

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

September 1, 2015

7:00 p.m.

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

Chairman: Alan Silverman

Commissioners Present: Bob Cronin
Robert Stozek
Edgar Johnson
Willard Hurd
District 4 – Vacant

Commissioners Absent: Frank McIntosh

Staff Present: Maureen Feeney Roser, Planning and Development Director
Mike Fortner, Development Manager
Tara Schiano, City Secretary's Office

Chairman Silverman: We do have a quorum and in deference to the people who are here and the applicant, I'm going to call to order the City of Newark Planning Commission meeting for Tuesday September 1, 2015. (gavel)

1. ELECTION OF PLANNING COMMISSION VICE CHAIRMAN.

Mr. Alan Silverman: The first item on our agenda is the election of the Planning Commission Vice Chair. We took a look at the calendar. We elect all new officers next month anyway. If there is no objection from the commissioners, we will simply withdraw that particular item from this agenda and proceed to a full slate of elected officers next month. Also, I would like to acknowledge the retirement of Elizabeth Dowell, our faithful secretary for almost 11 years. Tara Schiano from the City Secretary's office will be filling in tonight, and I understand we are going to be trying out a commercial transcription service.

Now, those of you who have worked with Elizabeth before have gotten comfortable with her. She's gotten comfortable with us. She would recognize voices. She knows who works for whom. I'm going to take a couple steps back here and remind you that we have hearing appearance slips on the back ledge there by the rail. And, I would like those of you who are here on behalf of the applicant to fill that out and say you are such and such engineering firm. So, all that written material can go to the transcriber. Also, we need to be diligent, and that includes myself as well as the commissioners, to make sure we state our name clearly into the microphone again for the transcription service, so this is something we're going to be learning together.

2. MINUTES OF THE AUGUST 4, 2015 PLANNING COMMISSION MEETING.

Mr. Silverman: The minutes, and again with Elizabeth's departure, we are taking a slightly different tack here. The minutes have been posted electronically on the city website in draft form from the last meeting. The city secretary's office has taken corrections from the commissioners as well as any public comments that have come her way, and those have been revised. The commissioners have electronic copies of those revised minutes. The revised minutes are also on the website. Most of the -,

well, virtually all the issues for grammar and spelling and word orders have been moved around.

So, if there is no objection from the commissioners, we will accept the minutes as posted electronically as revised. Yes.

Mr. Cronin: [Inaudible 00:03:27].

Mr. Silverman: Okay.

Mr. Cronin: [Inaudible 00:03:29].

Mr. Silverman: Okay.

Mr. Cronin: Other, other place [inaudible 00:03:55].

Mr. Silverman: Okay.

Mr. Cronin: Because then I'm sure that was [inaudible 00:04:03].

Mr. Silverman: With that correction from Commissioner Cronin, if there are no objections, the minutes will stand as amended. [gavel] Moving on to the next item on our agenda.

Ms. Feeney Roser: Okay.

Mr. Silverman: Go ahead.

3. REVIEW AND CONSIDERATION OF THE COMPREHENSIVE DEVELOPMENT PLAN AMENDMENT, REZONING, MAJOR SUBDIVISION AND SPECIAL USE PERMIT OF THE .89 ACRE PROPERTIES AT 174 EAST MAIN STREET AND 21 NORTH CHAPEL STREET IN ORDER TO ADD 6 APARTMENT UNITS WITH FIRST FLOOR PARKING TO THE EXISTING MIXED USE BUILDING KNOWN AS ASTRA PLAZA.

Ms. Feeney Roser: Maureen Feeney Roser, Planning and Development Director. We are now going to consider a Comprehensive Development Plan amendment, Rezoning, Major Subdivision and Special Use permit for the properties located at 174 East Main Street and 21 North Chapel Street, Project number 150305. For the benefit of those in the audience, I will briefly summarize the Planning and Development Department report which reads as follows:

On March 26, 2015, the Planning and Development Department received an application from Astra Plaza Associates for a rezoning and major subdivision of the .89 acre properties at 174 E. Main Street and 21 N. Chapel Street. The applicants are requesting approvals to add six (6) three-bedroom apartments to the northern end of the existing mixed use building known as Astra Plaza. Specifically, the applicants propose to rezone a .10 acre parcel located at 21 N. Chapel Street from RM (multi-family residential – garden apartments) to BB (central business district), and add it to the Astra Plaza parcel on the northwest corner of the intersection of N. Chapel Street and E. Main Street. The rezoning will also require a Comprehensive Development Plan amendment as Comp Plan IV designates the N. Chapel parcel as appropriate for low density residential uses. The applicants propose to continue the uses in the existing building, including 15,595+/- gross floor area of retail and restaurant uses and 12 two-bedroom apartments, while adding six (6) new residential units for a total of 18 apartments at the site. Parking for the development is proposed in the existing parking lot for the Astra Plaza complex and on the first floor of the new units, with two floors of living space above. The applicants also request approval of the required special use permit for apartments in the BB zone.

Please see attached the Karins and Associates Comprehensive Development Plan amendment, rezoning, major subdivision and special use permit plan, including building elevations showing the proposed facades.

The Planning and Development Report concerning this development plan proposal follows:

Property Description and Related Data

1. Location:

The property is located in the northwestern corner of the intersection of E. Main Street and N. Chapel Street.

2. Size:

.89 acres.

3. Existing Land Use:

The BB zoned 174 E. Main Street parcel currently contains a mixed use building with 15,595 +/- square feet of restaurant and retail space on the first floor and 12 two-bedroom apartments on one floor above, with associated access driveway and parking. The RM zoned 21 N. Chapel Street site contains a single family rental home fronting on N. Chapel Street.

4. Physical Condition of the Site:

The 174 E. Main Street parcel is a developed site containing a two-story mixed use building. The 21 N. Chapel Street is a developed site with one single family home, most recently used as a rental unit.

In terms of topography, the site is relatively flat and slopes only slightly from north to south towards Main Street, and west to east towards N. Chapel Street.

Regarding soils, according to the United States Department of Agriculture's Natural Resources Conservation Service, the property contains Urban Land (Up) soils. The Natural Resources Conservation Service does not indicate development limitations for previously developed soils of this type.

Planning and Zoning

The 21 N. Chapel Street site is zoned RM (multi-family dwellings – garden apartments).

RM is a multi-family apartment zone that permits the following:

- A. Garden apartments, subject to either site plan approval as provided in Article XXVII or the following regulations:
- B. One-family, semidetached dwelling.
- C. Boarding house, rooming house, or lodging house, but excluding all forms of fraternities and/or sororities, and further 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; provided that:
- 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 as defined and limited in Article II and subject to the special regulations of Article XV of this chapter, excluding semi-trailers and similar vehicles for storage of property.
- F. Cluster or neo-traditional types of developments, including uses that may 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 any one-family dwelling by a family resident on the premises, but not including student homes, is not a use as 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 three boarders or roomers in any one-family dwelling, and provided that such use by a nonowner occupant family resident on the premises and an owner occupant

family resident taking in more than two roomers or boarders, is permitted subject to the following requirements:

- 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 tower, water storage tank, water reservoir, water pumping station and water treatment plant.
- M. Municipal sewage pumping station and sewers.
- N. Right-of-way, street.
- O. Temporary building, temporary real estate or construction office, and temporary storage of materials provided that such use is located on the lot where construction is taking place or on a lot adjacent or part of the development site thereto, and that such temporary use is to be terminated upon completion of construction.
- P. Utility transmission and distribution lines.
- Q. Public transportation bus or transit stops for the loading and unloading of passengers.
- R. One-family town or row house subject to the requirements of Sections 32-13(a)(1) and 32-13(c)(1).
- S. Student home, provided the following requirements are met:
No impact home businesses in a residential dwelling shall be permitted subject to the following special provisions:

The following uses require special use permits as provided in Article XX, Section 32-78 of this chapter:

- 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 the following special requirements:
- G. Professional office in a residential dwelling permitted subject to special requirements.
- H. Customary home occupations subject to the following special requirements in addition to all other applicable requirements of this chapter:
 - I. Public transportation bus or transit shelters may be permitted subject to review by the planning department as to design and location.
 - J. Public transportation bus or transit off-street parking facilities may be permitted for users of a public transportation service subject to review by the planning department.
 - K. Swimming club, private (nonprofit).
 - L. Day care centers, kindergartens, preschools, day nursery schools, and orphanages with special requirements.

In addition, at Council's request, a summary of areas requirements for RM zoning have also been included for your information.

Area regulations.

1. *Minimum lot area.* 2,725 square feet per family for garden apartments, unless certain density bonuses are granted. In no case shall the minimum lot area be less than 2,350 square feet per family for a garden apartments and 6,250 square feet for any other permitted use.
2. *Maximum lot coverage.* 30%
3. *Minimum lot width.* 50 feet.
4. *Height of buildings.* 35 feet.
5. *Building setback lines.* 15 feet, except that for an apartment building, which requires:
 - a. 30 feet from the line of all perimeter streets.
 - b. 25 feet from the line of all interior streets.
 - c. 25 feet from all exterior lot lines.
6. *Rear yards.* 15 feet, except that for the apartment building, the minimum rear yard is 25 feet.
7. *Side yards.* In an RM district, two side yards shall be provided on every lot as follows:
 - a. Minimum 7 feet, with an aggregate of 15 feet; and, for apartments, the minimum side yard shall be 20 feet with other conditions.

The applicants are requesting the 21 N. Chapel Street parcel be rezoned to BB (central business district) to match the existing zoning of the Astra Plaza site fronting on Main Street. BB is a commercial and related retail zone that permits the following:

- A. Retail and specialty stores.
- B. Retail food stores up to 5,000 square feet in maximum floor area, with special conditions.
- C. Restaurants, bakery and delicatessens.
- D. Banks and finance institutions.
- E. Offices for professional services and administrative activities.
- F. Personal service establishments.
- G. Studios for artists, designers, photographers, musicians, and sculptors.
- H. Repair and servicing, indoor and off-site of any article for sale, which is permitted in this district.
- I. Related indoor storage facilities as accessory uses with special requirements.
- J. Accessory uses and accessory buildings.
- K. Public parking garage and parking lot.
- L. Public transit facilities.
- M. Social club, fraternal, social service, union and civic organizations, except on ground floor locations.
- N. Photo developing and finishing.

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

- A. Retail food stores with more than 5,000 square feet in area.
- B. Drive-in and curb service for other than eating establishments.
- C. Fast-food restaurants with special requirements.
- D. Motels and hotels.
- E. Commercial in-door recreation and in-door theaters.
- F. Instructional, business or trade schools.
- G. Electric gas and telephone central offices and telephone central offices and substations with special requirements.
- H. Tower, broadcasting or telecommunications on existing buildings or structures with special requirements.
- I. Police and fire stations.
- J. Library, museum and art gallery.
- K. Church or other place of worship.
- L. Restaurant, cafeteria style.
- M. Apartments, except on ground floor locations, with special requirements.

