

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

January 5, 2016

7:00 p.m.

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

Chairman: Alan Silverman

Commissioners Present: Bob Cronin
Jeremy Firestone
Willard Hurd
Edgar Johnson
Frank McIntosh
Robert Stozek

Commissioners Absent: None

Staff Present: Maureen Feeney Roser, Planning and Development Director
Michael Fortner, Development Manager

Mr. Silverman called the Planning Commission meeting to order at 7:02 p.m.

Mr. Alan Silverman: I would like to call the January 5, 2016 City of Newark Planning Commission meeting to order. I will make the announcement simply because it's protocol. Those wishing to speak, there are speaker slips on the counter as you come in. We ask for your name, address and, generally, the topic you want to speak on. It's not an inclusion or exclusion list. It's simply for management and making sure that everyone has the opportunity to speak and we have an idea of who is speaking on what topic. So that's available for anyone who wishes to speak on the topics on our agenda tonight.

The first thing I'd like to do as Chair is congratulate Maureen on her recent awards, particularly, your Jefferson Award. As some of you know, I...

Unidentified Speaker: Speech!

Ms. Maureen Feeney Roser: Thank you.

Mr. Silverman: Oh, please...

Ms. Feeney Roser: You'll hear enough out of me tonight.

Mr. Silverman: A Jefferson Award is a rather prestigious award. An individual cannot pursue it. They must be nominated by others and approved by their peers to get it. So it's quite a feather in the cap of someone who does receive a Jefferson Award. And you're quite welcome. You've earned it.

Ms. Feeney Roser: Thank you.

**1. THE MINUTES OF THE DECEMBER 1, 2015 PLANNING COMMISSION
MEETING.**

Mr. Silverman: The first item on the agenda this evening is our final review of the draft Comprehensive Plan. Oops, I'm sorry. The Planning Commissioners have had copies of the draft minutes. Dr. Morgan, who also reads our minutes religiously, has submitted comments. Do

the Commissioners have any additions or corrections to the minutes that they received in a hardcopy? Okay, hearing none, the draft minutes as distributed stand as written.

Now we'll get on to the next item on the agenda.

2. REVIEW OF REVISED COMPREHENSIVE DEVELOPMENT PLAN V

Mr. Silverman: We will hear comments from the staff on additional comments since we had our meeting last month with respect to the draft Comprehensive Development Plan V. In conferring with Mike, a number of those changes are simply typographical changes and some dealing with grammar and editing. But we do have at least one significant change from the draft from its original recommendation to Council, through Council's public hearings and then back to us. Mike?

Mr. Mike Fortner: Thank you. Just a quick overview. I'm going to go over some of the, briefly, each little change I'm recommending that Planning Commission review from the 11/3/15 draft. I'll do a final summation and we'll have public comments and then Planning Commissioner comments. I have the Comp Plan online. We can bring up any chapter if you want to look at it, if there is any kind of change or any other kind of things that come up. And we can just edit it on the screen and that can be part of your final recommendation as well, and any other kinds of things.

The first thing, you have a memo dated January 5th and there are copies available at the front door. But the first change is on page 91 under the section Healthy Community and it says, 'according to a GIS analysis of the Delaware Department of Natural Resources and Environmental Control (DNREC) most Newark residents live within a 5 minute walk of a park,' and it turns out I misread that map. Really, what it was, was that most Newark residents were a 10 minute walk from a park, [inaudible]. And so that was misread. It did not get caught until a Planning Commissioner pointed it out to me.

Change B is under the Downtown, is in the Chapter 9 Downtown Development District, the 5th bullet down. This is really rewriting that bullet to make it past tense. It was written that the Newark Shopping Center was under redevelopment when it was written and it was talking about the future, so this just puts it in past tense. The Newark Shopping Center Redevelopment Project was approved in 2013 and refurbished an old suburban style shopping center. The project was completed in May 2015 and included façade improvements to most of the existing buildings, improved amenities for bicycles and pedestrians, and the addition of a 220-unit apartment building. I just put that from future tense to past tense.

Ms. Feeney Roser: Excuse me, Mike?

Mr. Fortner: Yes.

Ms. Feeney Roser: Do you want to add that that building is under construction. We don't anticipate it to be open until the spring.

Mr. Fortner: I'd rather just put it in the past and I think that's what I did.

Ms. Feeney Roser: Okay.

Mr. Fortner: Let's think about this. Is it the right thing because things change? [inaudible]

So changes C and D are, the first two I told you about were just little typing changes. This is somewhat of a significant thing, if you want to include it, both of these. I recommended that we include in part of our annexation in Planning Section 2, the DuPont Stine Haskell Research Center. As these things come up all of a sudden, DuPont has been bought by Dow and maybe that site is not going to be there, I don't know. So we can include it in our annexation plan if it was to ever redevelop where they tear down the buildings and build something else. I'll go over the text.

The other one is some things on the very south side of town. Some parcels that include 0 Independence Way, 812 Smithfield Drive and then 351 through about 389, 395 West Chestnut Hill Road. I'll show you a blow up map on that later. But include those in the annexation plan. Those are vacant, underutilized parcels that are adjacent to the City and could come into the City with the right development plan.

Mr. Silverman: Mike?

Mr. Fortner: Go ahead.

Mr. Silverman: For a point of clarification, the City is not soliciting the owners of these lands to be annexed into the City?

Mr. Fortner: That's correct.

Mr. Silverman: We're simply following the State procedures for the Comprehensive Plan, saying if annexations were to take place, what parcels would the City like to have into the City.

Mr. Fortner: That's correct.

Mr. Silverman: Okay.

Mr. Fortner: It's just puts it as a target, as possible. That way we don't have to go back to the State. The parcels [inaudible], we just have to go back to the State and do a plus process with it.

Mr. Silverman: So that would actually save a step in the development process for anyone who would want to annex into the City.

Mr. Fortner: That's right. And it also doesn't mean we'd have to. If they came in and it wasn't the right plan for us, we wouldn't have to annex if we didn't want to, as well.

Mr. Silverman: Okay, just so we're clear on that.

