the public comment period and I know that at least one of them specifically said that he was avoiding making a recommendation. I think I would say also that if you want to make it quite impossible for Council members to speak on behalf of their constituents, you should be prepared to have large numbers of constituents showing up at your meetings as was happening at Council meetings about a year ago. I would say, be careful what you wish for because you might get it. I would also say that in addition to the legal requirements of the State, which, of course, you must comply with, I would also think it would be interesting to learn what happens at meetings of other Planning Commissions around the State; for example, the New Castle County Planning Commission. The City of Wilmington must have a Planning Commission. The City of Dover must have a Planning Commission. I would like to know what has been happening around the State in the last five or ten years.

Mr. Silverman: I know from my personal experience, it is highly unusual for an elected official to turn up and actively participate in committee meetings. We even have, if you want to call it the Delaware way tradition, that the Mayor of the City of Newark doesn't show up at a Wilmington City Council meeting, for example, to discuss problems that the City of Newark may be having that are similar to the problems that the City of Wilmington has and have an open dialogue and discussion in, say, dealing with the State on an issue. That is very unusual for elected officials from other jurisdictions to come in.

Mr. McIntosh: I, for one, would say it would be nice to have more people here. I recognize that might lengthen the meetings. That wouldn't be desirable necessarily.

Mr. Silverman: And, I am of the opinion, and I always have been, the Planning issues belong in there. They don't belong in the three minutes that somebody gets to speak on the floor at Council because this is where we initiate things. This is where the issues are raised.

3. REVIEW AND CONSIDERATION OF AMENDMENTS TO CHAPTER 27 SUBDIVISIONS, AND CHAPTER 32 ZONING, OF THE MUNICIPAL CODE OF THE CITY OF NEWARK, DELAWARE REGARDING FLOODPLAIN REGULATIONS.

[Secretary's Note: There was technical difficulty with the projector and laptop to be used for Mr. Fruehstorfer's presentation].

Mr. Silverman: We do have copies of the presentation.

Ms. Feeney Roser: We may have to do this the low tech way, if everybody has a copy.

[Secretary's Note: Mr. Fruehstorfer began his presentation using the printed copies of his PowerPoint presentation].

Mr. Fruehstorfer: What we have is an evaluation of questions about the revisions of the floodplain amendment. I will start with a brief background.

Floodplain Regulations are required as part of the National Flood Insurance Program to protect the public health, safety and general welfare and the Regulations help minimize development that is inappropriately located, inadequately elevated, improperly flood proofed or otherwise unprotected from flood damage.

- Floodplain regulations were initially added to Code in 1972

- ▶ The City agreed by resolution to meet the requirements of the National Flood Insurance Program (NFIP) and was accepted for participation in the program on March 29, 1974.
- ▶ Code revisions (for uniform language and clarification) were recently required to remain in compliance with NFIP. Chapters 27 and 32 were revised and Chapter 14A – Floodplains was added as a separate chapter in January 2015 by Ordinance No. 14-32
 - ▶ The revision primarily separated the Floodplain section into its own chapter, provided uniform language, and referenced current flood maps. There was no intention to change any requirements of the Code.
 - ▶ The Ordinance needed to be passed By February to meet federal regulatory deadlines.
 - ▶ Questions arose from public and City Council during discussion of the Bill.
 - ▶ This report addresses those questions as well as several other issues that were discovered during the Planning Department’s evaluation of the Chapters.

I am starting with a brief preview of what we are going to look at.

- ▶ Question 1 - Open Floodway District (OFD) vs Special Flood Hazard Area (SFHA)
- ▶ Question 2 – Should the term “Floodway Fringe” reference remain in Code?
- ▶ Other Issues discovered during evaluation
 - ▶ Sec. 32-96. (a)(2)h. Incomplete sentence and typographical error
 - ▶ Sec. 32-51. (g) is now covered in the new Chapter 14A
 - ▶ Sec. 32-66. (b) Board of Adjustment is given direction on rulings on Floodplain variances but City Council has jurisdiction on floodplain variances
 - ▶ Questions about Chapter 14A – (Planning Commission is not required to look at this Chapter), but we have that prepared to talk about if you are interested.

Question 1 - Open Floodway District (OFD) vs Special Flood Hazard Area (SFHA)

- ▶ It was observed that “Open Floodway District” had been changed to “Special Flood Hazard Area” but the “OFD” abbreviation remained.
- ▶ The intent was to change all OFD references to SFHA and eventually phase it out.
- ▶ “OFD” or “open floodway district” were found in 9 sections of the Code where it had not been changed to special flood hazard area.
- ▶ The Planning Department recommends that in each case “OFD” should be replaced by “special flood hazard area, formerly known as the open floodway district (OFD)”

You will notice on the bottom of your pages to help follow along during this presentation, I am listing the pages of the report. That is the 1-3 of Report and the other is the pages of Appendix B. Appendix B is basically the sections of the Code we are talking about, red line crossed out but the recommendation shown. If you want to see what it looks like, that is an easy way to find it.

Question 2 – Should the “Floodway Fringe” reference remain in Code?

That question came about from an evaluation of Section 32-96 – Use regulations for floodplain.

(b) Requirements for land adjoining open floodway district (OFD) known as the floodway fringe (FF).

(1) Permitted uses. All uses permitted according to the respective zoning district or classification as depicted on the official zoning map shall be allowed. However, in addition to all applicable regulations, requirements, and restrictions, no structure, development or construction within the floodway fringe including removal, addition, or rearrangement of soil or material, shall be commenced unless the planning director and

the director of public works shall have determined that such development or change is in compliance with the objectives and standards set forth in [Section 32-93](#) of this article.

That is basically referring to Section 14A. Basically, the floodway fringe is treated as the other district it is in and it is not treated any differently.

- ▶ We also found various definitions of floodway fringe
 - ▶ City of Newark Code defines floodway fringe as the area adjoining the open floodway district subject to average flooding frequency of once in 500 years (0.2% annual chance flood) the area ABOVE the Base Flood Elevation (BFE)
 - ▶ FEMA defines floodway fringe as lands outside the floodway that are at or below the BFE that store, but do not effectively convey, floodwaters the area BELOW the BFE

What is confusing there is the land outside the floodway. The floodway is not the entire floodplain. The floodway is just the main area of the channel that is conveying most of the water. Then there is an additional area up to border of the floodway, the floodplain that is considered the floodway fringe for FEMA.

The map on the next page shows that well, but I am going to have an awful lot of time describing this without you looking at me pointing. But, generally, if you look at this map, everything that's on there in a blue shade around the stream is the 1% chance flood. If you look towards the middle of that, you can faintly see a section that has yellow lines. That's the floodway. The clear blue area outside of that is the FEMA floodway fringe extending out to the 1% chance flood line and the yellowish area there is what the City of Newark would call the floodway fringe – the area outside the floodplain.

Mr. Silverman: We are actually more restrictive.

Mr. Fruehstorfer: Not really because our Code doesn't make us do anything special in the floodway fringe.

Mr. Silverman: Okay.

Mr. Fruehstorfer: It defines what it is, but it doesn't limit anything that can be done there. It just says it is treated as the normal zoning area.

- ▶ The Code was searched and floodway fringe was also found in 3 other locations.
- ▶ In Sec. 27-20. – Minor subdivision and Sec. 27-21. – Major Subdivision each require the floodway fringe to be labeled on submitted subdivision plans. (Pages 39 and 43 of Appendix B)
 - The floodway fringe is not regulated by code so there is no reason to require the floodway fringe be labeled on subdivision plans.
- ▶ Sec. 32-102. – Definitions. (d)(2) Requires purchasers of property in or near the floodplain be informed of the location of the floodplain and floodway fringe. (Page 60 of Appendix B)
 - ▶ Homes in the floodplain (100 year flood/1% annual chance flood) are required to purchase flood insurance.