N. Restaurants with alcoholic beverages, with special requirements.

Summary of BB Area Requirements:

- 1) *Minimum lot area.* 3,000 square feet.
- 2) *Maximum lot coverage.* Buildings or other structures may occupy the entire lot, with conditions and subject to rear yard requirements.
- 3) *Minimum lot width.* 20 feet.
- 4) *Height of buildings.* Three stories or 35 feet, with bonus floors for projects meeting certain requirements.
- 5) *Building setback lines.* No setback is required for all structures three stories or 35 feet in height or less. A 20 foot setback is required for three stories or 35 feet in height.
- 6) *Rear yards.* 15 feet.
- 7) *Side yards.* No side yards are required for buildings up to 35 feet in height.
- 8) *Parking.* As required in Code Section 32-45.

Regarding the applicable BB zoning area requirements, the proposed development meets or can meet all the applicable Code specifications.

Regarding nearby and adjacent properties, the property to the north of the site is zoned RM and contains a two-story duplex dwelling unit containing two rental units. The Chapel Street Playhouse is also located further north of the site on the west side of Chapel Street. To the west, the property backs up to the rear yards of several existing non-conforming, BC zoned, residential rental units. Also adjacent to the west, fronting on Main Street, is the BB zoned 170 E. Main Street site which currently houses several retail businesses, including Romanick Pottery and Frolic on Main, as well as an office use in a three-story concrete building, with the first floor being below grade. Across E. Main Street are BB zoned parcels containing a variety of retail uses. To the east, across N. Chapel Street from the site are RM zoned rental row homes and the St. John's Roman Catholic Church at the northeastern corner of the intersection of Main and Chapel Streets, which is zoned BC (general business).

Regarding comprehensive planning, the Newark Comprehensive Plan IV calls for commercial (pedestrian oriented) uses at the Astra Plaza site and single family residential (medium density) uses for the 21 N. Chapel Street. Commercial pedestrian oriented land designations provide for shopping and commercial uses of all types including retail facilities for the buying and selling of goods and services, as well as administrative and professional offices, personal service establishments, eating establishments, and shopping centers typically included in central business districts with customers to a lesser extent, relying on the automobile to patronize these businesses. Residential uses are also permitted.

As previously noted, 21 N. Chapel Street site is designated in the Comp Plan as appropriate for single family residential (medium density) uses. Single family residential (medium density) uses are defined as areas designated for dwelling units occupied by one family, either detached, semi-detached or townhouses, with overall densities of 4 – 10 dwelling units per acre. This land use designation complements the existing single family home on the parcel and the current zoning of the property which is RM (multi-family dwellings – garden apartments). However, because the single family residential parcel is proposed to be rezoned and added to the BB zone, a Comprehensive Development Plan amendment is necessary to accommodate the development, even though the use of the property remains rental residential.

In conjunction with this residential land use designation, in addition to the Comprehensive Development Plan's land use guidelines for the area, the property is also located in the Plan's Economic Strategy as an area recommended for housing rehabilitation. Specifically, the Plan notes that "Housing rehabilitation and affordable housing redevelopment should be concentrated in areas located in the north central and southeastern portion of the downtown development framework. Efforts to encourage affordable and market rate family owner-occupant type projects should be emphasized and expanded. The City may also consider reducing the permitted downtown density in this district for residential projects in a housing rehabilitation district." Further, the Economic Development Strategy of the Comprehensive Development IV, action item commentaries includes the following:

“Regarding the City’s review of downtown mixed use redevelopment projects with housing components, the intent is to make it abundantly clear that the City seeks positive impacts from such residential uses. One key positive impact for an individual project, for example, might include the potential of the site for affordable housing for owner occupants. In particular, and perhaps more importantly, to implement this action item, Council may need to actively consider density reductions for projects for this type, on a case-by-case basis depending on the location, other site conditions and the nature of the project. Through the City’s multi-year effort to limit the proliferation of off-campus student housing in traditional neighborhoods, we have learned that one of the best zoning tools to promote affordable housing is to effectively limit permitted density in approved residential projects to individual families or no more than two unrelated individual tenants, or with similar specifications.” The commentary goes on further to indicate that the City wants “. . . Newark, especially downtown, to become a destination city featuring affordable housing for owner occupants with an emphasis on occupancy for young couples and families, singles, recent university graduates, retirees, and other individuals desirous of making downtown Newark a permanent home rather than a transitory residence.”

The Comp Plan amendment requested for 21 N. Chapel Street would be for “commercial pedestrian oriented uses” for the site to match the Astra Plaza designation. The “commercial pedestrian oriented” land use designation is recommended for the downtown core district which is summarized in the Plan’s economic development strategy as “the center of Newark’s commercial business district is intended as an area to be redeveloped with first floor specialty and traditional retail shops, with a balanced concentration of food of entertainment. Apartments and offices are proposed for upper floors. Any additional apartments, however, must be carefully and closely evaluated in terms of their impact on downtown traffic and parking; their compatibility with existing downtown buildings in terms of design, scale and intensity of development; the contribution of the overall project, including proposed apartments, to the quality of downtown’s economic environment; and potential significant negative impacts on nearby established businesses and residential neighborhoods.”

Further, regarding this amendment, please note the Comprehensive Development Plan IV indicates that “professional, administrative and commercial offices, churches, schools, nursing homes, funeral parlors, community centers, day care centers, police and fire stations, bed and breakfasts, office research facilities, and light industrial uses, and various residential use types, may be accommodated very satisfactorily within areas not necessarily designated for such uses, depending upon the specific use involved, site design considerations proposed site amenities, and the availability of adequate services and facilities.

Finally, regarding the requested Comp Plan amendment, please note in the purposes and plan design section of the Plan, it indicates that the Comprehensive Plan is “not proposed as a warranty against alternative decision making when public needs or experience change – which, of course, may require Plan amendments – but, rather, it is intended as an officially adopted, legally required, public document designed to establish strategies and policies to “guide” our community’s growth over approximately the next five to ten years.” As you know, the City is currently in the process of updating the Comprehensive Development Plan IV, which was adopted in 2008. Mirroring Plan IV, and because of its current zoning, “Comp Plan V” calls for residential, low density uses at the N. Chapel Street site as well. Low density residential land uses in the update of the Plan are defined as residential dwelling units that include single-family detached, semi-detached row or townhouses with densities of ten or fewer dwelling units per acre. Under Comp Plan V, the requested amendment land use designation would be “mixed urban”. Having said that, it is important to note that, in the yet to be adopted, Comprehensive Development Plan V, the property at 21 N. Chapel Street is one of three properties in between a “mixed urban” (Astra Plaza) and “commercial” (Chapel Street Players) land use designation. Additional information about the requested Comp Plan amendment may be found under Departmental Comments.

Regarding gross density, please note that the Astra Plaza Comp Plan amendment, rezoning, major subdivision and special use permit plan calls for residential uses at a density of 20.22 dwelling units per acre. By way of comparison with recent, and somewhat recently approved, BB zoned projects in or near downtown, please note the following densities:

<u>Development</u>	<u>Units Per Acre</u>
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Newark Shopping Center	47.79
Campus Edge	25.88
Kate’s Place and Choate Street Townhomes	25.02
Washington House	36.10
102 E. Main Street	20.83
108 E. Main Street	14.71
129 E. Main Street	35.29
132 Delaware Avenue	34.78
One South Main	37.27
58 E. Main Street	44.28
52 N. Chapel Street	33.33
60 N. College Avenue	34.35

As noted above, the Commission should weigh the requested density against the overall contribution of the project to the quality of downtown economic and aesthetic environment.

Based on recent discussions at both Planning Commission and Council meetings, the following density calculations are also provided. In terms of bedrooms per acre, the 42 bedrooms proposed by the Astra Plaza plan calculate to 47.2 bedrooms per acre. For comparison purposes, recently approved multi-unit developments have the following bedroom densities:

<u>Projects</u>	<u>Bedrooms Per Acre</u>
Newark Shopping Center	95.6
Campus Edge	103.5
Kate’s Place & Choate Street Townhomes	59.3
102 E. Main Street	62.5
108 E. Main Street	58.8
129 E. Main Street	105.9
132 Delaware Avenue	104.3
One South Main	83.6
58 E. Main Street	95.3
52 N. Chapel Street	83.3
60 N. College Avenue	83.0

Status of the Site Design

Please note that at this stage in the Newark subdivision and review process, applicants are required to show the general site design and architectural character of the project. For the site design, specific details taking into account topographical and other project 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 and related exterior features. If the Construction Improvements Plan (CIP), which is reviewed and approved by the operating departments, does not conform substantially to the approved subdivision site and architectural plan, the construction improvements plan must be referred back to City Council for further review and approval. That is, initial Council subdivision plan approval means that the general site concept and the 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 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 plan and agreement for the project.

Be that as it may, as you can see from the Astra Plaza Comprehensive Development Plan amendment, rezoning, major subdivision and special use permit plan, supporting letter and applicant’s color building elevations, the proposal calls for the demolition of the existing single family home on the 21 N. Chapel Street site to allow for the construction of a three-story addition to the existing Astra Plaza building, consisting of 6 three-bedroom apartments on the second and third floors with first floor parking, for a total of 18 residential units on the expanded site. Parking is proposed underneath the new building on the first floor, as well as in

the existing Astra Plaza parking lot. Parking is accessed via Chapel Street. The plan meets Code for parking for the new apartments, as well as the existing commercial and apartment uses. (Please note, based on a recent Board of Adjustment ruling, we are applying the Shopping Center parking space requirements and the residential parking requirements to this project. The Shopping Center designation is appropriate as it is defined in Code as “*Shopping center*: A group of three or more retail, office, personal service, restaurant, or other commercial uses that are planned, constructed, and managed, as a total entity, with customer and employee parking provided on the site (32.4 (113.2)).” In fact, the proposed plan exceeds the Code required parking by virtue of a 63 space parking waiver granted by Planning Commission on December 3, 1996. Parking waivers run with the land, and therefore, when the waiver is applied to the required parking count (98 spaces), 35 spaces are required on site; and 46 spaces are provided.

Please consult the applicant’s submitted elevation drawings for additional information regarding the proposed architectural and site design. 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).

Please note, in this regard, that on a voluntary basis, the applicants reviewed the proposed elevation drawings with the Downtown Newark Partnership’s Design Committee. The Design Committee used the Downtown Newark Partnership’s Design Guidelines for mixed use buildings in downtown to evaluate the project. The Committee recommends in favor of the design as complementary to the existing Astra Plaza building and indicates that it will be a positive improvement to N. Chapel Street. Having said that, the Committee notes that the design could be improved by moving the addition forward, closer to N. Chapel Street.

Special Use Permit

Zoning Code Section 32-78, Special Use Permits, stipulates that Council may issue a special use permit provided the applicant demonstrates 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 that the applicant needs a special use permit for the proposed apartments in downtown. The existing development with 12 apartment units was approved in 1996, prior to Council requiring a special use permit for apartments in the BB zone.

Fiscal Impact

The Planning and Development Department has evaluated the impact of the Astra Plaza project on Newark’s municipal finances. The estimates are based on the Departments Fiscal Impact Model. The Model projects the Astra Plaza addition development plan’s fiscal impact; that is, total annual municipal revenues less the cost of municipal services provided. Based on the Model’s estimate, we project the Astra Plaza addition net revenue to be \$2,085 annually.

Please note that the current fiscal impact of the Astra Plaza development is not calculated into this estimate. In other words, the impact is calculated from the complete proposed project, and not the difference between what is currently generated and what will be generated if the development is approved. In addition, please note that there is no difference between the first and future years’ revenue estimates because the applicant already owns the properties and, therefore, there will be no impact from the real estate transfer tax in the first year.