Mr. Fortner: That's correct. So changing would update Planning Area 2 to include the DuPont Stine Haskell Research Center and I proposed putting this text in, "Annexation of DuPont Stine Haskell Research Center to be considered for industrial uses if the site redevelops."

And then Planning Section 3, you see in the red area on the left-hand side, those are underutilized parcels. Those are in addition. Those are the addresses. There is some interest on one of the parcels that could develop. The others are underutilized or vacant parcels and could be developed, so I just sort of put that section on there and what the proposal would be. There would be no added text, it's just low density residential.

And then for the final summary, again, you know it's been a long process. We've gone through a lot with this plan, and the response, although it's been long, has been, to the content of it, very positive. People have liked all of the different, kind of the vision of the plan. The two biggest criticisms, which we talked about last week are 1) the prioritization of the plan. That's been one of the main criticisms. It should have greater, or more clearly state what the priorities are. What are higher priorities and the lower priorities and putting on a time schedule of when these things are expected to take place. I'm not recommending any, kind of, changes to that. We have a process here where we develop our own work plan and we just state what we want and we review it.

But also keep in mind that this Comp Plan isn't necessarily just for the Planning Commissioners. There are other agencies that are looking at this plan and other developer as well. For example, it's not on our work plan for 2016 to look at the bus transit schedules and how to better interconnect the transit providers in the City to be more efficient, but we're already working with DelDOT on that. And we're working with the IPA, possibly via a study that will be coming in. And so you would be more of just a stakeholder in something like that. There's

also a whole section in Chapter 4 which is being implemented that aren't a part of your priorities either, but they're being implemented by the Public Works Department.

So it would be very hard for us to prioritize what's more important and less important. These things are going on, there needs to be flexibility. Things pop up, urgent issues, and by putting them in the Comp Plan, you create kind of a rigidity that we need more flexibility for. As we've been saying, when you put it in the Comp Plan it becomes, sort of like, a law. And so if you put that it would be done by this date, it would kind of be frozen there, where you'd have to do an amendment on that and that would just be tedious.

And so we developed a working plan where we would review this at least annually and I could give you a report every year on all the things. We could see what's been started, where the progress is, and you'd be able to see from that report, well this is really important, we should make progress on this. You would have this all in front of you and we could revisit this periodically.

The 2nd biggest criticism is with the benchmarks, not enough benchmarks. When this plan was created, I tried, every benchmark that was in existence, we had set, I put into the plan. A lot of times plans refer, this plan is a broad, comprehensive plan. It refers to a lot of other smaller plans, and those have benchmarks in them. But where I knew there was a benchmark, I put it in there. Where there wasn't a benchmark, I didn't want to set anything that was arbitrary. These benchmarks need to be done with thought and perhaps there needs to be a study or we focus on and develop these benchmarks to allow public participation. But this plan wasn't the portion for the benchmarks. This was just a broad, overall, when you create a benchmark and put it in a Comprehensive Plan, it sort of becomes a law and it's better to just create other plans and then have the Comp Plan refer to that plan and that way it doesn't [inaudible] as much. So that's the way I'm recommending with this. This is, again, a broader plan, not necessarily something where you would have a bunch of benchmarks. These are for sub-plans.

And so those are the two things and beyond that we've gone through a lot of revisions and things, and most of that sort of, things change. You know, like with the Newark Shopping Center. People rewriting sections. Sections on the parking, people want to rewrite it and soften the language some. And so it's been through a real stringent process like that, but the plan was approved pretty much like you approved it before. I'm recommending with those changes that we send this back to Council.

Now we can open it up to public comment and Planning Commissioner comments. I can answer questions or however you'd like to proceed.

Mr. Silverman: Commissioners? Let's start with Bob Cronin.

Mr. Bob Cronin: Thank you, Mr. Chairman. I guess a minor question I have in Planning Area 3, when I drive down Welsh Tract Road and I go past the old church, off to the left I see a lane that seems to have private property with a street number like 39. I don't see that shown as a separate parcel on here. Maybe that's, do you have, is that supposed to say this is all one tax parcel on that side of the road?

Mr. Fortner: This is not all one, most of that is one tax parcel. I see it as just one parcel when I go into CityView, not CityView but on Parcel View on New Castle County and on our parcel maps. That's one parcel. There's another parcel right next to it that, I believe, is owned by the State or Federal Highway Commission.

Mr. Cronin: Would you double-check that, just to be sure?

Mr. Fortner: Okay.

Mr. Cronin: And the next question I have is what determines whether a locale is out of play on this same map.

Mr. Fortner: Out of play is, there's only one thing that was out of play and that is that area in the gray. That is specifically out of play because there's legislation and it's described in the planning section, Planning Area 4, but it's described as, we got money for the reservoir and if we ever annex that, we'd have to give that money back, basically. And so we just consider that out of play. It was recommended by Council to put that in there.

Mr. Cronin: I'm sorry, what was the connection to the reservoir?

Mr. Fortner: Can you help me, Maureen?

Ms. Feeney Roser: Yes, there was an addendum to the bond bill the year that the State gave the money to the City for the reservoir that said that if we ever annexed the [inaudible] property there across from the Catholic Church, you know where I'm talking about? That's the one you're talking about right?

Mr. Cronin: On Possum Park, the Stopyra tract.

Ms. Feeney Roser: Stopyra tract, I'm sorry. Yes, the Stopyra tract, we would have to give back the bond money to the State.

Mr. Cronin: Really?

Ms. Feeney Roser: Yes, it was an add on.

Mr. Silverman: The Stopyra tract has been in contention for 40 years now. It's owned by an individual who, from time to time, would like to build a rather large shopping center there, town houses, high density residential. And this was the State Legislature way of making sure that the developer didn't back-door away from New Castle County and come to the City for annexation.

Mr. Cronin: Alright, thank you.

Mr. Silverman: It's a poison pill.

Mr. Cronin: Clearly. Thank you, that's all I have Mr. Chairman.

Mr. Silverman: Frank, any comments?

Mr. Frank McIntosh: No.