Basically, we have people come in to our office to look at the maps when they buy a home to see if they are in the 100 year flood plain to determine whether or not they need flood insurance. We actually don't even have floodway fringe on our map. It is not really that important for new home buyers. The important thing there is that they see that they are in the 1% annual chance of flood area.

Summary of question 2.

- ▶ Code has no regulations based on location in the floodway fringe.
- ▶ City of Newark definition of floodway fringe can be confusing compared to different FEMA definition.

- ▶ The Floodway Fringe, or the 500 year floodplain/0.2% annual chance flood hazard is not being regulated so there is no reason for developers to include it on their plan submissions.
- ▶ Home buyers need to know if they are in the 100 year floodplain for insurance reasons – there is currently no pressing justification for requiring the 500 year floodplain/0.2% annual chance flood hazard also.
- ▶ **Recommend removing all references to Floodway Fringe from Code.**

The next issue we looked at was:

Incomplete sentence and Typographical error in Sec. 32-96. – Use regulations for flood plain. (a)(2)h.

The Code section currently reads: “Reconstruction, improvement, or rebuilding or an existing building(s) or foundation(s) of a previously existing building(s) that has been abandoned, or otherwise unoccupied for a period of more than one year. Such improvement or rebuilding shall be limited to the confines of the existing building(s) or building foundation(s). “

After looking at this for weeks, I realized this is part of a list of things. So, if it had just been a simple reconstruction of a building that has been abandoned, it makes sense, but it is so far away from what it is listing and so long that I think it is much more clear turning it into a complete sentence and fixing the typo so it reads:

Recommend replacing with:

“*For* reconstruction, improvement, or rebuilding *of* an existing building(s) or foundation(s) of a previously existing building(s) that has been abandoned, or otherwise unoccupied for a period of more than one year, such improvement or rebuilding shall be limited to the confines of the existing building(s) or building foundation(s).”

Mr. Silverman: Tom, I have a question on that. Given what we have seen with the Federal programs and Katrina and insurance companies disputing, if my house is knocked off the foundation (built in 1940, so I predate the Code), which means it is not habitable, it may take me more than a year to get through whatever process there may be and get Federal money and all the rest of that. Technically, the property has been abandoned for a year. How do we deal with that?

Mr. Fruehstorfer: We certainly have not dealt with that in the City as far as I know. My understanding is, that if the home were to be destroyed by a flood then it would need to be rebuilt meeting the current standards.

Mr. Silverman: I have no problem with the construction standard. I am just looking at that time limitation and if I decide I live next door to that and my property wasn't damaged, I'm going to force this guy out and I'm going to buy his lot and expand mine. I'm going to be one of those SOB neighbors and use the City as the excuse. How do we deal with that circumstance? It clearly says abandoned for a year.

Mr. Fruehstorfer: This allows it to be rebuilt if it has been abandoned for more than a year. This is more than a year. So, if it is more than a year, it is saying that it has to be within the same foundation.

Mr. Silverman: So, there is no time limit on rebuilding.

Mr. Fruehstorfer: I can't say that without looking through the rest of the Code, but from this section here, it is not limiting it. This is talking about if it has been abandoned for more than a year.

Mr. Silverman: Can we check that?

Mr. Fruehstorfer: Sure.

Mr. Silverman: Because we have percentage of destruction of a nonconforming use of fire damage, for example, or abandonment of that use for X number of months, then it cannot be reinstituted. The activity has to conform to the underlying zoning. That kind of thing.

Mr. Fruehstorfer: I can look into it, but I think in this case here, it can be rebuilt if it is on the same foundation.

Mr. Silverman: I just don't want somebody to get stuck with a damaged house. They are working with their insurance company, they are working with FEMA and it is just taking an awful long time.

Mr. Fruehstorfer: And the initiation of that process might be . . .

Ms. Feeney Roser: I was thinking we would have to get an opinion on what the word "abandoned" really means. If you are trying to rebuild your home and have begun reconstruction, I don't think we would consider it abandoned.

Mr. Silverman: Or even the process of rebuilding.

Ms. Feeney Roser: Yes.

Mr. Silverman: Okay.

Mr. Fruehstorfer: Next, we found a section that is now covered in Chapter 14A. This is 32-51(g)

What it is saying is, in the event that a nonconforming building, structure, or use existing in the special flood hazard area, formerly known as the open floodway district (OFD), undergoes repair, reconstruction, or improvement which exceeds 50% of its current market value (a certified statement of the market value of the structure before the improvement or repair as determined through assessment records or by a bona fide property appraiser to be submitted to the building department) the lowest floor (including basement), which shall mean the lowest floor of the lowest enclosed area (including basement), shall be elevated to or above the base level flood (100-year flood) unless the property owner is granted an exception by the Federal Insurance Administration. In the case of non-residential structures, there shall be the following options:

- (1) Elevating the lowest floor, as defined herein, above the 100-year flood; or
- (2) Designing the improvements or additions and the attendant utility and sanitary facilities and that the walls below the elevation of the 100-year flood shall be watertight with walls substantially impermeable to the passage of water and with structure components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Such flood proofing methods shall be certified by a registered professional engineer or architect to be adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the 100-year flood, and the certification shall accompany construction plans filed with the building department. Notwithstanding anything contained in this subparagraph, no building permit shall be authorized which does not comply with Section 32-51(a) of this code."

Recommend replacing with:

In the event that a nonconforming building, structure, or use existing in the special flood hazard area, formerly known as the open floodway district (OFD), undergoes repair, reconstruction, or improvement, ***any changes must conform to the requirements of Chapter 14A.***

So Chapter 14A has the correct references and if we, in the future, make some changes it won't be in two chapters.

The next page is that same section and we found part of that section, which is highlighted in the presentation, but not on your screen. It is the section about the middle of the first paragraph that says, ". . . as determined through assessment records or by a bona fide property appraiser to be submitted to the building department . . ." That description is not

in the definition of Chapter 14A. So, if you look at the next page, it is the definition for substantial improvement and it currently reads:

“Substantial improvement. Any repair, alteration, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before improvement or repair is, if the structure has sustained . . .”

So, it doesn't at all say there how to determine it. So, we are suggesting we add, “. . . as determined through assessment records or by a bona fide property appraiser to be submitted to the Planning and Development Department.” to that definition of substantial improvement.

Finally, we found the Board of Adjustment is giving the power to make rulings on floodplain variances, but City Council has jurisdiction on floodplain variances. Section 32-66 describes what the Board of Adjustment is supposed to consider, but Section 14A-30 – Variances grants City Council the power to grant variances on floodplain regulations, not the Board of Adjustment. So, we are recommending the removal of Section 32-66(b). And, that leads to the Planning and Development Department's final recommendation.

“RECOMMENDATION

In order to ensure consistency of the City's floodplain regulations with Federal requirements and language, and to provide more clarity and properly assign responsibilities and powers related to floodplain regulations, the Planning and Development Department suggests that Planning Commission recommend that Council amend Chapter 27 - Subdivisions and Chapter 32 - Zoning as recommended in the Planning and Development Department's report above.”

As I said before, Chapter 14A had some questions which are beyond responsibility of the Planning Commission, evaluations of the questions relating to the Chapter 14A are included in Appendix A in this report. We can pause now and you can make decisions on 27-32 or if you like, I can continue through with the 14A questions, or we can pass up on 14A questions completely, if you like. Whatever you are interested in talking about.