Traffic and Transportation

At the request of the Planning and Development Department, the Delaware Department of Transportation (DelDOT) has reviewed the Astra Plaza Comprehensive Development Plan amendment, rezoning, major subdivision and special use permit plan. The Department indicates that the project does not meet the warrants for a Traffic Impact Study (TIS), which is 400 trips per day and 50 per peak hour. Having said that, DelDOT has comments regarding the need for the developer to provide initial stage submissions to the Department for review. In addition, and before making that initial stage submission, because Main Street and N. Chapel Street are classified as principal arterial and a minor arterial roadways respectively, DelDOT requires minimum right-of-way dedications of 50 feet for Main Street and 40 feet for N. Chapel Street; and these dedications must be shown on the plan. In addition, the State will require a 15 ft. permanent easement as well and this, too, should be shown on the plan. DelDOT also requests that a Traffic Generation Diagram on the plan. Other than these comments, DelDOT made no comment regarding transportation planning or traffic controls. The plans will need to be amended to address DelDOT comments, prior to City Council review.

Subdivision Advisory Committee

The City's Subdivision Advisory Committee – consisting of the Management, Planning and Development and Operating Departments – has reviewed the proposed Astra Plaza Comprehensive Development Plan amendment, major subdivision, rezoning and special use permit plan and has the comments below. Where appropriate, the subdivision plan should be revised prior to its review by City Council. Subdivision Advisory Committee comments are as follows:

Electric

1. The developer must pay \$14,400 towards the costs of a transformer, materials and meters.
2. The City must approve the single line diagram and switch gear.
3. The developer is responsible for relocating the primary and secondary conduits and cables. The Electric Department must be contacted to review how the existing electric service will be connected to the relocated transformer.

Parks and Recreation

1. The Department indicates that the submitted landscape plan is acceptable; and the Department reserves the right to make further comments for the Construction Improvements Plan.

Police

1. The Police notes that the increase of apartments at this location will increase concerns regarding parking and order maintenance issues. They have no additional comments.

Public Works and Water Resources

Water Resources

1. Water meters shall be located in one or more centrally located meter room(s) that will be readily accessible to the City of Newark. Two locking ball valves shall be associated with each meter, one immediately ahead and one immediately behind, in a meter bank setup.
2. The developer will pay the Sewer Treatment Plant (STP) fee prior to receiving a Certificate of Occupancy (CO) for a unit or building of multiple units. The STP fee for apartments is \$666.67 per unit. Therefore, assuming the unit count doesn't change, the STP fee will be \$12,000.06.

Public Works

1. The Public Works Division indicates that the subdivision plan and the preliminary stormwater report are acceptable. The Department will have additional comments during the CIP phase.

Planning and Development

1. The Department indicates that the property at 21 N. Chapel Street is designated in the Comprehensive Development Plan IV as low density residential. In order to rezone the property BB and add it to a mixed use property, even though the use of the parcel will continue to be residential in nature, and even though the Economic Development Strategy portion of Comp Plan IV identifies the parcel as part of the “housing rehabilitation” area and new housing is proposed; the development will require a Comprehensive Development Plan amendment from single family residential (medium density) to commercial (pedestrian oriented) designation. The Plan should be revised to reflect this requested amendment in the Title Block prior to City Council consideration.
2. The Plan purpose will also need to be revised, prior to Council review, to indicate that there is no parking waiver requested for this project as it is, in fact, Code compliant for parking.
3. Although the engineer has indicated that the loading zone will function as currently in use at the site, there is no indication on the plan of the location of the loading zone. The plan should also be revised to include the loading zone prior to Council review.
4. The Planning and Development Department suggests the following regarding subdivision site design conditions:
 - The architectural design of the proposed façade should be carried out on all building elevations visible from public ways.
 - Storage areas, mechanical and utility hardware shall be screened from view from all public ways and nearby properties in a manner consistent with the proposed architectural design.
 - The plan area lighting should be designed to limit impact on adjoining and nearby properties.
 - The building should be designed to allow for future conversions to condominiums.
5. The Department notes ten bike rack parking spaces are shown on the plan. Bike rack details must be provided on the CIP plan.

Code Enforcement Division

1. The construction type of the existing building will have to be verified in order to determine how the building can be constructed. In addition, the height and area regulations for one building will determine whether or not the addition will be considered a second building on the same lot from a Building Code perspective.
2. The Division indicates that all buildings shall be designed and constructed to the IBC Codes as amended, in effect at the time of submittal, including the IFC and the Delaware State Fire Prevention Code, whichever is more restrictive.
3. The Division notes that columns cannot impede parking spaces, and therefore, the specific locations of those columns and the resultant required 9 x 18 spaces will need to be maintained throughout the construction process or Cos will not be issued.
4. Because of the number of units proposed, an onsite property manager will be required.
5. Should trash trucks or utility vehicles have to access the parking area under the new units, the first floor height will need to be adjusted to a minimum of 14 feet. If necessary to adjust the height, the elevations provided will also need to be adjusted to reflect the actual height of the garage space and its impact on the façade. This issue will need to be addressed and finalized prior to Council review.

Recommendation

Because with the proposed Comprehensive Development Plan amendment, the Astra Plaza rezoning will conform to the requirements of the Comprehensive Development Plan IV, and because the rezoning, major subdivision and special use permit plan, with the Subdivision Advisory Committee recommended conditions, will not have a negative impact on adjacent and nearby properties, because the proposal meets or can meet all applicable Code requirements, and because the proposed use does not conflict with the development pattern in the nearby area, the Planning and Development Department suggests that **the Planning Commission take the following actions:**

- A. Recommend that City Council revise the existing Comprehensive Development Plan IV, Land Use Guidelines for this location from “single family residential (medium density)” to “commercial (pedestrian oriented)”;** and,
- B. Recommend that City Council approve the rezoning of .10 acres from the current RM (garden apartments) to BB (central business) zoning as shown on the attached Planning and Development Department Exhibit A, dated September 1, 2015;** and,
- C. Recommend that City Council approve the Astra Plaza major subdivision and special use permit plan as shown on the Karins and Associates plan, dated March 26, 2015 with revisions through July 16, 2015, with the Subdivision Advisory Committee conditions.**

Ms. Feeney Roser: That summarizes my report. I'd be happy to answer any questions that the commission may have for me.

Mr. Silverman: All right. Are there any questions from commissioners to the director?

Mr. Johnson: I just need a tutorial, Maureen. This is Edgar Johnson. On the 63 parking space waiver granted in 1996, how does it apply to this property?

Ms. Feeney Roser: Parking waivers run with the property. So, what we did was calculate what would be needed for the overall development including this new portion of it. And then, you subtract out what was waived by the Commission in '96 and then you see what's remaining on the plan. Thirty-five spaces were required.

Mr. Johnson: Did the owners of the property own it at the time that the parking waiver was granted?

Ms. Feeney Roser: Yes.

Edgar Johnson: Okay. Thank you.

Bob Stozek: Yes. I have a couple questions, I guess.

Mr. Silverman: Yes. Name please?

Mr. Stozek: Bob Stozek. In the packet, at least what I have, there are four photographs of the existing building but I see no renderings.

Ms. Feeney Roser: What they've done is photoshop it onto the existing building so that you can ... Unless I don't have...

Mr. Stozek: [crosstalk 00:18:13] to the side.

Ms. Feeney Roser: Well, perhaps the applicant will have, have things to show you.

Mr. Stozek: All right. Yes. Okay. I guess the other issue, you mentioned in your summary that this plan would have no effect on other properties. My question is, as there are two structures and one will be taken down and one will remain. Then there are two multifamily structures I believe the other side of that is the Chapel Street Playhouse, is that correct?

Ms. Feeney Roser: Yes, there is a duplex building in between.

Mr. Stozek: I guess what is the potential impact on anything that the owners of that property want to be able to do with that property? Are they hemmed in basically by this? They're limited to what they could possibly do. That

house is just going to prevent building just in the side [inaudible 00:19:08]. It would be something to be flipped on that side.

- Ms. Feeney Roser: You mean the duplex, the two owners of the duplex building? Next to them, one of which belongs to the Chapel Street Players. They are hemmed in by their own property line. I don't see that this one will preclude them from doing anything that they would be allowed to do with the property; the size that it is at this point.
- Mr. Stozek: So basically, they could in a new building essentially, the same use mixed use. Is there any way they could use that property for apartments?
- Ms. Feeney Roser: They are rentals now, and it's a duplex. So, potentially they could come in and ask to rezone, it. I don't know that it's large enough to do much with. But ...
- Mr. Stozek: Unless I'm saying that [inaudible].
- Ms. Feeney Roser: I mean they could. They could come in and request to rezone it.
- Mr. Stozek: Yes. And realize that's their problem, but there's, I'm looking at what are we doing for the whole city, not just one incremental development project at a time. [inaudible 00:20:14]. What are we kind of [inaudible 00:20:17]? That's what I have right there. If you're saying we could get other elevations of the whole building?
- Ms. Feeney Roser: Well, I would assume that since their architect is here, he'll show you what they've brought, and then he can answer questions that you may have.
- Mr. Silverman: Okay. Commissioner Cronin, do you have any questions for the director?
- Mr. Cronin: Not at this time.
- Mr. Silverman: Okay. Anyone else? Okay. Let's move on to the presentation by the applicant.
- Mr. Tracey: Good evening, Mr. Chairman. John Tracey from Young Conaway Stargett and Taylor here on behalf of the property owner and the applicant, Tsionas Management. With me seated is Dev Sitaram; standing holding the plan is John Mascari. They're both with Karins and Associates, they're project engineers.
- Mr. Silverman: If we can get someone to put all the names on one of those tickets, so we will have a proper spelling for the record.
- Mr. Tracey: That's fine. And then Dan Hoffman is our architect, who was alluded to by Ms. Feeney Roser earlier and would be here to answer questions with regard to the appearance of the building.
- Mr. Silverman: Thank you.
- Mr. Tracey: And also, Angela Tsionas, who is the property owner and the developer for these properties, is here as well. As usual Ms. Feeney Roser's report was more than thorough, leaving me not having to repeat a bunch of items that she did, although I'm sure I probably will. The property that's before you, there's two parcels although the bulk of what's happening the building construction is happening on the currently BB zoned parcel, that is Astra Plaza. The 6 new apartment units would now, actually, as the plan shows and maybe, Dev, we can bring that a little closer. As the plan shows, they're all actually within the property line of the BB zoned parcel.

Mr. Silverman: Point of information, are you extinguishing the lot line?

Mr. Tracey: Yes. And I was going to be saying that; I like when you jump ahead and anticipate what I'm saying. It makes my job easier. Again, as I say oftentimes in these types of hearings, I've been married 25 years, so I'm used to that. But what you see in the dark grey and the green is what's largely taking place on the .10 of an acre parcel that is presently zoned RM. You'll see additional parking spaces there, as well as the landscaping and the green around, as well as there will be some storm water management features within that green area as well.

The original project, as alluded to previously, was approved approximately in 1996. That's when the parking waiver was granted for the mixed use building. The Tsionas have owned that property as well as the 1/10 of acre parcel that's before you tonight since that time. So this is not an instance where they just bought the 1/10 an acre now are trying to maneuver it into it. They've owned it for nearly 20 years at least.