Mr. Jeremy Firestone: Could you explain for both the Commission and the public the reasons that you're proposing the changes on the annexation in each case? I mean, was it the result of new information or new facts or the result of it was overlooked and so that people have an understanding of the rationale for the change?

Mr. Fortner: Sure. Kind of a little bit of all of those, but first of all Stine Haskell might be new information. We wouldn't consider Stine Haskell to annex them and there would be, they'd have to pay the utility. I think New Castle County would have objected to it as well.

Mr. Silverman: Mike...

Mr. Firestone: For the public's edification, the reason that has now come into play is because of the potential merger between Dow and DuPont, is that correct?

Mr. Fortner: Yes, so if it redeveloped.

Mr. Silverman: Correct. It's significant change in facts and circumstances. When we looked at this property before, it was essentially a cornerstone property on Elkton Road. It was there long before Elkton Road development was there. There was an assumption that it would be there for a long time, and now with the Dow merger, particularly with, and I was the one that brought it to the Department's attention, with the Dow merger, Dow is very much into the agri-business and

agri-chemicals. There is a feeling that this relatively small research facility would be a real outlier for their central ag business, which exists in the Midwest and the upper Midwest. So that kind of looks toward a spinning off the property.

Then as we discussed, part of the economic development policy of the City of Newark is not so much outreach on annexation, but letting individuals who want to develop property that's within the City, letting them know relatively quickly whether it's a positive proposal or a negative proposal. And by following the State's annexation program, we would put it out there to anyone who would be interested in that property, if it were to come on the market, that if you're interested in annexation with the City of Newark, you can get an early answer or a very rapid answer as to your development proposal. Whereas other jurisdictions can take as long as two years, and then once the property would be annexed into the City, if that were the applicant's choice, in my other life I've been involved in annexations that have gone from annexation to building permit in about six months. Other jurisdictions can take years to do that. Plus you mentioned in your earlier side comments that by having it within the document, there's a whole layer of State review with respect to someone wanting to re-develop or to put more development on that property that does not have to be done. As Jeremy was saying, it's a major change in fact and circumstance since we looked at that parcel even two months ago.

Mr. Firestone: What about the other small parcels?

Mr. Fortner: The other one, that might have been more of an overlook. I tried to go around the City and identify parcels that usually were vacant or under-utilized. And those, since they were kind of on this cusp, I just never really noticed those, but we did have a developer come in for a property vacated a long time ago before I was doing this stuff, and this was about maybe re-looking at the property in that area and inquiring about annexation, and it kind of got me to look over there. Well there's some other properties over here too that this whole little area could develop low-density housing, so I decided to put it in there.

Again, it doesn't mean that the plans that come in might not be right for the City. It's kind of on the outskirts. You may not want it, but we could just have it in there.

Mr. Silverman: Also, along with maintaining the vitality of the City, I saw that State Representative Baumbach put back in legislation for a payment in lieu of taxes for the City of Newark, and in his statement, he discussed almost 50% of the rate-able property, taxable property in Newark, is tax exempt for one reason or another. Annexations like this would offer the City a way of increasing its tax base to support City services. So that does go toward the Comp Plan. Again, if the owner of the property chooses to make the application.

Mr. Fortner: That's correct.

Mr. Firestone: Switching to another point, I just want to comment on your comment on benchmarks since I was at least one of the people that brought up that issue. I guess my own personal preference would be that the Comp Plan would have some benchmarks. I understand it's late in the game and so I think your suggestion that you, and your commitment to take this up separately, is a good one. So thank you.

Mr. Silverman: Jeremy, for my benefit, since the open meeting generally forbids us to get together as a group and discuss how we understand things, what do you mean by benchmark?

Mr. Firestone: I mean that there's a lot of lofty language in the Comp Plan speaking to things like inclusiveness and sustainability, but we can't really determine whether we're moving in those directions or not because we don't have any benchmarks to say whether we're making progress that we think is appropriate or not. It's those kind of items.

Mr. Silverman: Thank you.

Mr. Will Hurd: I have a few editorial comments that I didn't manage to get to you over the holidays, so if you're ready for them...

Mr. Fortner: I am

Mr. Hurd: Okay. On chapter 4, page 34, in that first paragraph, you talk a lot about the Public Works and Water Department, but in that last sentence it's missing the words "and Water." It just says Public Works Department.

Mr. Fortner: Oh "and Water," not "Water Resources"?

Mr. Hurd: Yes.

Mr. Fortner: I just put Public Works but I didn't put Water Resources?

Mr. Hurd: Correct. It's named that in other places in that section.

Mr. Fortner: Yeah.

Mr. Hurd: On page 40, there were two things. This is talking about housing inventory and assessment. One thing that, to me, would have made Table 5-1 easier to grasp is if we had separate columns, or additional columns, for the percentage of change when we're talking about single unit and multi-unit structures. Because all that's in there is a gross, basically a number change and it would be useful to me to sort of say, "Which one's getting bigger faster?" I have to sort of calculate that out myself and it wasn't as useful.

And then this is not something we can do here, but something to go back and sort of just look at briefly because I don't think it changes the sense of things, but the next two paragraphs after Table 5-1, both kind of state the same things. They both refer to some of the same statistics and same data, so I think that there's a way to combine that into one paragraph. I don't know if that's just a result of different editing cycles.

Ms. Feeney Roser: So if I can reiterate this because it's hard to stand at the microphone and do that.

Mr. Hurd: Right.

Ms. Feeney Roser: Excuse me, on page 34, it was just adding Water and Water Resources to the department name. On page 40, the housing inventory table, is that table 1?

Mr. Hurd: Table 1 is the Increased Construction of Multi-Unit Structures.

Ms. Feeney Roser: Increased, okay, and you would like to see a separate column for both multi-family and single-family?

Mr. Hurd: No, to see a column for percentage of change.

Ms. Feeney Roser: Column for percentage of change.

Mr. Hurd: Because there's a number for units in 1990 and 2000, and then in 2008 and 2012.

Ms. Feeney Roser: So instead of number increase, the percentage increase would be helpful, right?

Mr. Hurd: There it is, yeah.

Ms. Feeney Roser: Yeah, so percentage increase?