Mr. McIntosh: On this last one about the 50% of market value, it seems to me that if you had an older property and now it is 20, 30 or 40 years later, that property might be worth far more than 50% market value and we have plenty of examples of that. The property I'm in is probably more like 80 or 90% more. So, I'm not sure about putting a 50% or any number there.

Mr. Fruehstorfer: The way I'm doing this now, I'm not using the straight assessed value. The assessed values are 1983 values of the home and property. So, I'm taking that 1983 value, adjusting it with the CPI, which is right now about 2.3% to get it to the current value. Interestingly, I have checked this against a few houses that I had a comfortable idea of what the current value was and it came out pretty close. I then checked it on one of the homes that we had some work on in the floodplain, and interestingly, the value of that property had increased substantially more. Even with the risk of the flood and the high flood insurance, those values have actually risen a little more. But, it is a good starting point and it is an equal way of looking at all the properties and that leads to the other part of that, which we have added in. If someone decides that the number we are using is off and they think they are justified in doing more work, they are welcome to get the property appraised by a professional and we can use that number to initially assess all the properties to make an initial determination is the adjusted assessed value.

Mr. McIntosh: Because if it is 2.3%, until quite often, property values were increasing at a rate much higher than that.

Mr. Fruehstorfer: And the CPI should take care of that, relatively, close enough, to treat all properties equally.

Mr. McIntosh: As long as they have a right to. It is really hard to predict what market values are going to be in the future. It is not so much a problem here but you go to other cities in the country and they bid on properties and they are paying well above what even the asking price was. So, we are not in that situation here, thankfully, but it could happen.

Mr. Fruehstorfer: But we have a great easy free way to come up with a fair value and the property owner has a method to change it if they wish.

Mr. McIntosh: As long as they have the wherewithal to contest it and be heard fairly.

Mr. Fruehstorfer: Was it clear enough about seeing the highlighted things on the screen. You could see which part was added.

Mr. McIntosh: Where are you looking?

Mr. Fruehstorfer: It is the page that has the Section 14A-9 Definitions. Substantial Improvement. “. . . 50% of the market value of the structure before improvement or repair is started *as determined through assessment records or by a bona fide property appraiser to be submitted to the Planning and Development Department.*” If someone doesn’t like the number we are giving them, they can hire an appraiser to give another number.

Mr. McIntosh: It just seemed like 50% to me if you put a stake in the ground, when you say that.

Mr. Fruehstorfer: This isn’t a number that we came up with. This is something that comes from the FEMA guidelines.

Mr. McIntosh: You just want to be fair if somebody has lost their house to a flood and now they are getting it repaired.

Mr. Fruehstorfer: This isn’t saying they can’t rebuild. It is just saying that if they do rebuild, they have to do it according to current standards where they have to raise the lowest floor 18” above the base flood elevation. So, they still can be built. It is just going to cost a little more, and if their house was taken out by a flood, they would be silly not to.

Mr. McIntosh: It would probably be easier to raise it.

Mr. Fruehstorfer: Are there any more questions?

Mr. Cronin: Talking about raising the lowest floor. Earlier and what has been recommended for deletion, I think, to define the lowest floor includes the basement. To me, if you raise a basement 18” or more above the BFE, it is no longer a basement. So, I’m scratching my head as to what is intended by that when they say, including basement.

Mr. Fruehstorfer: I think they are saying that you are not just counting the ground floor that the basement counts, that it’s not okay to start your ground floor 18” above the BFE and then have a basement below it. So, basically, you can’t have a basement in the floodplain.

Mr. Cronin: It might be better to state that a little more clearly than some backwards inference that you’re not supposed to raise the basement 18” above the BFE.

Mr. Silverman: I agree with Bob that if we are going to say no basements in the floodplain, it’s no basements.

Ms. Feeney Roser: I think that is what it says. It says that the lowest floor has to be 18” above the BTE.

Ms. Fruehstorfer: So, maybe we need to change it to, basements cannot be located . . .

Mr. Silverman: I am looking at the report packet that came out. I'm referring to page 10, question 2. I may be reading it out of context. It is right down at the bottom.

Mr. Fruehstorfer: You are moving ahead to the Chapter 14 questions, but this is kind of a different situation here. If you look at 1 and 2 on page 10, you will notice one is for residential and the other is for non-residential. Basically, they both have the same wording in the beginning but, the non-residential also added, "All attendant utility and sanitary facilities shall be flood proofed up to the same floor elevation."

Mr. Silverman: Mine has a typo. It needs the "to" in there.

Mr. Fruehstorfer: That's what it reads. I was going to point that out. It is a typo. That is what in the Code right now. There was a concern that nonresidential properties had more protection and in our evaluation, we agreed that residential and nonresidential property should have the same protection. We could just add that "All attendant utility. . ." to both of those – non-residential and residential except, this is under the Protection of Food-carrying Capacity." What the concern there is that you can't build something in the floodplain that is going to raise the level of water and worsen the flood for other people. And, what we are talking about here is just utility structures, a meter, and a meter isn't going to substantially going to raise water levels. So, we thought we should add that protection, but move this to another section of the Code that made more sense. So, rather than adding this other line in the protection of the flood carrying capacity, we moved it to the building section. So, we have that protection, but it is in a deferent location. Does that make sense?

Mr. Silverman: That does. It would be very easy to say, there shall be no utilities located in a basement, that if I am going to put a HVAC system in my house in the floodplain, it's got to be an attic system.

Mr. Fruehstorfer: And, I think there are other sections of the Code that say that.

Mr. Silverman: I'm still confused over this lowest floor elevation (including basement) elevated a minimum of 18 inches above the 100 year flood. I know the 100 year flood doesn't exist. I have an old house. I'm going to put an on-suite on the back – a 1930s-1940s bungalow substantial.

Mr. Fruehstorfer: If you are adding on area, the new addition you have is the lowest level of that addition needs to be 18 inches above the BFE. You don't have to raise what you have, it is the new one that you're adding has to be above the Base Flood Elevation and you can't put a basement under that. The bottom of your basement is your first floor.

Mr. Cronin: Basements by definition are below grade.

Mr. Fruehstorfer: This is FEMA wording.

Mr. Cronin: Just the same, why don't we say, no basements permitted and everything that is occupied or HVAC supporting the occupied space has to be above the BFE without reference to basement. Whatever you do going forward has to be above the BFE and basements are a thing of the past at that point.

Mr. Fruehstorfer: We could do that.

Mr. Cronin: When you raise a basement above the BFE, it is no longer a basement. I've never heard of a raised basement.

Mr. Silverman: A basement by definition has to be in the ground.

Mr. Cronin: At least partially below grade. Substantially below grade.

Mr. Silverman: Then we get into basements and cellars.

Mr. Cronin: They are interchangeable, I think.

Mr. Fruehstorfer: We can work on changing the wording I guess, so we eliminate basement.

Ms. Feeney Roser: Is this in 14A.

Mr. Silverman: It is in our printed packet.

Ms. Feeney Roser: I know. I'm trying to figure out whether or not Council needs your recommendation on that chapter. Your purview is 27 and 32, not that we don't want to make corrections to the other. I'm just trying not to muddy your motion. So, that's in 14A then we will make a second motion when you are ready to that says, and in 14A we think you should remove this and say that, and we can certainly do that and Council will know what you recommend, but, we need a separate motion on Chapters 27 and 32 because that is required to come to Planning Commission. That is why I asked the question. Is that something we need to keep track of now for our motion from Planning Commission to Council for Chapters 27 and 32 or is this something you want to make sure Council is aware of so that they can change it for 14A.