As Mr. Silverman alluded to, we will be eliminating the property line between the two parcels as part of this application for purposes of having BB zoning apply to both. The department's report went over it, although I think it is appropriate to remind the commission that no matter which metric is chosen, either a units per acre or bedrooms per acre, that this project is substantially below the maximums that you have seen in this area in the BB zoning district. In fact, I know the commission is pretty familiar with 52 North Chapel, which was before it a few months ago. I happened to be in the audience for another more minor matter that night, and I think that project was almost twice the bedrooms per acre that we're currently proposing here.

We're in the area of 40 bedroom per acre. I think that's around the area of 80 bedrooms per acre. As Maureen indicated this was vetted by the Newark Downtown Design group. She mentioned they endorsed the project. They suggested perhaps moving the new building, which you can see in kind of a rust color on there, closer to Chapel Street. We believe it makes more sense in the location that it's in. For those of you who travel up and down Chapel Street with the buildings close to it, [inaudible] is kind of a natural screen of the building. In addition, it avoids any confusion of people wondering about availability of the retail parking spots if you move that building up front people may think they have to go underneath the entrance in order to get to the retail parking spots, where you can see the entrance right there.

It also makes deliveries for the building easier and you just mentioned your comment earlier, I think, the plan or at least one version of the plan does show the loading is to the rear of the building there. We'll make sure that's clear on the plans that are submitted.

Mr. Silverman: Do you anticipate restricting loading to other than vehicles that require a 14 foot height limit?

Mr. Tracey: We would certainly want to ensure that it is very clear that if we have that 14 foot height limit that nothing higher than that obviously would be...

Mr. Silverman: I'm thinking the other direction.

Mr. Tracey: Oh, so it's only those, only those size vehicles would be able to get back there...

Mr. Silverman: Most parking garages have an 8-foot limit, for example.

Mr. Tracey: Yes.

Mr. Silverman: You can take a van in but you can't take a box truck.

Mr. Tracey: Oh, right, making sure they know what the height is so the taller vehicles can get back there.

Mr. Silverman: That's going to enter into the visual impact which we're interested in, and the financial impact which you guys are going to be interested in, with 14 feet versus whatever else.

Mr. Tracey: Right. But we were ... I could tell you from our perspective, we're willing to make that accommodation, unless I am mistaken, such that the 14-feet can be accommodated. That's what we are planning on doing in our resubmissions to everything before ultimately moving on.

Mr. Silverman: Commissioner Cronin?

Ms. Feeney Roser: May I just jump in? The reason that comment was brought up was not only to make sure that the height requirement was noticed, but that the elevations are adjusted so that they clearly show what it's actually going to look like before it goes to Council. Okay.

Mr. Silverman: Yes. Commissioner Cronin picked up on this with a building we have on Main Street, where we looked at what was presented here, and all of a sudden everything was very much out of proportion with respect to other buildings.

Mr. Tracey: I'm sure Mr. Hoffman can come up and talk about that when I'm done.

Mr. Silverman: Okay.

Mr. Tracey: Just kind of running through my quick notes on everything, I may play an architect on TV, but he actually has the appropriate initials behind his name. Again, the design as you can see from the photos that were submitted is designed to blend in. The red bricks being carried all the way through. The center feature is where the elevator, as well as the stairwell access would be in the front of the building. Ms. Roser also acknowledged that we can meet all of the requirements of the BB zoning that we are seeking. As the exhibit submitted with the report indicate on our Main Street side, as well as behind the building, we are surrounded by the commercial pedestrian Comp Plan designation, as well as BB or BC zoning directly across the street from Astra Plaza as well before you get into the similar RM.

I think it was, it was indicated earlier, these are primarily, if not entirely, rental houses and duplexes that exist on Chapel Street, with the exception, of course, of the Chapel Street Theater, which I had the fondest memories because my son has performed there in the past. As Ms. Roser indicated, there is a duplex in between us and the Chapel Street Theater parcel. Obviously if anything wanted to be done on that parcel, they would have to comply with the zoning requirements. I can tell you, however, that the Chapel Street folks have been talking to Ms. Roser about ... or not Ms. Roser, Ms. Tsionas about the fencing that we intend to put around the property because I think they were looking at installing a fence but if we were going to do it, it would save them the time, money and effort; and know that there have been ongoing discussions with our client and them about that. So they have been working together in that regard.

Then lastly, there was mention about DeIDOT in the report. Obviously, we intend to comply with DeIDOT and delineate everything that needs to be done as we're moving forward. I do not want to find ourselves in

the same position that some of you may recall when I was here on the Candlewoods Suites, where we had to redo entire plans because of a 600-square foot designation to DeIDOT. So, prior to the time we get to council, all of that would be ironed out.

Beyond that, I think Ms. Roser's report was extremely thorough. I don't want to bore you with repeating the instances that she talked about. We'd be more than happy, obviously, to answer questions. I can certainly have Mr. Hoffman come up now and talk about the architecture if you would prefer that, before you get into questions, or we can proceed however the commission would so desire.

Mr. Silverman: Yes. Do the commissioners prefer to hear the entire presentation?

Mr. Tracey: [crosstalk 00:29:24] Dan, do you want to come up and talk about the architecture?

Dan Hoffman: Good evening. My name is Dan Hoffman. I'm an associate at Design Collaborative Architects in Wilmington. I am a resident of just outside the city of Newark and not officially a resident of Newark.

As you can see ... what we've tried to do is sort of blend in the new with the old to sort of make it continuous. This front corner, the upper corner view here is from the corner right in front of Saint John's Church. You're sort of looking up Chapel Street and just catch the rear portion of the addition, in behind the trees and also where the existing building sits on the site. Then the other, the view right below is walking up Chapel Street where the image of the building would now sort of come into effect. We pulled off pieces of the existing building with the Georgian style corner piece and made the new stair tower and tied the two pieces together. We then continued the accent vents and the windows. And also when you get around to the other views, you'll see that the column enclosures up for the exposed columns are very similar.

We have these two small boxes that are in front of the parking area to shield the parking area. One of them houses the utility room with the fire suppression, the water room. The other one is merely a screen wall for the dumpsters. And then, the accents with the copper roofing to continue the copper roofing that's on the existing corner, trying to pull everything together. The height has been raised up to accommodate the 14-feet that's been requested. Basically, what it is, the existing building has a second floor elevation of 15 feet at the front of the building on Main Street. When you get to the retail that faces Chapel Street, the finished floor elevation is now 13.8 [feet].

So, we're going to be about 2.5 feet taller than that, that floor and that area only because we're, the grade rises also and then we need 14 feet of clearance. So, my structure needs to be about 16 feet up.

Mr. Silverman: By using the setback from Chapel Street visually, you'll take care of that and that will appear to be one continuous building.

Mr. Hoffman: It will appear to be one continuous building, out the back two floors of the addition area will be taller, will be elevated from the existing second floor of the front portion of the building because it will run along flat. And, we're not connecting the two buildings per se other than, you know, physically. There is no connection between the existing building in the front and the new building in the back. It essentially stands alone as its own building.

Mr. Silverman: But it will have a...

Mr. Hoffman: The second floor on that level will be elevated two feet from the second floor of the original building. Basically, one, to accommodate for the raising grade, and also to accommodate the elevated structure for the 14 feet clearance for the garage.

Ms. Feeney Roser: So the 14 feet, you've already put that into what you're showing here.

Mr. Hoffman: Yes.

Ms. Feeney Roser: Okay. So, it's not to going to change.

Mr. Hoffman: No. You lose a little bit because of the perspective.

Ms. Feeney Roser: Okay.

Mr. Hoffman: I know the building here and it's been addressed before.

Ms. Feeney Roser: It looks great now.

Mr. Hoffman: Yes.

Ms. Feeney Roser: But it was scary when it was first being built.

Mr. Hoffman: Right. And, the grade on that building, in the rear of the building, is much more substantial than what we have on the site. If there's any questions, I'd be more than happy to answer.

Will Hurd: Will Hurd. I wanted to commend the design that you've got. I liked how you pulled the columns in. I liked how you did the window treatments. These are just more suggestions and things to make sure you're looking at. I don't know if it's possible to do more like the double hung windows in the existing building in the new one, because what you got here is more of a square punch opening. I think the other one is a more vertical window, which I thought looked a little better. It's another little better element that would tie things together.

Mr. Hoffman: Right. The Main Street façade and the corner piece on Chapel Street have a clear story on top of the windows so they appear taller. And then, once you turn the corner and go down Chapel Street, they are more or less true double hung. I can look at the windows.

Mr. Hurd: Okay. Visually, my eye wants to see something like that. The beam above the header above the windows and the precast over the parking entrance.

Mr. Hoffman: That's...

Mr. Hurd: So basically, because right now, it's like the brick just stops.

Mr. Hoffman: But you're talking about the corner piece right there at the corner?

Mr. Hurd: Well, I'm talking about... nevermind. This might be easier. So there, something like that.

Mr. Hoffman: Right. You're talking about... [inaudible].

Mr. Hurd: Yes, and then just the last thing, and this is may just be or a piece for the rendering. The roofs on that screen wall, there's nothing behind them. So, I don't know if there's an intention to continue the brick down behind it, so that the wall kind of meets something.

Mr. Hoffman: The screen wall on the right, excuse me, on the left, closest to the stair tower?

Mr. Hurd: Both of them. That roof just sort of shows as a triangle, and there's no wall behind it basically.

Mr. Hoffman: That is the one. That is the screen wall that is on the right hand side. The left hand side is actually the utility room.

Mr. Hurd: Yes.

Mr. Hoffman: Yes.

Mr. Hurd: Yes. I'm ... (laughs) ... this is crazy. Right along there. Is just there, there is nothing backing up the roof.

Mr. Hoffman: Only that one [inaudible].

Mr. Hurd: Right above this one. Okay. So, yes, just visually it just sort of seems to be floating. Just, looks a little strange.

Mr. Hoffman: Okay. Well, that's a big [whole 00:36:56] we can, we can definitely work out.

Mr. Silverman: [inaudible] as you're referring to the photo exhibits.

Mr. Hurd: Yes.

Mr. Hoffman: Yes.

Mr. Hurd: Can you walk me through how the loading dock is going to be working now that this building ... Because looking at the plan, I see where the loading dock is supposed to be. I see parking spaces. I see columns. I'm, I'm not clear as how that, how that's going to function back there.

Mr. Hoffman: I will have to turn that over to the civil engineers.

Mr. Hurd: Okay.

Mr. Hoffman: I have, John Mascari from Karins come up and address that. [inaudible 00:37:28].

John Mascari: Good evening. John Mascari. Karins and Associates. To discuss the loading area, it is noted with a note "loading area to remain in existing location," and that is located close to the back of the parking area next to, adjacent to the three parking spaces just beyond the building addition. This area has been utilized to make deliveries to the businesses through a sidewalk behind the retail, the existing retail. And so therefore the trucks today would pull in through the parking lot, park at the end of this parking lot and make their deliveries to the back of the buildings. So, the same concept would continue with this proposed. The only difference would be that there is a building above them. So that, that is where the loading is proposed, as it is existing. Do you, do you have questions about that?

Mr. Hurd: It just looks really tight to get in and get back out again.