Mr. Hurd: So I look at that and I say, "885." Well, that doesn't tell me a whole lot right away, but when I calculate and go, "Well, that's 17% more," that has more value, I think, in terms of understanding what's going on.

Ms. Feeney Roser: Okay. Good.

Mr. Hurd: And then the two paragraphs after...

Ms. Feeney Roser: Can be combined into one.

Mr. Hurd: See how they both talk about, you know, how many housing units which is 6.62%, 66 and 66.2% and it just, it seems to me that they're saying the same thing. Maybe worded slightly differently, but I think that they could be combined into one.

Ms. Feeney Roser: Yes, we can look at that, right?

Mr. Fortner: Yeah, sure.

Mr. Hurd: That make sense?

Ms. Feeney Roser: Sure.

Mr. Fortner: In the next paragraph I'm referring to paragraph Table 5-2 and I'm supposed to write a little bit about each table.

Ms. Feeney Roser: Ah, so maybe it needs to go underneath the table.

Mr. Fortner: Yeah, I don't know, but if I combine it, obviously I've got to be able to refer to both tables. If I'm going to have a table, I've got to write something on it. But okay. I guess I got the right changes. Okay, yeah, I think that's good. I can do that.

Mr. Hurd: I don't know, because it just, I read it and then I was reading the second one going, "Is this the same stuff?" If it were clearer that you were leaving one table and moving to the next one, maybe that would help.

Ms. Feeney Roser: Yes. You just take that second paragraph and put it underneath Table 2, Mike.

Mr. Fortner: Okay.

Ms. Feeney Roser: You know what I mean?

Mr. Fortner: Is it still redundant, though? He's saying it's redundant. Okay, well, somehow I'll stick it in Table 5-2 in there. Okay?

Ms. Feeney Roser: Okay.

Mr. McIntosh: Excuse me. One question on this point.

Mr. Hurd: On page 113.

Ms. Feeney Roser: Excuse me, Will.

Mr. McIntosh: Sorry, Will. Before you go on, are you suggesting...

Ms. Feeney Roser: You need to talk into the microphone.

Mr. McIntosh: Oh, yeah. How did it get down there?

Mr. Hurd: How'd you get down there?

Mr. McIntosh: Hi, there. It was over here and now it's here. Anyway, are you suggesting that you take out the number reference and put in percentage?

Mr. Hurd: No. I'm just saying...

Mr. McIntosh: Are you suggesting...

Mr. Hurd: No. For table 5-1? I'm saying add two additional columns for percentages.

Mr. McIntosh: Okay, because I think there's value to both.

Mr. Hurd: Yes. I agree.

Mr. McIntosh: Okay. That's all I had to say. Thank you.

Mr. Silverman: Will, go ahead.

Mr. Hurd: So on page 113, this is just, again, sort of an editorial, a typographical thing.

Mr. Fortner: What chapter is that in? What chapter?

Mr. Hurd: Chapter 9.

Mr. Fortner: Okay.

Mr. Hurd: Under area F. If you go down, it starts referring to other districts and I think here what you mean when it says District 6, I think you mean District F, and for District 1, I think you mean different District D.

Mr. Hurd: Okay.

Mr. Hurd: That's how I read the, from other spots. Unless there's another meaning there that I'm not sure of.

Mr. Fortner: No, those terms changed during the process.

Mr. Hurd: Right, okay.

Ms. Feeney Roser: Yes, they were numbered and they went to lettered sometime during the process.

Mr. Silverman: That was one of the critiques of Council, that was confusing Council, [inaudible] districts, right?

Ms. Feeney Roser: Right.

Mr. Hurd: I can see that. Last one, chapter 10, page 154. This is just a minor, editorial proofreader thing for me. Under Action Item 1, is Zoning Code supposed to be in a different font? On that first note, up, up, up.

Mr. Fortner: 154? What?

Mr. Hurd: Under Action Item 1.

Mr. Silverman: Continue to the top of your screen.

Mr. Cronin: Go higher on the page.

Mr. Fortner: Zoning code.

Mr. Cronin: Action Item 1.

Ms. Feeney Roser: Oh, that is a different font, isn't it? Action Item 1, see that, Mike? Where zoning is?

Mr. Fortner: That? The zoning...

Ms. Feeney Roser: Looks like Times Roman or something.

Mr. Fortner: Yeah.

Mr. Hurd: Courier, I think.

Mr. Fortner: Yeah, somehow that got botched up now. A lot of times we underline Zoning Code. Okay, but I got 154.

Mr. Hurd: That's the extent of my petty, little nitpicky things.

Ms. Feeney Roser: Well, we appreciate it.

Mr. Silverman: Commissioner Stozek?

Mr. Bob Stozek: Okay. Bob Stozek. I want to beat this dead horse one more time, just a little bit. I understand why you don't want to have priorities and deadlines and such in the Comprehensive Plan, but I thought our discussion at the last meeting was, in order to proceed through the Work Plan in a meaningful way, that we needed to have some sort of prioritization. And that you guys were going to set up a separate, internal process within your department or report, and I think you referenced that tonight, so you could report back to the Commission what the status is on these various projects. Because we have an interest in that Work Plan as well. I mean, we have input into it.

The only thing you said tonight that bothered me a little, I think you said, you would report back to the Commission once a year. I really don't think that's often enough. And these reports I don't see as being an hour-long thing, maybe 10, 15 minutes at the most. But I would think we would need to hear something about what's going on within the Department on a quarterly basis.

Mr. Fortner: Right, I guess, once a year, I thought it would be a year-end report, but we can do a quarterly report. Sure.

Mr. Stozek: Just to say this is what we're putting attention to. You know, here's our progress on it. Just very brief, to let us know what's going on.

Mr. Silverman: Items described, items started, status on those started items, any impediments, waiting for completion, that kind of thing.

Mr. Stozek: Right, and I think the other interesting thing might be for us, because you mention quite often you get other things thrown at you by Council, I would list that as some impediments, too. If Council is throwing additional things, just to say, so we have an answer as to why these things aren't getting accomplished. We had ten more things that Council threw at you.

Mr. Silverman: Let me change impediment to distraction.