Mr. Silverman: Hearing no objection, we will split out our recommendation as described by Maureen.

Ms. Feeney Roser: We can continue with 14A if you like.

Mr. Fruehstorfer: I'm making sure that this isn't in any of the 27 or 32 sections.

Ms. Feeney Roser: That would be good to know.

Mr. Fruehstorfer: The way it is here is the section that we deleted, we added to 14A.

Ms. Feeney Roser: That is part of the Commission's concern, then.

Mr. Fruehstorfer: Kind of, yes, because it is something we are taking out of Chapter 27.

Mr. Silverman: I am looking at page 3 at the top. We get into bona fide appraisers to be submitted the lowest floor elevation including basement shall mean the lowest floor of the lowest enclosed area, including the basement, shall be elevated to or above the basement.

Mr. Fruehstorfer: What page are you on?

Mr. Silverman: Of your written report that we had in our package – July 28th – on page 3, the paragraph that completes at the top of the page above the heading that says revise 32-52.

Mr. Fruehstorfer: That's just where we are changing OFD to Special Flood Hazard Area.

Mr. Silverman: Correct, but the one above also references lowest floor area elevation, including basement.

Mr. Fruehstorfer: I think that might be what we are erasing. The 32-51 is being deleted also.

Ms. Feeney Roser: The entire section?

Mr. Fruehstorfer: Yes.

Ms. Feeney Roser: So, it's not a problem there, but let's go through to make sure that there isn't some other reference to a parentheses. It says, including basement in 32 or 27 and then we can move on to fix Chapter 14. That's what the Commission is looking for, right, s the removal of the parentheses because the rest of it makes sense to you.

Mr. Silverman: Yes.

Mr. Fruehstorfer: The basement reference should not be anywhere else in 27 or 32. That is part of what we are doing is we are removing that and making that part of 14A.

Mr. Silverman: On page 10 that I originally reference or the appendix?

Mr. Fruehstorfer: That is in Appendix A. Yes.

Ms. Feeney Roser: So, the issue is not in 27 or 32, it is in 14A.

Mr. Silverman: Yes, assuming that this whole paragraph that I brought up on page three is deleted.

Mr. Fruehstorfer: If you agree to delete it, which we should because it is wrong.

Mr. Silverman: No problem.

Mr. Fruehstorfer: That was a change that was missed years ago when this was changed. This wasn't a change that was missed in January. It was made years ago.

Ms. Feeney Roser: But, on page 3 where it is referenced, we are actually amending it to say, Special Flood Hazard District, and then later we are deleting. So, that is the difficulty of this. You have to do everything methodically because if you don't fix it and later decide not to delete it then we end up with it being wrong.

Mr. Silverman: So, if Council chooses not to delete it. I understand.

Ms. Feeney Roser: It is slated for deletion. If it doesn't get deleted, we will have to fix it by removing the parentheses to let Council know that if it is going to stay, the Commission recommends removing them.

Mr. Fruehstorfer: Yes. Are there any other questions.

Mr. Cronin: One suggestion. We have somewhat of an acronym, Open Floodway District (OFD), I think it would be good to at each place we have special flood hazard areas to also follow that with the (SFHA), partly because I look at County tax parcel sites with some frequency and you see OFD on there if it pertains to that property. And I think we are going to end up replacing that with SFHA and I think the SFHA ought to be tagged with enough of the references. If we are going make replacements and take out the OFD, we ought to put in the SHFA as an accepted abbreviation for that special flood hazard area.

Mr. Silverman: That is a an excellent recommendation because many of the residents will be referring to the same maps you are that are maintained in New Castle County and then if they go back to the original FEMA maps.

Mr. Cronin: It is more of a grammatical thing than substance.

Ms. Feeney Roser: So, that recommendation would be to add the acronym for it.

Mr. Cronin: At least the four letters. OFD is pretty standard.

Mr. Fruehstorfer: Formerly known as OFD after SFHA.

Mr. Cronin: That is my intention.

Mr. Fruehstorfer: That makes sense.

Ms. Feeney Roser: We can do that.

Mr. Silverman: Maureen, have you crafted a motion?

Mr. Fruehstorfer: That was the last thing I read.

Ms. Feeney Roser: We did not go and try to rehash the report for you. The recommendation is simply to amend as read in order to insure consistency of the City's floodplain regulations with Federal requirements and language, and to provide more clarity and properly assign responsibilities and powers related to floodplain regulations, the Planning and Development Department suggests that Planning Commission recommend that Council amend Chapter 27 – Subdivisions and Chapter 32 – Zoning as recommended in the Planning and Development Department's report above. If you wanted to make that motion, you could then add the acronym for Special Flood Hazard Area.

Mr. Silverman: I just got confused between other recommendations that were referenced on page 9 in the report in our packet. That's what we are going to craft?

Ms. Feeney Roser: Right, and then after you have that motion, if you would like to make changes to 14A, that's fine as well. We can make sure that Council is aware that you have reviewed that and you have suggestions for them, but this is required because it is Chapter 27 and 32.

Mr. Silverman: I have no problem with that.

Mr. Fruehstorfer: It's the section of the report that says **Staff Recommendation** before that are the recommendations that are referred to by the Recommendation on page 9.

Mr. Silverman: And, that takes us back to how the changes were derived.

Mr. Fruehstorfer: Yes.

Mr. Silverman: And, what we are looking at on page 9 omnibus?

Mr. Fruehstorfer: Yes.

Mr. Silverman: I'm with you. It is a good paper trail. Just as a point of information, I'm throwing this out. Maureen, do you recommend that we adopt receipt of this report since we are referencing Federal regulations and making a substantial change and then move into the motion to show that we have received it, we've reviewed it and it is here?

Ms. Feeney Roser: Sure.

Mr. Silverman: I would like to do that. I know that gets a little on the bureaucratic side but when somebody has a question about how did we get there.

Mr. Silverman: The Chair will entertain a motion to accept the report of the City of Newark, Delaware, Planning and Development Department, dated July 28, 2015 with respect to revisions to amendments in Chapter 27 – Subdivisions and Chapter 32 – Zoning Code of the City of Newark Delaware regarding floodplain regulations. Is there a motion?

MOTION BY STOZEK, SECONDED BY MCINTOSH TO ACCEPT THE REPORT OF THE CITY OF NEWARK, DELAWARE, PLANNING AND DEVELOPMENT DEPARTMENT, DATED JULY 28, 2015 WITH RESPECT TO REVISIONS TO AMENDMENTS IN CHAPTER 27 – SUBDIVISIONS AND CHAPTER 32 – ZONING CODE OF THE CITY OF NEWARK DELAWARE REGARDING FLOODPLAIN REGULATIONS.

Mr. Cronin: I have one question. I am looking at page 3 of the report that we got in our packet. It is suggested at the top that we are revising Section 32-51 changes in italics, but also we have that "including basement phrase in there." Were we deleting that?

Ms. Feeney Roser: We are deleting that entire section if you take the recommendation of the Planning Department. We just went through and made the changes that we needed to make in the Code in case you didn't want to delete it.

Mr. Silverman: Bob, what we are doing is recognizing that this was presented to us and it was reviewed at a public meeting. And, then we are going to have a motion that accepts the recommendation with revisions we talked about with respect to basements and putting in the additional parentheses.

Mr. Cronin: Okay.

Mr. Fruehstorfer: 32-51 is deleted on page 7 of the report.

VOTE: 4-0

AYE: CRONIN, MCINTOSH, SILVERMAN, STOZEK

NAY: NONE

ABSENT: HURD, JOHNSON

MOTION UNANIMOUSLY PASSED

Mr. Silverman: Next motion.