Mr. Mascari: And, as I mentioned, it's the alignment is the same as what it is today.

Mr. Hurd: So those parking spaces are currently there at the end of the building and around the back?

Mr. Mascari: Yes, they are.

Mr. Hurd: Okay.

Mr. Mascari: The three parking spaces. There are parking ... There is existing parking along the western property boundary all the way along up through the stairway to the existing end of the property which is close to the north end of this building. So today, that whole area is parking.

Mr. Hurd: Okay. All right. It is ... I was ... Because I couldn't sort of see where to look. I couldn't tell if there was loading dock there, if there is, is, but you're just saying it's a loading zone basically.

Mr. Mascari: Yes. It's not a dock. It's just a loading zone.

Mr. Hurd: Okay. Thank you.

Mr. Mascari: You're welcome.

Mr. Silverman: I have a number of questions for the civil engineer, and I don't know whether anyone else in the group does.

Dev Sitaram: [inaudible]

Mr. Silverman: We're going to hold that one until the end. Do you want to ... I think we're on the same lines I'm going to be critical here. I find your plan extremely hard to read and decipher. I see a heavy dashed, double dashed line on the plan and I find nothing in the legend in the lower left telling me what that is. The building, as I understand it, will be essentially a free standing structure probably from a building code point of view. I see no reference to extension of the fire department sprinkler connection system or any reference on here to a new fire department connection. I patronize several stores in that complex. The parking now, from my point of view, just works, and it all depends whether the Pepsi guy is unloading and he doesn't pull around out back. There is no reference to fire lanes on here and clear markings for the fire lanes. People tend to park along the existing storm water management easement that parallels North Chapel Street in front of the existing stores, which really crowds parking.

On the more positive side, I like the idea of the bio-detention area rather than just having a series of pipes and grates. There will now be some additional green provided because of the nature of the bio swale [which] is being used which will help soften the back parking area. Let's see, will there be signage to keep commercial street-generated traffic parking out from under the building? Will the parking under the building be exclusively for tenants and the employees of the stores? And, how will that be policed? The signage?

Mr. Mascari: Shall I, can I get through each.

Mr. Silverman: Yes, go ahead.

Mr. Silverman: Please.

Mr. Mascari: And, I didn't know if you wanted to continue with...

Mr. Silverman: No. Go ahead.

Mr. Mascari: Oh, okay. The first question about the dashed line, heavy dashed line, I believe you're referencing the proposed building that is located above the parking.

Mr. Silverman: I'm looking at a line that extends completely around the site...

Mr. Mascari: Oh very good. That...

Mr. Silverman: ... including Main Street.

Mr. Mascari: Thank you. That line is the property boundary, so it's the heavy dashed line...

Mr. Silverman: And where do I find that on the legend?

Mr. Mascari: I do apologize if that is unclear. It is not. That is not noted in the legend and that is labeled as with the bearings and distances of the property, and we can certainly add a note if, if it is not labeled there.

Mr. Silverman: Yes, for someone who's not used to looking at a drawing like this, I didn't know whether that was going to be your sediment erosion control fence.

Mr. Mascari: Sure.

Mr. Silverman: I know it's kind of ridiculous on this site but it does lead to some confusion. Go ahead. Continue.

Mr. Mascari: And, I believe that perhaps the next item is the fire department connection.

Mr. Silverman: Yes.

Mr. Mascari: If you look at the sprinkler room, which is at the front of the drive into the garage, we have a note that says FDC for Fire Department Connection. And that is in the legend as FDC, Fire Department Connection.

Mr. Silverman: Okay. That did not stand out to me.

Mr. Mascari: Correct. Yes. So in the front, the existing fire department connection is also labeled along the East Main Street side.

Mr. Silverman: Okay.

Mr. Mascari: The fire lanes.

Mr. Silverman: Marking fire lanes.

Mr. Mascari: Yes. The fire lanes will be marked. There is a separate fire marshal plan which denotes those markings a little bit clearer and I do apologize that's not shown on this version of the plan.

Mr. Silverman: Well, even if there is a notation, some engineering firms have almost a template that they drop on the plan that refers to fire lane markings. And I know this is a very busy and very tight site.

Mr. Mascari: It is. And then the note about the parking. I know the existing parking is marked for apartments at the end of each parking area. It is signed for the apartment parking. I don't. Are there any other proposed signs?

Mr. Silverman: So the parking assignment will continue?

Mr. Mascari: We're actually handling parking or proposing to handle parking in two ways. Both existing but carrying through. There is already some signage in there directing folks to where the tenant preferred parking spaces are. That would, of course, continue. In addition, the Tsionas Group has probably for about the last 5 years, employed a private security firm that monitors all of their spots. Since they've been involved in that relationship, it's had a pretty positive effect in controlling the parking, particularly people not parking where they shouldn't be parking. That is

something that obviously would be carried through on this building. They'd be continuing that practice that would just be added to the rotation of what that service already does for the Tsionas Group.

- Mr. Silverman: You said that action should minimize some of the concerns that the police department expressed on having to police that problem.
- Mr. Mascari: Correct. And I was, we had this discussion when we met about a week ago in preparation for this, and that was what was brought up. And since that has happened, they haven't had many issues if there are any issues with the police. I think it's one less thing they have to spend a lot of time worrying about. I'll never say there is no time. It's a college town. I was a college student in this town once, I remember, but we do what we can do to make their jobs easier and I think there's been a positive effect with regard to that. Plus, using the code in the waivers, we actually, with this plan, are going to have 11 more parking spots than we would otherwise be required to have. So, that should help a little bit as well.
- I didn't know if there any other things that you wanted John to address, Mr. Silverman, if I didn't catch a few of your points?
- Mr. Stozek: I just had a couple of comments not in this sort of exact [inaudible]. One is, and, and I realize these renderings are not complete, but as I look at this and what I see is brick and asphalt. And I also see in the plan, there are five existing trees that are being taken out, but some of them were in the footprint of the building, so they need to go. And there are some obviously, there is some shrubbery. But, isn't there something you could do to soften up this building? I mean you currently have extra parking spaces. You could sacrifice something there.
- Mr. Mascari: With, with gre- ... Oh, I'm sorry. I didn't want to interfere. There's a... did you want to keep going or did you want me? I'm sorry. We're talking over each other, and that's my fault, not yours. The trees that are being removed, there are some that are being removed where the building is. The others, on the plan or the ones that are being removed are being removed because they're not in good shape irrespective of this project. Those will be replaced. We are planning to plant new trees. In addition and I don't want to speak out of turn, but I think we're looking now on more decorative fencing. Originally, we had just talked about a wood fence. I think now, we're adding... we're going to go to a more decorative fence along the perimeter on the back side. Obviously, to the extent we have ability to add more trees. We can do that. We're, focusing at the moment on a landscaping site with being able to incorporate the storm water management features in that green area, which I think is perhaps more beneficial than I think I heard otherwise, just kind of running pipes into the existing system if we have the ability.
- Mr. Stozek: Yes. I agree with that. And, it's not a simple solution but...
- Mr. Stozek: Brick and asphalt. Too many structure already in the city like that.
- Mr. Mascari: Yes. And, part of what we're also trying to do by stepping the building back again is to avoid the sense that you have this construction kind of right on Chapel Street. Even if you can tuck them back into the corner adjacent to other rental units, it allows for more space, and there's always the balance that we talked about in front of the commission and council. Perhaps others more so than me, but I'm learning to, to have the discussion, as well as wanting to have sufficient parking to ensure that we're not causing problems for other folks over there, which is that kind of delicate balance that we talked about.

Mr. Stozek: Here, basically, we're continuing along the existing structure of the same purposes I wish we could do something more creative and make something more attractive. The second comment I had is relative to parking and traffic. I know this project is not going to break the bank. I was in the shopping center today and looking, staring at that huge monolith. It's going to be there and adding I don't know how many cars. And to think that that's not going to affect traffic in the city you're crazy, because there's only two ways of getting out, Main Street and Chapel Street. And now, you're adding more into this project, adding a little bit more traffic.

I don't think, you know, looking at a citywide comprehensive plan how to deal with this. We're just incrementally adding little bits and pieces here, and it's going to come and bite us some day, if it's not already biting us, which is my problem.

Mr. Mascari: And, and if I can respond. Again, I think we're doing what we can do. In fact, the parking that we're adding to the site, in addition to being more, meets, if I'm not mistaken, the requirements that those apartments would otherwise have. I think with regard to this, also, we're not as, perhaps you heard on other applications, we're not adding a retail component or an office component which tends to be the bigger traffic generator in these areas. The apartments, to the extent they generate trips, as you know, they're not constant trips in and out that a retail use would have. So, we're not expanding on the retail aspect that's already there. We never intended nor are we doing it. We're limiting it to the retail component which I think has a lesser impact in that regard than perhaps the retail would.

Mr. Stozek: [inaudible] rent to students?

Mr. Mascari: This would likely be, the principal tenants would likely be university students, although it's not limited to that. And, as we know with what's happening on Main Street, there are some opportunities, you know, for young professionals and the like, working in the area to locate there. So, that, that certainly is a possibility that exists as well.

Mr. Stozek: I understand. That's an admirable goal. But, I always the question where are these people working. [inaudible 00:52:03].

Mr. Silverman: Commissioner Johnson. If you would like to start the conversation.

Edgar Johnson: Edgar Johnson. I just want to know during construction, where is your lay down area?

Mr. Mascari: Dev Sitaram, the one who I introduced, is going to come up and respond to that.

Mr. Sitaram: Dev Sitaram with Karins and Associates. Mister Commissioner, I can respond to that or I'll try to respond to that. The existing building is obviously going over the parking area that is currently adjacent to the building. So the two access points will remain open, and the parking in the back will be fenced off. So, that will be utilized for construction activities and the parking in the front, which is essentially the retail parking as well as the two access points, will continue to remain active and open. So that's our intent at this time. Obviously, as we go through the process, we will work with the public works department to refine that and talk to the contractor as well as the construction manager to find, or to make sure that it is feasible and practical and the businesses continue to operate.

Mr. Johnson: Can, can you give me an estimate of how many parking spaces will be lost to the lay down area?

Mr. Sitaram: It will take some time, but I can give you that.

Mr. Tracey: May I respond to that? It will be approximately 12 to 15 spaces and what we would be doing, because we have other properties in the areas, we'd be reaching out and letting people who are tenants there park their vehicles at one of our other properties. We'll work out an agreement with somebody else while the construction's going on through for the ability to park there. We don't want to just have them show up one day and say, "Oh by the way, there's fencing and you can't utilize the parking." This would all be taken care of in advance before that constructions starts. Okay.

Mr. Silverman: The other question I had my colleague started. It's an understatement to say that at times of the day, this is an extremely, extremely congested area. Have you given any thought to traffic control with respect to moving construction equipment and supplies in and out of that site?

Mr. Tracey: Obviously, we would have all of that finalized before we're to start the ...DeIDOT has input in this based on what they're looking to gain. Obviously, the code enforcement people as well have given us a number of different comments. We're not our first time doing something like this. So, we would be having that plan in place prior to the time we started construction so that we could control the in and outs, know the schedules of when people are going to be there to ensure that there's not going to be problems on Chapel Street.