Mr. Silverman: Okay, that's fine. I think once a year just isn't often enough for us to really get a feel for what's going on with you guys.

Mr. Fortner: Want for shoot for something about March? Well, if this Plan does get approved until then, but... yeah, we'll have something.

Ms. Feeney Roser: I think they're two different things, though. I think they're correlated, but I think what you're referring to is the Planning Commission's Work Plan and where we are on these items, right? And how they correlate to the Comp Plan, which is a pretty easy thing for us to do.

Mr. Fortner: Well, even with the Comp Plan, I just pull up a spreadsheet. I do it for the State, I would do it annually for the State anyway, and I just take each action item and goal and just put them on them there and each quarter, I'd just update them. I mean, I'd just go through and update the same template and add new information.

Ms. Feeney Roser: So you can provide that on a quarterly basis then.

Mr. Fortner: Probably. Somebody wouldn't even have to present on it. You wouldn't even have to hear me talk. I'd just give it to you.

Mr. Silverman: Do we want to call it a quarterly action report on the work program to distinguish it from the Comp Plan work we're doing now?

Mr. Stozek: Sure.

Mr. Hurd: I want to be clear. I think Bob is saying that he's looking at what Mike is talking about is a list of all the things in the Comp Plan, the action items and goals. Because that's something I want to see separate from, sort of, where are we on the Work Plan items.

Ms. Feeney Roser: We should be able to do that.

Mr. Fortner: Yeah, okay.

Mr. Hurd: That's all.

Mr. Silverman: Any other comments? Any other questions? I'd like to open the floor up to the public. If you'll approach the mic, ma'am, and please give your name and, if you choose, your address.

Ms. Jean White: Jean White.

Ms. Feeney Roser: It's not on.

Ms. White: I have not studied the Comprehensive Plan or the things you've talked about tonight and I have a comment that may not be appropriate. But in talking about reports as to things that would be happening in the future and how things have worked out, I have a comment. And that is, a number of us in past years, before five years ago when I had to stop coming, a number of us felt that the project as proposed and approved was built, and showed something different. We had thought that it really would have been useful, or would be useful, if those on the Planning Commission could go and look at past projects, not just done, but just before and say, "How did this project that, in fact, looked ugly, looked too big, looked poor, come about, and what could we have improved in our questions to [inaudible] approval and, in other words, or maybe even the requirements in the Code that could have made a better project." This may not be useful for you tonight, but it's a thought, as you were talking, that occurred to me. Thank you.

Mr. Silverman: Thank you, Ms. White. Is there anyone else from the public who'd like to speak? Okay, since no one else has stepped forward, shall we? Our step from here is to craft a motion to return this proposal back to the City Council for their final consideration.

Ms. Feeney Roser: To recommend approval.

Mr. Silverman: Okay. Let's craft a motion then among the Commissioners that we recommend approval of the draft, and let me get the exact wording off of your agenda here, Comprehensive Development Plan V. Do we as Commissioners want to list those items that we talked about that we would like to see as changes or would simply refer to changes as discussed in the record and by the Development Department, Planning Department?

Mr. Edgar Johnson: Changes as discussed.

Mr. Hurd: Yeah, as discussed.

Mr. Silverman: Okay. So the Chair will entertain a motion to approve the draft Comprehensive Development Plan V, and Mike, what's the date on that?

Mr. Fortner: January, no...

Mr. Silverman: Okay, as of...

Mr. Fortner: November 3, 2015.

Ms. Feeney Roser: Well, we're making revisions up until tonight, so why don't we say this will be a new draft?

Mr. Fortner: Yeah, so this will be a new draft.

Mr. Silverman: So, approve the draft of the Comprehensive Development Plan V as reviewed and discussed by the Planning Commission at the January 5, 2016 meeting, with the recommendations and changes as proposed by the Commission.

Mr. Hurd: I so move.

Mr. Johnson: Second.

Mr. Silverman: Okay, it has been moved and seconded. Is there any discussion by the Commissioners? Okay, hearing no further discussion, all those in favor of recommending the Comprehensive Plan with the proposed changes as discussed, signify by saying Aye. All those in opposition signify by saying Nay. The motion carries.

MOTION BY HURD, SECONDED BY JOHNSON, THAT THE PLANNING COMMISSION MAKE THE FOLLOWING RECOMMENDATION TO CITY COUNCIL:

THAT CITY COUNCIL APPROVE NEWARK COMPREHENSIVE DEVELOPMENT PLAN V AS REVIEWED AND DISCUSSED BY THE PLANNING COMMISSION AT THE JANUARY 5, 2016 MEETING, WITH THE RECOMMENDATIONS AND CHANGES AS PROPOSED BY THE COMMISSION.

VOTE: 7-0

AYE: CRONIN, FIRESTONE, HURD, JOHNSON, MCINTOSH, SILVERMAN, STOZEK

NAY: NONE

MOTION PASSED UNANIMOUSLY

Maureen: Alright, back to Council. I'm excited. Ready to move on?

3. REVIEW AND CONSIDERATION OF THE REZONING OF 249 EAST MAIN STREET FROM BLR (LIMITED BUSINESS RESIDENTIAL) TO BB (CENTRAL BUSINESS DISTRICT) TO ALLOW A WIDER VARIETY OF COMMERCIAL USES AT THE SITE.

Mr. Silverman: Okay, I would like to move on to Item #3 on our agenda, review and consideration of the rezoning at 249 East Main Street from BLR, limited business residential, to BB, central business district, to allow a wider variety of commercial uses at the site.

Ms. Feeney Roser: Thank you, Chairman Silverman. For the benefit of those in the audience, I will briefly summarize the Planning and Development Department's Report on this rezoning request.

On October 28, 2015, the Planning and Development Department received an application from Heavenly, LLC to rezone the property located at 249 East Main Street from its current BLR (limited business residential) to BB (central business district) zoning. The applicant indicates that the rezoning is being pursued simply to allow a greater variety of commercial uses at the site. Specifically, the owner would like to lease a portion of the Main Street frontage to a waffle/coffee shop, which is not permitted in the BLR district. No other changes are proposed for the property at this time.