ON MOTION BY MCINTOSH, SECONDED BY STOZEK, THE PLANNING COMMISSION RECOMMENDS THAT COUNCIL APPROVE THE AMENDMENTS TO CHAPTER 27 SUBDIVISIONS, AND CHAPTER 32 ZONING, OF THE MUNICIPAL CODE OF THE CITY OF NEWARK, DELAWARE REGARDING FLOODPLAIN REGULATIONS IN ORDER TO INSURE CONSISTENCY OF THE CITY'S FLOODPLAIN REGULATIONS WITH FEDERAL REQUIREMENTS AND LANGUAGE, AND TO PROVIDE MORE CLARITY AND PROPERLY ASSIGN RESPONSIBILITIES AND POWERS RELATED TO FLOODPLAIN REGULATIONS, THE PLANNING AND DEVELOPMENT DEPARTMENT SUGGESTS THAT PLANNING COMMISSION RECOMMEND THAT COUNCIL AMEND CHAPTER 27 - SUBDIVISIONS AND CHAPTER 32 - ZONING AS RECOMMENDED IN THE PLANNING AND DEVELOPMENT DEPARTMENT'S REPORT, WITH THE DELETION OF THE REFERENCE TO "(INCLUDING BASEMENT)", AND ADDING THE ACRONYM "SFHA" WHERE APPROPRIATE.

Mr. Silverman: A comment on the record. We are referring to "including basement" in parentheses for insurance in the event that the deleted section is not adopted by Council.

Ms. Feeney Roser: We haven't had public comment.

Mr. Silverman: Oh, I'm sorry.

Dr. John Morgan: District 1. Just a quick question first. Are you voting only on revisions to Section 27 or also on Section 32, at this point?

Mr. Silverman: It is 27 and 32.

Dr. Morgan: Together. Okay. I don't know where you are because there are many paginations, but I'm on this sheet right here, which is the page of the report that was supposed to be shown on the screen, and I just have a question which is where you are revising the recommended wording where it says, "For reconstruction, improvement, or rebuilding of an existing building(s) or foundations(s) of a previously existing building(s) that has been abandoned, . . .) And, there was a question about what you meant by abandoned, but then it also says, " . . . or otherwise unoccupied for a period of more than one year, . . ." So, I think that is clear that if it is not occupied, this applies. Then it says, ". . . such improvement or rebuilding shall be limited to the confines of the existing buildings(s) or building foundations(s)." And, I would now just ask the question, let's

suppose a house is so severely damaged that it is knocked off of its foundations. The owner wants to rebuild on the same lot. Wouldn't you want him to rebuild further up in elevation and not be confined to the existing foundations?

Mr. Fruehstorfer: I think what we are trying to do in this whole effort is address questions and fix the mistakes we found from the last revision. I don't know if our intention now is to be changing the intent of the Code so much, and that is what we are starting to talk about now. We are not just taking the same Code and making it more clear. You are talking about changing its intention, which we can do, but that wasn't what we set out to do with this whole effort.

Mr. Silverman: If I understand correctly, City Council can give relief from provisions of the Code. So, if the Code says, if I have 24' x 36' basement, my house was damaged to the point that it is gone, and the guy says, I can't build a modern house in that dimension anymore, I need to extend another 16 feet out the back, according to this, he can't do it.

Mr. Fruehstorfer: No, and I haven't been dealing with this a long time; I am not a total expert. My understanding, though, is that Council can't grant a variance that doesn't meet the Federal guidelines. The type variance that Council could grant, we are requiring construction to be 18" above the base flood elevation. The Federal Government either requires it at the base flood elevation or one foot (12") above. So, Council could grant a variance down to the minimum standard that the Federal Government requires (12"), but can't go beyond that. So, in this case, you are talking about a bigger foundation that is going raise the flood level for everyone else. So, that would not be allowed.

Ms. Feeney Roser: To get back to Dr. Morgan, I don't think you were talking about expanding the foundation. You were talking about wanting them to have to raise the foundation.

Dr. Morgan: But, not on the same (foundation). Suppose you have a piece of land that slopes downhill and suppose the original builders decided it would be nice to have a house next to the river and then it got flooded out. Wouldn't you want the property owners to rebuild their house 20 feet further up the hill where it is much less likely to get flooded out?

Mr. Fruehstorfer: That 20 ft. up the air is out of Special Flood Hazard Area, then they would be allowed to do that. Just moving further away from the stream, I'm not sure. I would have to read it carefully to find out. Offhand, I don't know the answer.

Mr. Silverman: So, our interpretation is, if they have the option on their same property and they meet setbacks and all the other regulations, they could chose to relocate their house from the previous foundation and move it out of the floodplain.

Ms. Feeney Roser: Move it out of the floodplain if you could meet requirements, absolutely, but I think the question is, within the floodplain. That's what you are saying, you don't know.

Mr. Fruehstorfer: I don't know the answer to that question without research.

Dr. Morgan: Would this be an appropriate time for me also to ask a question about the revised definition in Section 14A-9?

Mr. Silverman: Hold on on Section 14, because we are concentrating on changing the other sections – 27 and 32.

Mr. Cronin: On the confines of the existing foundations and so forth, it seems to me the intent is to not allow expanded square footage so you are not creating any wider footprint that is going to raise any floods in the future. So, somewhat along the lines of

Dr. Morgan, why don't we, perhaps, change it to the no additional square footage, but it wouldn't have to be within the confines of the old foundation.

Mr. Fruehstorfer: We would have to check with FEMA to see if that would meet their approval. For the most part, this is FEMA approved language. We need to meet FEMA regulations to be certified – if that is the word they use – to be compliant.

Ms. Feeney Roser: And, this is an existing nonconforming. So, we can't approve anything that doesn't conform unless it meets Code, right. So, that is what the Code is saying because it has to be on the existing foundation and not to exceed that. We wouldn't give a building permit for another location in the floodplain. Right?

Mr. Fruehstorfer: As far as I know, and FEMA may not allow that.

Mr. Silverman: And we are adopting all this and conforming to FEMA so homeowners will continue to be eligible for Federal Flood Insurance. That is the whole purpose outside of not interfering with floods and further damage, but from a financial point of view and rebuilding point of view.

Mr. Fruehstorfer: And, going back to the basement. You are going back to FEMA language. We didn't write it.

Mr. Silverman: There is a higher power here. Are we ready to call the question?

VOTE: 4-0

AYE: CRONIN, MCINTOSH, SILVERMAN, STOZEK

NAY: NONE

ABSENT: HURD, JOHNSON

MOTION PASSED UNANIMOUSLY

Ms. Feeney Roser: Do you now want to go into 14A?

Mr. Fruehstorfer: If the Commission would like to.

Mr. Silverman: Do we as commissioners have discretion on 14A or are we still controlled by the FEMA wording? If we don't have any discretion, the wording and definitions are taken part and parcel.

Mr. Fruehstorfer: I'm not sure it is accurate to say that you don't have any say. They are just saying that if we do make changes, we may have to check with FEMA to make sure they are okay. And, that is not what we are doing. Things that are happening in 14A, at least what we are recommending, don't have a lot to do with that. If you have other things that you want to change, you are welcome to change those.

Mr. Silverman: Commissioners, are there any comments on 14A?

Ms. Feeney Roser: Do you want Tom to review 14A for you?

Mr. Cronin: I think we do. We kind of finished one section of his handout, we ought to go with the next section and press on.

Mr. Fruehstorfer: So, moving on to question A1.

Mr. Cronin: Which page are you on, Tom?

Ms. Feeney Roser: Page 10.

Mr. Fruehstorfer: It says page 10 of report but that is just identifying that what I am talking about with question A1 can be found on page 10 of our report.