Mr. Silverman: Is there anything in writing with respect to what the development side of the city has given you? Because I'm very concerned about this! The state and their projects that I've seen out by McDonald's, they have a police officer there the whole time.

Mr. Tracey: Mm-hmm (affirmative).

Mr. Silverman: I'm not asking that you hire a police officer, but I don't want an 18-year-old trucker's helper to be backing traffic in and out of that site on Chapel Street. It just doesn't fly.

Mr. Tracey: Nor do we. I can say that emphatically! But you wanted to respond as well?

Mr. Sitaram: Dev Sitaram with Karins and Associates. I'd like to respond regarding the lay-down area. There will be about 18 parking spaces that will be lost in the back portion of the property. But one of the other things, and I didn't think of that as Chairman Silverman has mentioned or pointed that out to me, is the property that is to the north is going to be demoed. So that entire lot will be available for construction activity. So I think that's going to provide a significant relief to operations and for accessing the proposed building during construction.

Mr. Silverman: Thank you.

Mr. Tracey: Mr. Silverman, just to follow up even further on your comment to me previously. Our builder for this project is someone who is very experienced in doing the city projects, Dave Grayson, and he will be running point on those very issues that you raised, and as part of the conversations with the city in terms of what needs to be done, and to ensure pedestrian safety and vehicular movements are not interfering with other activity.

Mr. Silverman: The chair, just so the things didn't get lost, wanted that on the record.

Mr. Tracey: That's fine.

Mr. Silverman: So if the city needed to come out and say, "Hey," and someone on your site says, "I don't know anything about that," it's here.

Ms. Feeney Roser: Excuse me, Maureen Feeney Roser. Chairman Silverman that is something that is worked out during the review of the building permit...

Mr. Silverman: Okay.

Ms. Feeney Roser ... with the Code Enforcement division generally.

Mr. Silverman: Okay.

Mr. Tracey: Thank you, Mrs. Feeney Roser.

Mr. Stozek: Are there currently any other pending projects on the west side of North Chapel Street?

Ms. Feeney Roser: On the west side of North Chapel Street, no. There are none. On the east side there's 52 North Chapel, and then the property just north of that is recently sold to someone who does tend to develop occasionally, but he has other projects going and has told me he's not interested in doing anything soon.

Mr. Silverman: Any other comments from the applicant?

Mr. Stozek: Well...

Mr. Silverman: Go ahead, go ahead.

Mr. Stozek: ... can, can I go back to my comment about landscaping and softening at this point? I'm going to propose the other changes to make this thing look more than just asphalt and brick.

Mr. Tracey: I'm stepping back to let the engineer respond to that, Dev Sitaram.

Mr. Stozek: And low shrubs.

Mr. Sitaram: Dev Sitaram with Karins and Associates again. I do want to give you feedback on a meeting that I had with DelDOT with regard to some of the improvements that we are making, and the traffic issue. We did discuss traffic and DelDOT's primary concern in urban situations such as the one we have over here, is sidewalks. And you probably know that sidewalks are deficient along Chapel Street right now. Main Street there, you know, sidewalks are pretty wide. You have good movement of pedestrian traffic. But along Chapel Street, you know, it is a pretty, there are several hazards, I should say, for pedestrians along Chapel Street.

So one of one of the requirements that DelDOT has placed on this project is to improve sidewalks, you know, provide the proper width around ... There are some planters, you can see some of the planters along Chapel Street where there are trees, and whoever planted it you know, took out sidewalk around the trees. So you have 2 feet, 3 feet of sidewalk and don't have the necessary width, so that is one of the improvements that we are going to be making as part of this project. So I just wanted to provide that feedback.

Mr. Stozek: Any work to complete?

Mr. Sitaram: Well, unfortunately there it is focused more to traffic and pedestrian traffic, which is primarily what is going to occur, and a safety issue that's being addressed. We are adding quite a few plants that are not there

today, and you can see that on the northerly side, as well as along Chapel Street next to the existing ...

Mr. Stozek: Those are all little shrubs?

Mr. Sitaram: Yes, little shrubs. Whatever we could fit in there. And some of the landscape islands we have provided for the larger trees, and some of the existing trees that are dying are going to be replaced. The city has requirements for replacements.

Mr. Stozek: Here on the side and the back of the side of the lot?

Mr. Sitaram: Yes, sir.

Mr. Stozek: I'm talking about more something to soften the front side of the...

Mr. Sitaram: We'll, we will talk to our landscape architect and see what we can do.

Mr. Tracy: Yes, just to follow up on that last point, I was discussing that with my client while you were having the conversation with Dev. We are going to go back and look to see what if anything else we can do with regard to adding additional trees in particular to the site. Again, we don't want to interfere with the stormwater management abilities on the side of the property, but if we have the opportunity to go in and do that as we're going back and cleaning up the plan, based on Mr. Silverman's comments earlier, we will add if we can add.

Mr. Silverman: Any other questions from the commissioners? We'll open the floor up to the public. We have ... Number 4?

Ms. Feeney Roser: Yes.

John Morgan: Can I make a few comments?

Mr. Silverman: If, you'd like to. I assume you were going to make some comments with respect to parking?

Dr. Morgan: Yes. Actually, no ... (laughs)

Mr. Silverman: Oh!

Dr. Morgan: But I am going to make a couple observations and ask a question...

Mr. Silverman: Your name please?

Dr. Morgan: John Morgan from District 1. And one question I would have is, is there any reasonable opportunity for putting a green roof on top of the new construction to mitigate the stormwater runoff?

Mr. Silverman: Are you going to be following some of the LEED requirements?

Ms. Feeney Roser: Well, they're required to file to get 25 points in the city's LEED-like project, and the developer has the discretion of determining how to, how to do those. I don't whether, John, you could tell us if you've had any conversations with Public Works and Water Resources about doing a green roof on this particular site?

Mr. Mascari: John Mascari, Karins and Associates. We certainly spoke with Public Works about stormwater management items. The green roof, specifically, was not one of the items that we did discuss. We were very interested in what the existing soils, what ability they had to recharge proposed runoff into the ground, because that's the primary goal to get some of that water to not run off of the site into the city's storm drain

systems, but to infiltrate that into the ground. The soils investigations that we performed did show in the area of our bio-retention that there is infiltrative soils on site. Therefore, that was our primary goal, was to recharge that water into the ground. One thing that Public Works did discuss as an alternative to the bio-retention was a permeable paver in that new parking area.

So that is certainly something that I know that we will discuss during the construction improvement plan process.

Ms. Feeney Roser: But they did note that your plan meets stormwater management as it's designed now, without the green roof?

Mr. Mascari: Correct.

Ms. Feeney Roser: Thank you.

Mr. Silverman: Thank you.

Dr. Morgan: Okay. Well, I guess I would just say that, you know, I mean, maybe you can go a little beyond just meeting what there is there, and think about the advantages of having a green roof, which also will reduce your cooling load in the summer. I don't know the economics of it, but I think you should at least look at it. Okay.

Mr. Silverman: Dr. Morgan, your reference to a green roof is literally a live grassed roof?

Dr. Morgan: Right, or just with plants or something like that.

Mr. Silverman: Plant material, okay.

Dr. Morgan: So it's soil which absorbs the water, so it doesn't have to get carried away through gutters down to the ground level. I guess I would also make an observation about the difficulty of greening up the front of the building on Chapel Street, which is that you do see this little green area between the sidewalk and the parking lot, and there's a tree there, and the tree has grown up into the electric lines on the property. And which obviously poses a problem if we have a heavy storm. And you wouldn't want more trees planted there, I think. I mean, shrubs I think is about the best you could do along there.

Mr. Mascari: That tree's to be removed.

Dr. Morgan: And that tree will be removed. Okay, well, that's okay. Yes, well, it needs to be cut back if nothing else (laughs), right? But I was just sort of also wondering and looking at, I know the issue has come up in the past about trying to bury utility lines on Main Street. Now, is it economically feasible to bury these utility lines here along Chapel Street, or if it's just too expensive, I certainly wouldn't be advocating...

Mr. Silverman: My understanding is it's extremely expensive and extremely disruptive at this point in time.

Dr. Morgan: Okay, thank you.

Mr. Silverman: Is there anyone else who would like to speak from the public?

Okay, hearing no one else desiring to speak, are we ready to move to the motions?

Bob Cronin: Okay. Do you want commissioners to offer our comments or offers?

Mr. Silverman: Yes, please. Go ahead.

Mr. Cronin: I'd like to do that. First off, I think I lost the supporting letter in the packet?

Mr. Silverman: No.

Mr. Cronin: Or maybe, perhaps there may be one in here and I didn't see one.

Ms. Feeney Roser: That would be my mistake. It was a transmittal letter, not a supporting letter.

Mr. Cronin: Okay. Under the zoning section of commentary first on Page 2 and going over to Page 7 of the report that we see, end of the first paragraph talks about furthering the economic development strategy the action item commentary regarding the city review of downtown mixed use buildings. The intent is to make it abundantly clear that the city seeks positive impacts of recommended uses. But at the end of the same paragraph in quotation marks, it says, "the City wants Newark, especially downtown, to become a destination city with affordable housing for owner occupants and young couples and families, singles, recent university graduates, retirees who are going to make downtown a permanent home rather than a transitory residence."

At the bottom of the page, Page 7, it says a comprehensive plan is "not proposed as a warranty against alternative decision-making when the public needs and experience change." And over on Page 10 on the "Special Use Permit" section, Item C stipulates council may issue a special use permit providing the proposed use will not be in conflict with the purposes of the Comprehensive Development Plan of the City. I really like what I see in terms of the development proposal! I think it's well done and it doesn't detract from what's going on in that part of the City and the housing we already have in place.

I guess if I have a question at all, it's just, and to go through rather from the city and we have these plans and these concepts and these goals ... It just seems like the economic force that's driving this, but all the time it seems the goals tend to be, you know, modified almost routinely to accommodate more student-oriented housing. And that's not going to stay the goal in the plan, and I'm not so sure, unless then it's in the public need, an initiative rationalizes more students downtown to make it closer to campus and less single-family homes that might get converted for student housing. Statistically...

Right here before us is rationale, which would almost suggest that, you know, we were going down an extremely different path contemplated and these are for the council measurement, the commission makes a recommendation that the council decide, but I just wanted to put that forth on the table for the commissioner's consideration at this point in time.

Mr. Silverman: Okay, for the benefit of the transcriber, Commissioner Cronin was referring to the Planning Department's Comprehensive Development Plan, Amendment Zoning, Major Subdivision and Special Use Permit Report dated August 21, 2015, which is part of the commission's packet of information and the public announcement.

What I'd like to do is move the proposals forward and then open up the floor for discussion on the three major components. Then we'll get your question officially on the record, because I have some comments on that also.

So for the benefit of moving this proposal forward, if you will turn in your report packet to the recommendations found in the August 21st report from the Planning and Development Department.

Do we want to handle these as a packet or individually? We have three components to vote on.

Mr. Cronin: I don't have a problem with-

Ms. Feeney Roser: Chairman Silverman, this is Maureen again. You don't want to amend the comp plan and then not approve the subdivision or vice versa, because then you have a comp plan amendment and you don't have a plan to go with it. It's better to look at this as package, although you can certainly discuss the items individually.