The Planning and Development Department report on the proposed rezoning follows:

Property Description and Related Data

1. Location:

South side of East Main Street, approximately 325 feet west of Tyre Avenue, and adjacent to the east side of Farmer's Lane.

2. Size:

0.753+/- acres

3. Existing Land Use:

The property is now being used for professional offices and apartments with an access way and associated parking.

4. Physical Condition of the Site:

The site consists of two buildings: one 2-story vinyl clad building fronting on Main Street and in the rear fronting on the parking area is a long mixed use building, which is one-story on the north end with a two-story addition and deck on the south. A one-way in access drive is located west of the Main Street building and leads into an asphalt parking area for both buildings, with egress onto Farmer's Lane. The parcel is relatively flat, but slopes to Main Street on the north side. Green/lawn areas are located in front of the Main Street building, along Farmer's Lane and in the rear adjacent to Municipal Lot #5.

5. Planning and Zoning:

The property is currently zoned BLR. BLR is a limited business and residential zoning which permits the following:

- A. Church or other place of worship, seminary or convent, parish house, or Sunday school building.
- B. Public and private elementary, junior, and senior high schools.
- C. Park, playground, athletic field, recreation building, and community center operated on a noncommercial basis for recreation purposes.
- D. Municipal tower, water storage tank, water reservoir, water pumping station, and water treatment plant.
- E. Municipal sewage pumping station and sewers.
- F. Right-of-way, street.
- G. Utility transmission and distribution lines.
- H. Public transportation bus or transit stops for the loading and unloading of passengers.
- I. Social club, fraternal, social service, union, and civic organization.
- J. Accessory buildings or structures, no impact, and accessory uses, no impact.
- K. Hospitals.
- L. Apartments are permitted in conjunction with any nonresidential uses permitted in this district. Nonresidential uses are permitted on ground floor and second floor only in such mixed use buildings and permitted nonresidential uses shall occupy a minimum of 30% of the gross floor area of each building.

- M. Offices for professional services and administrative activities.
- N. Undertakers.
- O. Barbershops, beauty shops.
- P. Personal service establishments, limited to a maximum floor area of 5,000 square feet.
- Q. Special retail stores, with a maximum floor area for any one establishment limited to 5,000 square feet.
- R. Finance institutions, banks, loan companies.
- S. Parking spaces, off-street.

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

- A. Police and fire stations, library, museum, and art gallery.
- B. Country club, regulation golf course, including customary accessory uses, subject to special requirements.
- C. Substation, electric and gas, and telephone central office, subject to special requirements.
- D. Day care centers, kindergartens, preschools, day nursery schools, and orphanages, subject to special requirements.
- E. Drive-in and curb service business, for other than eating establishments, with restrictions.
- F. Bed and breakfast, defined as an inn, guest house, and similar commercial lodging establishment permitted only in a structure in existence at the time of this ordinance's adoption and subject to special requirements.
- G. Accessory buildings or structures, with impact, and accessory uses, with impact.

Summary of BLR Area Regulations.

- 1. *Minimum lot area.* 3,000 square feet; ½ acre for apartments with non-residential use.
- 2. *Maximum lot coverage.* 40%; 25% for apartments with non-residential use.
- 3. *Minimum lot width.* 75 feet.
- 4. *Height of buildings.* 3 stories/35 feet.
- 5. *Building setback lines.* 20 feet.
- 6. *Rear yards.* 15 feet.
- 7. *Side yards.* 10 minimum/25 aggregate
- 8. *Open area.* 35%; 40% for apartments with non-residential use.
- 9. *Parking.* As required in Code Section 32-45.

The applicants are requesting rezoning to BB. BB is our central business district zoning which permits the following:

- A. Retail and specialty stores.
- B. Retail food stores up to 5,000 square feet in maximum floor area, limited to bakeries, confectionery, candy, gourmet shops, small convenience grocery, and meat sales facilities. Goods produced on the premises shall be sold only on the premises.
- C. Restaurants, bakery-restaurants and delicatessens.
- D. Finance institutions, banks, loan companies.
- E. Offices for professional services and administrative activities.
- F. Personal service establishments.
- G. Studio 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, with special requirements. A 20 foot setback is required for this with no vehicular parking permitted in the required front yard area.
- I. Related indoor storage facilities are permitted as an accessory use to any of the permitted uses in this district, with restrictions.
- J. Accessory buildings or structures, no impact, and accessory uses, no impact.
- K. Public parking garages and parking lot.
- L. Parking, off-street.

- M. Public transportation facilities, including bus or transit stops for the loading and unloading of passengers; stations and depots.
- N. Street, right-of-way.
- O. Utility transmission and distribution lines.
- P. Water tower, water reservoir, water storage tank, pumping station and sewer.
- Q. Social club, fraternal, social service, union, and civic organizations, except on ground floor locations.
- R. 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, with restrictions.
- C. Fast-food restaurants with special requirements.
- D. Motels and hotels.
- E. Commercial indoor recreation and indoor theaters.
- F. Instructional, business or trade schools.
- G. Substation, electric, gas, and telephone central office, subject to special requirements.
- H. Tower, broadcasting and telecommunications installed on existing buildings or structures only, with special requirements.
- I. Police and fire stations.
- J. Library, museum and art gallery.
- K. Church, or other place of worship, seminary or convent, parish house, or Sunday school building.
- L. Restaurant, cafeteria style.
- M. Apartments, except on ground floor locations, with special requirements.
- N. Restaurants, with alcoholic beverages, with special requirements.
- O. Accessory buildings or structures, with impact, and accessory uses, with impact.

Summary of BB Area Regulations.

- 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.

In terms of adjacent and nearby properties, the lands immediately north across Main Street from this site are zoned BB and contain the commercial buildings of the Newark Shopping Center and several other businesses fronting on Main Street. Located east of this site are BB zoned properties which contain Bing's Bakery, Formal Affairs and several other retail businesses with apartments above. To the west is Farmers Lane, which has, fronting along its western boundary, automotive type uses and is zoned BC. South of the site is the City owned, BLR zoned Municipal Lot #5, which is an 80 space, monthly permit lot.