Ms. Feeney Roser: That is the recommendation for 27 and 32. The next page starts 14A.

Mr. Fruehstorfer: Does it say Chapter 14A questions? We are one question A1

The following statement is part of the Code integral to establishing special flood hazard areas:

“(c) Other hydrologic and hydraulic engineering studies and/or maps prepared pursuant to these regulations or for other purposes, and which establish base flood elevations, delineate 100-year floodplains, floodways or other areas of special flood hazard.”

There was a concern for the phrase “or for other purposes” seems vague and perhaps too lenient. It was suggested the phrase be replaced by “other purposes as approved by Council”.

We agree with that and are recommending this be changed to:

Recommendation

Revise Sec. 14A-4. (c) to read: **(changes in italics)**

“Other hydrologic and hydraulic engineering studies and/or maps prepared pursuant to these regulations or for other purposes *if approved by City Council*, and which establish base flood elevations, delineate 100-year floodplains, floodways or other areas of special flood hazard.” That was a simple change.

The next question is the one I already started talking about. You will see 1 and 2 on that page are basically the same wording except the non-residential structures also have the “All attendant utility and sanitary facilities shall be flood proofed up to the same floor elevation,” We were agreeing that that requirement should be added to both residential and nonresidential, but instead of adding it in the protection of flood carrying capacity area of the ordinance, we wanted to add it in the building and structures area of it. So, we took that whole “New construction or substantial improvements to existing buildings and structures that are located, in whole or in part, in special flood hazard areas shall have the lowest floor (including basement) elevated a minimum of 18 inches above the 100-year flood. All accompanying utility and sanitary equipment shall be flood proofed up to the same floor elevation.” That is for all structures. That includes residential and nonresidential. That sounds like you would like to remove the, “including the basement.” I think it is not that simple because I think we are still going to still want some sort of wording that says that the basement is not the first floor. Something else has got to be written there to make sure that someone says, well, that is not my first floor, that’s by basement so I can have it there.

Mr. Cronin: It doesn’t say the first floor. It says the lowest floor elevated. They can call it the second floor if they want. It’s still the lowest floor. It doesn’t matter what it’s called as long as it’s the lowest floor, in my judgement.

Mr. McIntosh: I’m not an expert in this at all, but I think of the basement as the basement, not the lowest floor. The lowest floor is the first floor, to me.

Mr. Fruehstorfer: My general thought is, there have been decades of thought put into this wording. It is going to be more complicated that just crossing out a couple of words. Just crossing out a couple of words could cause other problems. We have to be very careful in how we change this.

Ms. Feeney Roser: I think the intent of the language is to let people know that no basements are allowed.

Mr. Fruehstorfer: Exactly, I think what's there says that.

Mr. Cronin: Suppose we said, shall have no basements and the lowest floor shall be elevated a minimum of 18" above.

Mr. Fruehstorfer: Again, that sounds like that's a good solution. . .

Mr. Cronin: Good.

Mr. Fruehstorfer: But, I'd have to look at the rest of the Code to make sure. That is a good recommendation to make and we can further research to make sure it is okay.

Ms. Feeney Roser: If the Commission wants to make that recommendation, they can, and we will look into it.

Mr. McIntosh: If a house doesn't have a basement – a lot of houses don't – then the lowest floor would be above ground, right. That would be pretty clear, correct? So, if you fix the lowest floor being the basement, then that covers both of those things.

Ms. Feeney Roser: I think that is the intent.

Mr. Silverman: I may be confusing other codes but I remember the reference to occupied elevation or inhabited elevation.

Ms. Feeney Roser: There are references in the Code to that, but in this case, we are just saying the lowest floor.

Mr. Silverman: I know.

Mr. Fruehstorfer: Even if it is unoccupied.

Mr. Cronin: Sure.

Mr. Silverman: Which is a way to keep people from having basements.

Mr. Cronin: Whether it is a new construction or substantial improvements after a flood, I think going forward, it is appropriate to say, shall have no basement and the lowest floor shall be elevated a minimum of 18", and make it rather clear, "shall have no basement and the lowest floor shall be 18", and that doesn't look so goofy. I mean, how do you elevate a basement above a BFE and still call it a basement? I'd just say, "Shall have no basements."

Ms. Feeney Roser: I think we are getting bogged down by this. I don't think we have any problems with your suggestion to say no basement, if that is what the Commission would like to recommend.

Mr. Silverman: It would be a recommendation. "There shall be no basement."

Mr. Cronin: As I said, "there shall be no basements and the lowest floor shall be."

Mr. Silverman: Yes, and that way it allows for a crawl space under the structure.

Mr. Cronin: Yes, it does.

Mr. Fruehstorfer: Next is question A-1 1. I think, basically, that covers all the questions or comments we have recommendations for. These next ones were just some clarification. So, in 14A04 (d), it states that, "The city may identify and regulate new local flood hazard or ponding areas. These areas should be delineated and adopted on a "local flood hazard map" using best available topographic data and locally derived information such as flood of record, historic high water marks or approximate study methodologies." There was a question raised about what was meant by "the City". City is defined in Section 1-3 as "the City of Newark, in the County of New Castle, and the State of Delaware." Section 14A specifically references "regulating new local flood hazard." This is an action that would be identified by City staff and reviewed and approved by City Council. Therefore, the term "city" is adequately defined and is consistent with uses in other sections of the Code.

Mr. Cronin: However, Tom, I suggest when referring to the City, we always use a capital C in every instance to mean, effectively, the City of Newark and not something, perhaps, other.

Ms. Feeney Roser: That's fine, we can do that.

Mr. Silverman: That is commonly accepted.

Mr. Fruehstorfer: Okay. The next question is A-1 2. This goes back to substantial improvement. Again, the same definition we were reading before. I won't read it again, but it was thought that definition of substantial improvement, there might be a cross purpose situation with other definitions in the Code and it may be more appropriate to have definitions removed from individual ordinances and combined in one place. So, we looked into this a bit. We could not find any overlap with any other definition of substantial improvement. We found the terms "substantial" and "improvement" are used in other sections of the Code, but not together. We found "improvements" defined in Chapter 32 and there were also definitions for lot improvements and public improvements in other sections and it was further decided that having a definition for substantial improvements is consistent with other definitions in other chapters of the Code. We also thought that possibly the 50% thing is what was causing some confusion. So, we found in Chapter 14 Fire Protection, there is a reference to renovations at any one time to 50% or more of its interior area. This, though, refers to something that requires installation of sprinklers. It is not associated with cost compared to the home's value as the floodplain regulation does. We could find no other reference to either "substantial" or "improvement" in Section 7-14 of the Code. We also looked into the suggestion of having one definition section to cover the entire Code. Our thought was that this would be a massive effort and beyond the scope of this project. And, there may be current or different definitions for same word in different Code sections and it would be difficult to develop a single definition that would work in every ordinance. In other words, the attempt to change the definition to improve one Code section may unintentionally change the meaning of another Code section. This is described completely in Appendix 8-2, but I have two quick slides to highlight it. I looked at the definition of motor vehicle and found in three different chapters different definitions. In Chapter 20, it is basically self-propelled vehicles except farm tractors. Chapter 20A Noise, includes trailers and Chapter 1 also has a definition peddlers, Vendors, any vehicle used for the display, storage, or transportation. So, see, trying to work different chapters could get difficult looking at what we are going through here now with just two chapters. But, the next page really highlights it even more.