Mr. Silverman: Okay, we'll do that then based on your experience and recommendation. Chair entertains a motion that we adopt the recommendations as presented by the Director of Land Use in the August 21st report, recommending that the City Council revise the existing comprehensive development plan for lane use guidelines for this location for single-family residential medium density to commercial, pedestrian-oriented, and recommend that the City Council approve the zoning of .10 acres from the current RM, garden apartments, to BB central business zoning as shown on the attached Planning and Development Exhibit A dated September 1, 2015. And recommend that the City Council approve the Astra Plaza major subdivision and special use permit as shown on the Karins and Associates plan dated March 26th ... That's current, March 26th?

Ms. Feeney Roser: March 26th was the original date of submittal and then the revisions are through July.

Mr. Silverman: July 16, okay. Through July 16th with the Subdivision Advisory Committee recommendations.

Mr. Johnson: I so move.

Mr. Hurd: Second.

Mr. Silverman: Okay, it's been moved and seconded. Discussion on the motion or any components of the motion?

Mr. Johnson: This is Edgar Johnson. I think the ugliest part of our city is Chapel Street. And it's a main entrance to our city from the north, and anything we can do to make it more modern, I'm in favor of. I don't like all the electrical wiring there, but I think it's a fact of life here in Newark that we're beyond addressing the issue of burying electric lines in the city. The cost is just too prohibitive in my mind. I think this does one thing for me, and that moves retail business away from Main Street off to one of the side streets, and I think that's important. And I would like to see more done on Chapel Street to clean it up and put in the new buildings and perhaps have additional retail there as well, so I support this.

Mr. Silverman: Any other comments from other commissioners?

Mr. Stozek: Bob Stozek. There's a lot of things about this that I like. You know, just go back to my comment about incrementalism. I've only been on the commission for a few months and every project that I've seen is student housing. You can be sure that every project you see going forward on Chapel Street is going to be student housing. Maybe we'll have some storefronts. I just wish we could have some people who would come up with some creative ideas, something other than students. I really, this is my, you know, my soapbox. I really hold the university responsible for a

lot of this! I read just the other day that there are 500 triples in freshman housing this year. That's unheard of!

The university is not living up to its requirements to provide housing and to provide parking for its students, and it has nothing to do with this project.

Mr. Silverman: A triple refers to what?

Mr. Stozek: Three people in a dorm room designed for two. I worked there, there 250 were triples in a year. That's 500 this year. That's outrageous! Again, it, it's, we're just going to see this more and more, more student housing, student housing, student housing, and I think that's to the detriment of the city. That's my soapbox for the day.

Mr. Silverman: Bob, you're very clear on your position with respect to the development in this area and the comp plan. I'm, I'm not being critical. I...

Mr. Cronin: I just want to put out the record ... I'll get to the concept and the plan. [inaudible], but I think it's interesting that you tend to do things that you always say you wanted to do. That's the nature of age. That's certainly in harmony with you know, the rest of Astra Plaza. I can appreciate what Edgar says about, you know, if you want Chapel Street to be more, you know, driving into shops and so forth, and more like the Main Street so to speak, that might be the way to go, and it might go that way anyhow with the shopping centers and so forth. That's not what the comp plan says, not Comp Plan 4 or Comp Plan 5. So, I don't know, it's just not ... I'm not anchored to anything, but we're going to ... I have goals in writing and so forth, and so either the public needs change and [inaudible].

Mr. Silverman: In my relatively short life with the commission, this is the fourth time this discussion has come up with respect to initiatives brought forward by the private sector in this immediate area and immediately adjacent to the area. I was present during the subdivision ... I'm sorry, the review process for the comprehensive plan, and some of these new subdivisions, and it's only been in relatively recent occurrences that I found that what I thought I knew about the area involving New Street, Center Street, Choate Street, Chapel Street, didn't really turn out to be what I thought it was going to be. And council has an opportunity to bring this back for further study in my mind. I learned that virtually every structure found in that area is now an income-producing rental unit.

I found that the properties are relatively old. They don't meet current standards. I see more and more for rent signs up as the market is responding to the demands of the students who want private bathrooms and central air conditioning and don't want to rent a house and have a \$600 a month heating bill in January. And that house was built at the turn of the century, there's no insulation in it, and I see that area ... maybe it's time to take a look at that area. You know, is it suitable for what the comp plan is calling for even in this new comp plan? Did in the last five or ten years, did any of the activity there meet the goals of the comp plan that's in effect? There's a housing supplemental overlay. There's a village concept, there are programs both at the state and city level that encourage first-time homebuyers, families to move in. They don't seem to be flocking into that area.

So, you know, maybe it's time to look at that whole area. With respect to the comp plan change on this particular property. The city uses an idea of setting setbacks in the front along its business district as an average setback. If I look at the exhibits that were prepared for this particular application, I see that the BB – and I don't have those exhibits

right in front of me, kind of is sawtooth across the back property lines, it follows property lines. And this parcel and another parcel put literally an intrusion into a smooth line of the rear properties in the business district, so maybe it's time to even use this change to the comp plan to square up the area where the theater is, where this adjacent duplex property is, and at least come up with a regular property line, or a regular BB district to allow that area to grow naturally.

And I am in favor of the proposal. There are a number of attributes. It's not additional commercial. It kind of carries the content-concept of South Main Street around Chapel Street ... I agree with what my colleagues say ... with the infiltration system that's being used there's an opportunity for more green to soften that whole area. The Tsionas organization has stated that they do their own policing, and this has turned out to be a fact, so it takes pressure off the Newark Police Department as far as keeping order in the area. I heard that there's going to be an on-site manager, that's somebody who's there in theory 24 hours a day. They have a towing service that takes care of people who shouldn't be there, and people who are parking where they shouldn't be. So there's less demand on city services with respect to city-wide impact.

They've taken the DOT and the city's wishes to heart on renewing the sidewalks in that area to make them more accessible and cleaning them up. And so I support the proposal as proposed.

Any other comments?

Mr. Hurd: I was just going to throw in one thing. Will Hurd here. I guess I'm...

Mr. Silverman: Identify yourself.

Mr. Hurd: Will Hurd. I think I'm in agreement with the proposal, this one for what it does for this site. I think it's, as you said, it does not add any more retail, because that would be a traffic nightmare and the additional property is really just to help buffer and to help stormwater. But I also am in agreement with Bob that I would love to have a proposal come to us that is actually in compliance with the comp plan and supports the goals in it, and the ideas of it, because I think everything that we've gotten, especially in this area, has been asking for an amendment, because the comp plan's not supporting the goals of the developer, so it'd be interesting to see if someone is actually going to step forward, and try to make something happen with that.

Mr. Johnson: May, may I just make one final thing, and I'm just going to shut up? I think it's quixotic to think that we're going to get single-family homes downtown. I don't care what the comp plan says, because the value of the property downtown is greater for rental than it is for ownership. And the economics is leading this, and Bob [Stozek] talks about the problem is the university, because they didn't provide enough housing. In defense of the university they used to have about 35% of dormitory space for their undergraduate enrollment. I don't know what it is today. I don't know how many rooms they've lost because of Rodney and Dickinson and other construction. But the economics is driving this, and I would like to see my daughter be able to buy a place downtown for herself and her family. She can't afford it, because the spaces downtown are much more profitable to be rented to students, to multiple students in six bedroom, six bathroom townhouses, than it is to build a townhouse with four bedrooms and two bathrooms for a family.

And so I think it's just, we're whistling in the dark to think that's going to change sometime soon. I will now shut up! (laughter)

Mr. Silverman: Okay, any...?

Mr. Stozek: And I will make one last comment.

Mr. Silverman: Okay, Bob.

Mr. Stozek: I will vote for this proposal, not quickly because I like it. But because I think for this, this piece of property I'm not sure what else could be done. I would like to see some improvements and they look more attractive and whatever, who will come forward with that. What's going to happen with the rest of Chapel Street, I would agree with the previous speakers who were between a rock and a hard place here. But I think it's a real shame that we don't look at the comp plan moving forward and how we're going to develop the city. And I've given up with those that downtown is going to become all apartments. We're so far down that road, there's no turning back now.

It's not going to happen and convert it to condominiums and all this kind of, you know this talk. So I just hope we can come up with creative uses of property going forward. There are other parts of the city I can talk about down south of the campus. Back to you.

Mr. Silverman: Okay, are we ready for a motion?

Mr. Johnson: Yes.

Mr. Silverman: All those in favor, signify by saying "aye".

In Favor 5 "aye".

Mr. Silverman: All opposed signify by saying "nay".

The motion carries (gavel used). Thank you.

Ms. Feeney Roser: Thank you.

Cross table: I will shut up.

Cross table: I guess we'll go over [inaudible 01:32:51]. (laughs)

Mr. Johnson: No, I will, I will, I will shut up in the next meeting.

Ms. Feeney Roser: You can just set this up. You're just going to hang with us.

Mr. Silverman: Were just waiting for the applicant to clear, and we'll move onto our next agenda item.

Ms. Feeney Roser: Use your gavel. (laughter) (clears throat)

4. DISCUSSION CONCERNING PARTICIPATION BY COUNCIL MEMBERS AT PLANNING COMMISSION MEETINGS.

Mr. Silverman: Okay, moving on to Item #4 on our agenda. I, as a member of the Planning Commission, as an appointee brought this up as an item of business, not as the chair. When we had some preliminary background discussion concerning participation of council members at Planning Commission meetings, one of the things that came out of our informal discussion on the record at the last meeting was a request to have Director Feeney Roser make contact with the city solicitor and review some of our thoughts. And we have a letter that was included in our packet, and was that letter also posted with our minutes?

Ms. Feeney Roser: Yes.

Mr. Silverman:

Okay. So that it is on the record. I'd like to give...I'm going to run through this very quickly. Before interest groups became worried about secrecy and local government, the chair would have preferred to deal with this topic on an informal aside or in an executive session. The chair's purpose would have been to review and clarify the roles of the parties involved. That's the Planning Commission, the public and City Council members, and to avoid any misunderstandings. Now, citing the State Attorney General's office on their page dealing with open government, each public body has its own set of rules and procedures for public meetings. They must meet certain legal and constitutional standards regarding fairness and non-discrimination.

Now, also, we as commissioners can choose to close the floor to any public comment by invoking the Freedom of Information Act. The Freedom of Information Act, according to the Attorney General's office, only gives the public the right to observe, not to participate.

It's not uncommon for the city manager, department directors and senior staff to attend Planning Commission meetings. Often this occurs at the request of the Planning Commission or as a legal requirement, such as making presentations of the capital budget. The mayor and members of City Council also attend Planning Commission meetings at their pleasure. However, in recent Planning Commission meetings after the last several months, City Council members have taken an active role in concert with the public in our hearing discussions. The issue, as I see it, is should the council member participate in the recommendation process of the Planning Commission to only later consider that same recommendation at a future council meeting?

If you remember, our charge, in both state law and city ordinance, is to make a recommendation on the series of planning issues as defined by law, to the City Council, for consideration. So, recommendation to the City Council does not have to be bound by that recommendation. They have the right to hold additional hearings to gather additional information and come to their own conclusion. I believe this is an issue, because a council member, by virtue of their standing, their longevity, their following, may inadvertently shape the discussion. Secondly, a planning commissioner may consciously or unconsciously be influenced to take the position espoused by the council member who may have appointed him or her. It's almost human nature.