Regarding comprehensive planning, the Newark Comprehensive Development Plan IV calls for "commercial (pedestrian and auto oriented)" uses for this site. 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. Therefore, both

the current BLR zoning and the proposed BB zoning are compatible with the Comprehensive Development Plan IV's land use designations for the site.

No development plan is associated with this rezoning request, therefore, a fiscal impact analysis, a traffic analysis, and density comparisons have not been calculated for this project. Those analyses are done when a new development is proposed.

Subdivision Advisory Committee

Even though there is not a subdivision plan associated with the rezoning, the City Subdivision Advisory Committee – consisting of the management, planning and operating departments – has reviewed the proposed rezoning of 248 East Main Street and has the following comments below.

Planning and Development

Land Use

1. The Department notes that both BLR and BB are mixed use zoning districts. The BLR district is simply more restrictive regarding commercial uses and limits the amount of residential use permitted. It is also not as flexible regarding parking requirements (that is, no parking waivers are permitted) and no bonuses are provided for density and building height. There are also differences in the mandatory area requirements, again with BLR being more restrictive. Therefore, while the owner is not proposing development of the site at this time, it is important to note that the rezoning to BB would permit, subject to approvals, a more intense development of the site than the existing BLR zoning could provide.
2. The Department notes that both the existing BLR and the proposed BB zoning meet the land use designated in Comp Plan IV for the site.
3. The Department also notes that, except for the BC zoned properties across Farmer's Lane and BLR zoned City parking lot, which was originally a part of the 249 East Main Street parcel, all surrounding properties are zoned BB.

Police Department

1. While the Department did not have specific comments regarding the rezoning, they did have several comments regarding crime prevention strategies for mixed used properties downtown, which have been shared with the applicant.

No other departments had comments concerning the rezoning.

Recommendation

Because the proposed rezoning does not conflict with the land use recommendations in Comprehensive Development Plan IV, because the rezoning does not conflict with zoning of properties in the area, and because the property is located within the boundaries of the downtown central business district, the Planning and Development Department suggests that the **Planning Commission recommend that City Council approve the proposed rezoning of the 0.735 acre property at 249 East Main Street, as shown on the attached Planning and Development Department Exhibit A, dated January 5, 2016.**

That's a summary of our report. The applicant, of course, is here and is ready to make a statement, but you may want to talk with the Commissioners first if they have questions.

Mr. Silverman: Yes. Before the applicant starts into their proposal, do any of the Commissioners have any questions of the Director about the Department's report? Seeing no questions, any indication of questions from the Commissioners, we will move right to the applicant's presentation.

Mr. Hal Prettyman: Good evening, Commissioners. I'm Hal, Harold B. Prettyman. Hal Prettyman, most people know me as Hal. I'm here this evening with the two other owners of the property. Can you hear me okay?

Mr. Hurd: I don't think it's on.

Ms. Feeney Roser: Is it on or no? We may have to switch them out again.

Mr. Hal Prettyman: It just sounds like I'm talking.

Ms. Feeney Roser: Is it off?

Mr. Hal Prettyman: Okay. Sorry about that.

Ms. Feeney Roser: There you go. Hi, Hal.

Mr. Hal Prettyman: Hi. Okay, again, I'm Hal Prettyman. I am one of the owners of Heavenly LLC, who owns 249 East Main Street. I'm here tonight with two of the other owners, my son, Benjamin Prettyman, and my wife, Ruthann Prettyman. We recently purchased this property. It is, just as was said, BLR. It's a mixed use. It is not 100% occupied. We've put a sign out front to try and fill the building. At this point in time, we've had several inquiries in being able to fill the building fuller than what it was when we purchased it. However, we have been approached by a local business person here in the audience, Jean Cress, who's also here tonight with us, and we obviously sent her to the Planning Department to talk to the Planning Department to see if her business would be allowed at this site. It turned out that it was not, and it would be allowed, though, in BB zoning. So we're here requesting the change in zoning because it opens us up to a much wider group of commercial type of businesses.

This is the building as it looks right now. We have Quest Diagnostics on the left, which is a lab. On the right-hand side there, it's vacant. It's about a thousand square feet and the building behind it, we didn't bother to show it because that building is up and running the way that it is.

This shows the parcel on Main Street. You're probably all very familiar with this particular area of Main Street. This is showing the current zoning, which I think you got a copy of this in your packet and it shows that the property next door, which is Bing's Bakery, is BB, the property across the street, which is Newark Shopping Center, is BB, and then of course, the muffler shop, which is BC, which is a zoning I think that is not being utilized that often anymore, that the BB zoning seems to be what's taking its place.

This, of course, is the Bing's Bakery. Of course, the Newark Shopping Center, this is a shot from the second floor of our building. This is the muffler shop, which is BC zoning, and of course, this is back to the regular zoning.

Once again, we feel that this zoning fits in with the properties that are around us. It's essentially functioning with apartments on the second floor and offices on the first floor with the exception of some businesses that aren't permitted. So, again, that's why we're here asking for the rezoning, and we think that this does fit within the Comprehensive Plan. It doesn't have a conflict with it. We think it will also fit in with all zonings that are around us.

With that, I'd be happy to answer any questions.

Mr. Silverman: I'll start to my right. Bob, do you have any questions?

Mr. Stozek: Well, I'm just curious here. This thing, possibly the waffle coffee shop, would that be the entire first floor of the building?

Mr. Hal Prettyman: No.

Mr. Stozek: Quest would still be on the...

Mr. Hal Prettyman: Quest will still be there. They have a long-term lease. It would be the right-hand side as you face that building.

Mr. Stozek: And how big would the coffee shop be?

Mr. Hal Prettyman: It's about a thousand square feet. It's the entire right-hand side from the front all the way to the rear.

Mr. Stozek: So it would be an eat-in type of establishment, right?

Mr. Hal Prettyman: It's my understanding from talking to Jean that a lot of her business is takeout. The waffles that you mentioned, it's not a waffle house. It is a specialty...

Mr. Stozek: That's a commercial name, yeah.