I looked at the term "repair" which I found defined in Chapter 7 – Building and used 99 times in at least 21 different chapters without being defined anywhere else. If the Chapter 7 – Building definition for "repair" was applied to all uses of "repair" at least 20 chapters would need to be reviewed to verify that the specific definition for "repair" did not alter the meaning of any other chapter. That is just one word. So, we recommended against that. Are there any questions?

Mr. Cronin: It seems to me that we could say, if we wanted, on the page 13 of the report that will (inaudible). That very first sentence defines it as equals or exceeding 50% of the market value, so perhaps, is it relevant to clarify "substantial improvement" as defined in this paragraph or for this particular section defined as, and just have a specific definition that's limited to that particular section only. Would that be helpful?

Mr. Fruehstorfer: That is the way it is. This is a definition in Chapter 32, which implies that it (inaudible).

Mr. Cronin: So, you think that is sufficiently clear the way it is.

Mr. Fruehstorfer: Yes, that is the way most other chapters in the Code are. If the drafts of the Code thought words in that section needed to be defined, they included definitions in that chapter. Those definitions don't go from chapter to chapter.

Mr. Cronin: Thank you.

Mr. Silverman: Dr. Morgan, we are on 14, your comments.

Dr. Morgan: District 1. I am on, it says page 8 of report, section 14A-9 Definitions. This is Substantial Improvement. I think I should like to start with a logical point which is in the italicized phrase, “. . . as determined through assessment records or by a bona fide property appraiser to be submitted to the Planning and Development Department.” The language as it is written doesn’t make it clear which is going to be used if there is a discrepancy. Who decides whether you are going to use the assessment records or the bona fide property appraiser? Is it the property owner that decides?

Ms. Feeney Roser: I think we are going to use the property assessment records, and if the homeowner does not feel that is adequate, they would get an appraisal done.

Dr. Morgan: I think that for clarity, it would be better then to say something like, that you are going to pick the lesser or the greater of these two different numbers, because, after all, it is possible that the City could hire a bona fide property appraiser if the City disagreed with the assessment records. You might think the assessment records are just really out of date for some reason.

Ms. Feeney Roser: I know that Tom has been doing the adjustment, as he said, but what do you think about that? Whichever is greater? Is that what you would think? That sounded like the intent of it.

Mr. Fruehstorfer: If you are saying whichever is greater, that is only going to be if you have an appraiser. That’s not to mean you have to do both and pick which is greater.

Dr. Morgan: But, you see, the point is, it is a little unclear if you have an either or.

Mr. Silverman: Would it default to the homeowner?

Mr. Fruehstorfer: In my mind, that is what the intention is. The intention is to do a basic assessment and if the owner doesn’t like it, they could come back with a professional assessment.

Mr. McIntosh: Why don’t you just say that, because here, as Dr. Morgan’s pointed out, it does say one or the other, basically, or in this way here you say you are going to use the assessment records? The homeowner, if they disagree – I’m not saying this is the exact language – they have the right to get an assessment and submit it.

Mr. Fruehstorfer: We can certainly come up with good wording for that and include it in our recommendation to Council.

Mr. McIntosh: I think it is a very good idea. It gives the homeowner clear direction as to what to do.

Mr. Stozek: You are going to take the greater number. Suppose the homeowner comes in with an appraisal that for some reason the City doesn’t agree with.

Mr. McIntosh: Good point.

Dr. Morgan: There’s an old joke about accountants. What is $2 + 2$? And, the answer is whatever you want it to be. What do you mean by a bona fide property appraiser? Do they have to be licensed in Delaware?

Mr. Cronin: Yes.

Dr. Morgan: Is there any control over what they do? Suppose an appraiser comes up with one number that is 50% more than most other appraisers would?

Mr. Cronin: They have professional standards to qualify for their license. But, having said that, you could probably get two or three appraisals and they wouldn’t necessarily all have the same precise answer. It is a professional determination but it is not totally objective like mathematics.

Mr. Silverman: I am going to have to depend on Bob Cronin for this, particularly when we get into nonresidential. Residential is relatively easy.

Mr. Cronin: But you can still get two different numbers.

Mr. Silverman: But, I could see with commercial where somebody takes into use and access and special circumstances and all kinds of things that could skew a number. For example, you talked about houses in the floodplains. (Inaudible) That house may be worth more because it's got a long backyard that is all heavily wooded and the person knows that they are enjoying somebody else's open space as to somebody who has a standard lot.

Ms. Feeney Roser: Can we try to keep in mind, though, what it is we are trying to do here. We are trying to define "substantial improvement," which means that a house that is in the floodplain needs to be damaged to a point where we are trying to determine whether or not it can be rebuilt. So, we are using this to define what "substantial improvement" is, not necessarily to talk about appraisals in the large sense, and I would think that if someone came in with an appraisal by a certified property appraiser we would accept it.

Mr. Fruehstorfer: We are doing the same thing in another section we talked about tonight with licensed surveyors and engineers. They could basically trust that somebody who has a license is going to give you a truthful and honest appraisal and they are going to vary a little bit, but hopefully they are being honest, they've signed it and they are swearing to it.

Ms. Feeney Roser: How about this. Can we do something that says determined through assessment records or by a bona fide property appraisal to be submitted and approved by the department? Would that make people feel like there was that safeguard there, that it would have to be not just submitted but something that we thought was accurate and if we didn't think it was accurate, we could have our own done, I suppose. We could always leave it out entirely, which is the way the Federal regulations are written in the first place.

Mr. McIntosh: I don't think that is a good idea. Maybe we are playing around with semantics here and to no good end, and if you keep it the way it is written, it would say you used one piece of the (inaudible) so there is only one other piece left and that other piece is to bring an appraiser in, and if you wanted to do that, you could.

Mr. Fruehstorfer: And, maybe that doesn't even need to be in Code because the tracking of this is just starting this year. I am making the format up, basically, as I go. So, we certainly could write that in our procedure.

Mr. McIntosh: My point would be, as long as the homeowner realizes that they have an option, that whatever you said, if they disagree with it, they have an option. Many homeowners, if they didn't think they had one, (inaudible) but others less sophisticated, perhaps, may not think about that or do anything about it. So, you have it somewhere where you say it is okay for you to do that if you don't agree with us.

Mr. Fruehstorfer: That is certainly my intention. I was also thinking about how to do this, so we could just put that intention down in writing and it wouldn't necessarily have to be part of the Code. It could just be a City policy.

Mr. McIntosh: That would be alright with me. Unless you were to decide at a later point, no we are not going to let them do that. We are going to change City policy, which is a lot easier to do than to change a code, it seems to me.

Mr. Fruehstorfer: I think with the variability and questionability of adjusting assessed values, there has got to be another way if that isn't getting a good number.

Mr. McIntosh: I recommend we leave it the way it is.

Mr. Cronin: I can read it two different ways that the 50% of the market value is before the damage occurred or as is damaged. I think the placement of the phrases in the words can be improved upon somewhat because it can read 50% of the market value of the structure before improvement repair is started or before it started. It is grossly damaged and it is 50% of the damaged, the washed out whatever. Or does it mean 50% of what was there before it was damaged.

Mr. Silverman: Now you are thinking like an insurance adjuster.

Mr. Cronin: I'm looking at the wording and words have meaning and the phrasing and so forth and clarity and how somebody might be able to read something differently. Depending upon how you, in your own mind, group these words together.

Mr. Fruehstorfer: Their substantial damage is another definition and I don't think this is referencing rebuilding of its damage. This is saying, I've got a house that I want to make additions to. This has nothing to do with damaged property. There is another definition of substantial damage that is related to this one. This is, I have my house that is a perfectly livable situation right now in a floodplain right now and I want to add on. So, I determine my value of what it is now, and that is what we are doing now as a building permit request comes in for a property they want to do work, we are looking at the value of their home making sure it doesn't exceed 50% of its value.