Now, a council member may be at a disadvantage by participating at an early level and at a recommendation proceeding. By virtue of a Planning Commission hearing being controlled through the chair, the dialogue does not go back and forth in the room. It comes from the public to the commissioners, back to the public. And there are often time constraints in there, so there may not be an opportunity to fully explore an issue. A council member may react to incomplete information. This may be the first time they've heard it or the proposal has been discussed in their community, and the Planning Commission, remember, is the first step in the initial public planning process.

To start the ball rolling it's to determine whether the commission needs additional information, either from a technical point of view from the city, or information brought forward, questions brought forward by the public, need to have answers found, whether it's found within the city or for example, DelDOT or DNREC, questions need to be answered and that information brought back.

In addition to that initial step, the time interval between the Planning Commission hearing and recommendations to the City Council permits discovery of additional information. It's kind of a "here's the picture, let's see what needs to be developed." It also provides the opportunity

for additional public discussion on the matter, whether it's through newspaper articles, community groups getting together, community groups meeting with their councilmen, their council people, to discuss questions that arose at an earlier Planning Commission hearing.

Now, I believe there's also a grey area. We're bound by a doctrine called *ex parte*, and from our commissioner point of view, we are not allowed to take into account any information that is not brought to us and presented to us at a public hearing. We can't have sidebar meetings one on one with an applicant. If we're asked as representatives of geographic areas of Newark Council districts to attend a local meeting, we go there and listen. We don't interact. We encourage people to bring those questions to the commission meeting to get them in the public record. And I'm not sure whether the transcript of our meeting, where a council person's comments are reflected, meets that requirement of *ex parte*. Because that's person's contemporaries, other council people are not there to witness the same reaction, to hear the public make the same comments.

And finally, when it becomes time for a council person to deliberate at a council meeting, the council person may have inadvertently put themselves in a difficult position as a result of earlier comments at that initial meeting on a planning issue. They reacted to one piece of information, they got further information and now in another public forum they may have to take a position that's exactly opposite, and it may not be as easy in saying, "Well, Public Works cleared that up for me." So that just doesn't go well.

In closing, I believe the role of the council member in the planning process is to consider the recommendations made by the planning commissioners ... Excuse me (clears throat) ... and use the detailed transcript of Planning Commission hearings as background. That way council's public hearing then becomes another opportunity to gather information and provide an additional public forum for discussion by the public and among the various council members, so there's no *ex parte* problem there.

Now, this is where I get a little schizophrenic! I have no issue with council members attending a workshop with the Planning Commission. And if it's just a general kind of thing, maybe participating in background. But when we're formulating an actual proposal and voting on an actual recommendation, I think that just may be crossing the line. Now, in conferring with the city attorney, he raised an issue that there may be a First Amendment issue, that how do we separate the council person who's a city resident from the council person who represents a group of people, from the council person who represents his or her particular interests? However, I believe the process, the whole planning process and decision-making process, is better served by a City Council that seeks additional information at their council meeting, and then deliberates and comes to a conclusion.

In the letter, report memo ... well, that was redundant ... In the memorandum that was presented to us and is found on the city's website in response to our inquiry as to what does council, the city solicitor at council, Bruce Herron think about the topic. The department and I'm citing from that letter, "The department spoke to City Solicitor Bruce Herron, regarding councilman participation in the formation of council recommendations to City Council". And the report here says, "Nothing in the city or state code prohibits council from speaking at public Planning Commission meetings about topics on the agenda." So there's the freedom to speak issue. He also believes that providing their point of view on a particular subject is not an ethics violation.

However, he also recommends that the commission make a recommendation to City Council that the council amend their rules of procedure to specifically state that council members shall not participate in commission meetings for any item that would be directly forwarded to council for consideration in the form of a Planning Commission recommendation.

Ms. Feeney Roser:

Yes, excuse me, Chairman Silverman, but he does say that the commission may do that if the commission feels that the council advising or offering opinions is inappropriate.

Mr. Silverman:

Okay.

Ms. Feeney Roser:

He didn't jump immediately to telling them not to.

Mr. Johnson:

The word says, "could", "could"!

Mr. Cronin:

To make a recommendation to indicate, where it's indicated that if the commission feels that the council person advise or offer what is appropriate. Then he can make a recommendation attempt. He didn't recommend that, he said [inaudible] if that's the case, he could make the recommendation. He didn't make a recommendation.

Mr. Silverman:

I stand corrected. Moving to my proposal, in concert with what the city solicitor recommended, I propose we recommend to council, and I have here the Planning Department report citing the city attorney, that the mayor and council members refrain from commenting with regard to specific items under discussion of Planning Commission public hearings where council later makes a final determination based on the commission's recommendation.

And I will ... let's see where this goes. I will put that in the form of a motion.

Is there a second?

Hearing no second, it dies. (gavel used)

Mr. Johnson:

See, I didn't have to talk. (laughter)

Ms. Feeney Roser:

If there isn't any more discussion, just that?

Mr. Johnson:

That's it?

Ms. Feeney Roser:

Okay, now (laughs), we, we did that without public comment too.

Mr. Johnson:

We are adjourned?

Ms. Feeney Roser:

Well, I don't...

Mr. Silverman:

We have no public comment, because we have no recommendations to open up the floor. We haven't made a motion, so you have no discussion.

Ms. Feeney Roser:

Okay. Well, let, let me mention that we forgot this. Okay.

Mr. Silverman:

We do have one more item under report from the director.

Ms. Feeney Roser:

Yes, and this was not added to the agenda, so we probably cannot discuss it tonight. But we have as, as you remember, we have appointed Commissioner Cronin to the Rental Housing Needs Assessments Study Phase 2 Technical Advisory Committee, and I promise we will come up with a better way to say that at some point. (laughter) But, and he is

going to be unable to make the organizational meeting for that particular committee, which is scheduled for October. So he had suggested that the commission may want to appoint Mr. Stozek, who had originally indicated that he was interested. Because this was not on the agenda though, I don't believe you can vote on it tonight, so I just thought I'd bring it up. That meeting is not until after the next Planning Commission meeting. Is it not, Michael?

Michael Fortner: October. That's correct. Yes, October 31st.

Ms. Feeney Roser: Right.

Mr. Fortner: October 21st.

Ms. Feeney Roser: 21st. Okay, so with the commission's permission, I will put that on your next agenda for discussion. [cross talk and action]

Yes, but we did, but we did tell council who it was that was appointed as the representative, so I think it's important that we should vote on it. Yes.

Mr. Silverman: Before we adjourn...

Ms. Feeney Roser: Oh, I don't know.

Mr. Silverman ... a point of clarification. So as commissioners, there is no problem with any elected official, a City Council person coming in here and making presentations on any specific items outside the hearing of the commissioner's fellow council people...

Mr. Johnson: With, with all due respect Mr. Chairman, to your position and your words, I think this is a bit of a canard, because it's been my experience, and it's only been three years, but it's been my experience that every time there's been a council member present at one of our deliberations, the chairperson, yourself or Jim [Bowman] before you, has invited them to speak. So we have created our own conundrum by inviting them to speak, and I cannot think of one instance in which I was present in which a council member ran up to the microphone demanding to speak. They were, they've all been invited. So if it is a big issue, don't invite them! But I think they have a right to speak. They are citizens, they pay taxes, and I want to hear what everybody thinks.

And there's only one person that can influence my opinion, and that's my wife, and she's batting 500, so. (laughter)

Mr. Cronin: That's pretty, pretty impressive batting for a baseball player.

Mr. Johnson: It's pretty good, yes. I, I'd put her on the bench.

Mr. Silverman: There's no reason to say no to that individual?

Mr. Johnson: No.

Mr. Cronin: No.

Dr. Morgan: No.

Mr. Silverman: Okay!

Dr. Morgan: Do we have a definition for the public?

Mr. Silverman: I see no right. We are kind of an open, open session at the moment. There is a request from Dr. Morgan to comment on our immediate past discussion.

Dr. Morgan: May I?

Mr. Silverman: Go ahead.

Dr. Morgan: Okay. So I mean, I've put some thought into this, and I would have to say that I'm just speaking for myself now. Okay. I think that it would be improper for a member of council to comment on a specific proposal that originated with a developer, because there could be some serious questions about the propriety of that, about how the council member influenced the Planning Commission, and if the developer doesn't get what he wants from council, he can claim there was possibly some violation of some procedure and file a lawsuit against the city. So I don't think we want that at all.

Mr. Silverman: We have no control over that now.

Dr. Morgan: Yes. But, but I don't think you want ... I think it's a matter of good judgment, rather than making a rule here; it's a matter of people exercising good judgment. I see it as different, however, when a proposal is originated by council. And in particular the request to revise the definition of accessory use and to add a definition of neighborhood originated with council. There was a proposal made by Councilman Morehead on March 24, 2014 at a council meeting where he requested that council give direction to the Planning Department to come up with a new definition of accessory use and a new definition for neighborhood to replace what's in Merriam Webster. And although the minutes do not show it clearly, I believe there was unanimous agreement by council to give such direction to the Planning Department.

And Maureen Feeney Roser's department indeed took it up and in June [2014] she prepared a memo to council basically going through some options and saying it's a very complex issue, and recommending holding a workshop by council. And months went by without any workshop or any progress, and then in early November [2014] we learned that the university was planning to sell West Campus, and questions were raised about what would happen, what would be going there. Would it be some commercial property, maybe with some accessory uses? It could have been anything you can justify anywhere in the country, right? And I think that's what got people really scared, and that's when I then raised, started interacting with Maureen Feeney Roser and saying, "We really have to get moving on this!"

And to her great credit, the Planning Department did get moving on it pretty quickly, and came up with, I thought, some good proposals of their own, which were kind of similar to what some of my ideas [were], but I think even better. Okay, then this went to the Planning Commission, but I think some of the members of the Planning Commission were rather unaware of what had been happening in the city, because there were some questions raised, like why are we even here.

Mr. Silverman: I don't think that was by the commission members.

Dr. Morgan: I can quote you from the minutes of the March meeting, where Mr. McIntosh was asking why we are even here, you know, and things like that! And I think that's where some members of council then who were here, felt obligated to speak up on behalf of their constituents, because there were some concerns not only left over from what almost happened on the STAR Campus, and its effect on District 3, but what

could happen on West Campus, and its effect on District 1. So I think that's how we got here, and I would have to say just from my perspective ... I mean I've attended several meetings of the Planning Commission now where there's a lot of dialogue back and forth between a developer and members of the Planning Commission. It seems to me that if council unanimously comes up with a proposal for how they think the zoning ordinance should be revised, it should be okay for members of council to interact in public; much better here than in private, with members of the Planning Commission.

Mr. Silverman: Is it ... my notion in the future then, whether I'm sitting in this chair or sitting as a commissioner, will be to specifically have a joint meeting of City Council and the Planning Commission to discuss any of their proposals. That way all bases are covered.

Dr. Morgan: I think that makes a lot of sense. That's a very good idea!

Mr. Johnson: Motion to adjourn.

Mr. Silverman: Okay, we have a motion to adjourn. (laughter) If I ... Hearing ... Hearing no objections, we stand adjourned (gavel used). Thank you.

Ms. Feeney Roser: Thank you everyone. Thank you Tara.