Mr. Cronin: I guess I was a little misled by that, the words repair, reconstruction and rehabilitation being improvements. To me, they could be restoring to a previous condition.

Mr. McIntosh: But, it does say market value of the structure before improvement or repair is started. It indicates to me the structure as it exists. That is what I would say.

Mr. Fruehstorfer: And I have to look closely at the definition of the substantial damage and see how it relates to this to figure this out completely right now.

Mr. Cronin: And, a repair is not necessarily an improvement or an improvement is not necessarily a repair. Let's put it that way.

Mr. Silverman: We are talking about the value prior to the event.

Mr. Fruehstorfer: The event is remodeling.

Mr. McIntosh: It is right here, market value of the structure before improvement or repair is started. So, if you are saying that I want to fix the chimney – I don't know how that would apply here.

Mr. Fruehstorfer: It would. Any work you are doing to improve your home.

Mr. McIntosh: If you have a really, really, nice chimney you want to put in, that could probably make it more than that, I guess. At any rate, it seems to me it's clear, it's the way the structure is at it stands before you do anything to it. So, I don't think there is any need to deal with that.

Mr. Silverman: Are we ready for a recommendation on Section 14?

Dr. Morgan: Could I first ask another question, which is, where does the 50% number come from? Is that national standard?

Ms. Feeney Roser: It is from FEMA.

Dr. Morgan: Thank you.

Mr. Cronin: Can I suggest that if we delete repair, reconstruction and rehabilitation and in the fourth line where it says improvement and repair just take out repair.

Mr. Fruehstorfer: I don't know what other part of the Code this is attached to. You can make the recommendation, I guess, but beware, we are going to need to go through and make sure that's not changing something else.

Mr. Cronin: Okay, but it seems to me for substantial improvement, it would read better, "... any alteration, addition or other improvement ..."

Ms. Feeney Roser: There could be repairs included in that, though. You could have something that you wanted to repair and then decide, while I am at it, I had to take off this portion of the roof, I'd like to do X or Y. I don't feel very comfortable with removing something that's part of the FEMA Code that may apply to other sections, unless there is a real problem with it, other than just wordsmithing.

Mr. Silverman: Tom, I'm going to have to have some assistance here in looking at your report. Do you know what page we are talking about in your report?

Mr. Fruehstorfer: It's going to be page 8 of the report, if we are talking about the substantial improvement.

Ms. Feeney Roser: Not your report. Page 8 of the handout.

Mr. Fruehstorfer: It is page 8 of the report. It is 3 lines down, replace with changes in italics. Is that what you are looking for?

Mr. Silverman: That takes us back to having to amend our previous recommendation.

Ms. Feeney Roser: That is not what we are talking about. We are talking about 14A.

Mr. Fruehstorfer: 14A-9 Definitions. I guess we talked about that in another section also.

Mr. Silverman: The PowerPoint presentation is not part of the accepted report and it is very hard to reference pages on that.

Mr. Fruehstorfer: If you've got the PowerPoint report, the page is referenced on the bottom right.

Mr. Cronin: It is on page 23 of the handout under definitions, is it not? At the bottom of page 23?

Ms. Feeney Roser: That is the Code sections that have been redlined. I think what you have been referring to is Appendix A-1. Is it not, Tom, of your report? Not of the PowerPoint, of your report. That is what you reviewed through the PowerPoint just now with the Commission where we talk about the word "city" should be capitalized.

Mr. Fruehstorfer: Page 13.

Ms. Feeney Roser: Page 13 of the Planning and Development Department report, right?

Mr. Fruehstorfer: Yes.

Ms. Feeney Roser: What we are looking for direction from the Commission so that we can make those recommendations to Council. So can let Council know that the Commission looked at it, right?

Mr. Fruehstorfer: I should also add, though, that at this point of the appendix . . .

Mr. Silverman: I am trying to craft a motion that says, we've reviewed and we recommend Chapter 14-A as presented as part of the July 28, 2015 report.

Mr. Fruehstorfer: I think the recommendations that you are making aren't associated with any of the recommendations I made. So, it really doesn't correspond to a page of my report. It is kind of a separate recommendation. Right?

Mr. Cronin: This 14A-9 Definitions, is exactly what is at the bottom of page 23 of the handout.

Mr. Fruehstorfer: Yes, that is the Code.

Ms. Feeney Roser: I think what we are trying to get to is that the Commission has reviewed the Planning and Development Department's recommendations for changes to 14A and they have the following comments about them. Right?

Mr. Fruehstorfer: Page 13 is where we talked about this section. It is referenced page 13 of the Planning and Development Department report.

Ms. Feeney Roser: Appendix A-1.

Mr. Fruehstorfer: Yes. This is where we were talking about substantial improvement. It had nothing to do with the wording we are talking about. We are making unrelated changes to a section of the Code.

Ms. Feeney Roser: Right. What this is referring to is the fact that the Planning and Development Department was asked to look at the term, “substantial improvement” and see if there was a cross purpose in the Code and that’s when you went through and looked at all these other places and see no reason to. Is there a recommendation from you?

Mr. Fruehstorfer: There is no recommendation, no.

Ms. Feeney Roser: Then you don’t really need anything from the Commission then.

Mr. Cronin: But, then, why do we, on page 23, the new wording in definitions at the bottom?

Mr. Fruehstorfer: That was erased from Section 32-51 and added in this because before it didn’t say. . .

Ms. Feeney Roser: But, you are going to make a recommendation to add those words that the Commission has been discussing.

Mr. Fruehstorfer: Yes, that was in the first part of the report. That was the first page I gave you. It was back on page 8. That was the one that we were taking something out 27 and 32 and moving into 14A. So, we talked about that in the first section before the Appendix and that is where we added the word and it was page 8.

Mr. Silverman: And, we have already accepted that recommendation.

Ms. Feeney Roser: Yes, you have. So, in 14A if we look starting on page 17 of the report, so Appendix B. It has everything that’s red lined in Chapter 14A that the Department is recommending to Council and you have already discussed all of that with the Commission.

Mr. Fruehstorfer: Yes.

Ms. Feeney Roser: So, the Commission doesn’t need to have a separate motion on it.

Mr. Silverman: So, we do not need an additional motion.

Ms. Feeney Roser: Because if you look at page 30, there is a red line there that is talking about buildings and structures. The Commission may want to say that they don’t think that the parentheses saying, including basements, should be in there but that the words should say, no basements, which they did in the other recommendation. So, we can follow that through for Council. I’m just making sure that there isn’t anything in 14 that the Commission wants to comment on that they have not already.

Mr. Silverman: So, we are going to leave it at this point where staff will review our comments and make the necessary corrections.

Ms. Feeney Roser: Absolutely. If you look at 39, we are going to add the acronym SFHA there because the Commission suggested that in 32 and 27. So, we will make sure that follows through on the Code and there isn’t anything else other than. . .

Mr. Silverman: And that nothing we are suggesting will be at cross purposes with other sections of the Code. That is just something to look at.

Ms. Feeney Roser: Yes. We will check that. So, unless the Commission wants to make a recommendation, I think that it is not necessary because we have your concerns.

Mr. Silverman: I see a nodding of heads consensus. We will leave it stand as you described it, Maureen.

Ms. Feeney Roser: Thank you.

Mr. Silverman: That appears to bring us to the end of our agenda. If there is no further business, and no objections, we will stand adjourned.

There being no further business, the Planning Commission adjourned at 9:01 p.m.

Respectfully Submitted,

Elizabeth Dowell
Planning Commission Secretary

/ED