Mr. Hal Prettyman: It's a specialty, like the Ducks Donuts that occurred on Main Street, it's something similar to that, where people come in, they get their waffles, they get to add whatever they want to them, grab a cup of coffee, and then move on.

Mr. Stozek: Okay, so parking would not be an issue? People are in and out really quickly?

Mr. Hal Prettyman: No, we have plenty of parking on the premises.

Mr. Stozek: Okay.

Mr. Firestone: Would you be willing to agree to no parking waivers on this property as a condition of the rezoning?

Mr. Hal Prettyman: I believe in BB there are no parking waivers.

Ms. Feeney Roser: Yes, there are, BB is the only district in which you can request a parking waiver.

Mr. Hal Prettyman: Oh, it is where you could request, let's see...

Mr. Firestone: It would basically keep the status quo, but allow the waffle shop.

Mr. Hal Prettyman: Right. I don't...

Ms. Feeney Roser: I don't know, you know, in the future, 25 years from now, whether or not you would want to have that kind of restriction on a property for rezoning. I mean, I would imagine you could do it for a time period. I mean, if you rezone it to BB and BB is allowed, that's a deed restriction you would be asking him to voluntarily agree to.

Mr. Firestone: Yeah.

Mr. Hal Prettyman: Right.

Mr. Firestone: That is what I'm asking, to voluntarily agree to, as a condition of a zoning which provides you with a more valuable piece of property.

Mr. Hal Prettyman: Right. Without going back and talking to all of the owners, I mean, I don't foresee that for this particular situation and what we're doing here, but I can't honestly say that I would deed restrict the property at this point. If the Code says that, keep in mind, there's a parking lot directly behind the property.

Mr. Silverman: Mr. Prettyman, I think your mic went out.

Ms. Feeney Roser: Your mic went out. But parking waivers are also discretionary, right? So you'd have to get your parking waiver, if you were to request it, approved. This is the first I've

considered this so I'm kind of thinking out loud here, but if you were going to do that, you would think if the building were to be razed and a new project built, then you might not want to agree to something like that. But you may agree to it if the building stays as is.

Mr. Silverman: So you're saying a parking waiver must be requested. It's available in this zoning district, but it's not automatic?

Ms. Feeney Roser: Well, no, it's not automatic. It's a discretionary approval of this Commission.

Mr. Silverman: So Mr. Prettyman could, if he were to come in with a development plan or a tenant outfit that the Development Department would deem would require additional parking, then he could be required to come back for a parking waiver?

Ms. Feeney Roser: Yes, he would be required to come back for a parking waiver. But if he couldn't, that might limit some business that you may actually want to see in the building.

Mr. Firestone: Right. On the other hand, if there's no condition, if there's no agreement to place that on the deed, you could come back next meeting with a new development request and a parking waiver.

Mr. Silverman: That's correct, but remember this is a rezoning. This is not a development.

Mr. Firestone: I know. I understand this is a rezoning, and so what I'm trying to do is come up with a solution that allows further occupancy of the building, per the desire. I like coffee and waffles, and if they're like the street waffles you get in Brussels, that'll be really good and a very nice addition. I mean, I'm for the proposal. What I'm trying to do is meet the objectives, but not open this parcel up to parking waivers. It's not allowed under the present scheme.

Mr. Silverman: But remember, parking, the granting of waivers is not automatic.

Mr. Firestone: I understand that.

Mr. Silverman: You understand that?

Mr. Firestone: I understand that.

Mr. Silverman: Now, we aren't, this Commission, I don't think, should be in a position of back-dooring the position on the merits of parking waivers by suddenly restricting everything that comes before it.

Mr. Firestone: We're not. What we're doing is not creating a situation where there's potential for more parking waivers than there is under the status quo.

Mr. Silverman: That's the law right now.

Mr. Johnson: This is Edgar Johnson. I think the fair thing is that Mr. Prettyman is not looking for a parking waiver for what he's requesting now, because it's not development, it's just rezoning. He could freely admit I'm not going to ask for a parking waiver under the current circumstances. I don't think we should restrict the future. I think it's a mistake. Whether, Maureen said 25 years from now, I'm thinking five or six years from now. Things could change, and he could come forward to whoever's on the Planning Commission and request parking waivers, and the Planning Commission and City Council could deny it or they could grant it. I, for one, will never vote for a parking waiver ever again in my life. Let me be on record and say that again. But I don't think we should tie Mr. Prettyman's hands in a rezoning issue on parking waivers. I don't think we should do that.

Mr. Firestone: I don't have anything further.

Mr. Silverman: Okay. Mr. Macintosh?

Mr. McIntosh: I kind of like this. This is pretty good. I agree with Mr. Johnson. I don't think we should restrict it. I think there's a restriction enough by having to ask for it some future point in time and then it can be approved or denied. I think your proposal is just fine the way it is. Thank you.

Mr. Silverman: Mr. Cronin?

Mr. Cronin: I'm generally in agreement with the proposal as presented. I don't have any issues with it. I'm fine with not having a restriction for a parking waiver at this time.

Mr. Silverman: Representing a Council district, not my Chair hat here, I'm in favor of this proposal. I'm trying to remember, I'm starting to feel old, when this site was originally developed as it appears now. It's been decades. And, if I recall, the zoning was kind of pioneering in opening that area. A substantial amount of redevelopment and rezoning has taken place around where the old Newark lumber yard used to be. The buildings there now behind Bing's Bakery and the buildings next to it, a lot of modernization, a lot of contributing to the redevelopment and appearance of that area. I think the redevelopment of the Newark Shopping Center stands as a comment as to how successful the redevelopment there is. I think by offering this slightly expanded zoning category, the new zoning would bring the property uses to become contemporary with the uses that are around it and offer the flexibility that are found at adjacent properties.

Something that just really never developed has been the Newark Transit Center, the Newark Transit Hub. Hopefully, the kind of business that's being talked about tonight will be a stop-off point for those people who are using, I believe its long-term parking at the transit hub. Hopefully, in the future some of the interstate buses that are now driving up and down our streets can be redirected to that transit hub so it can develop even more. I see the opportunity as a site claim comes in or tenant improvements coming in, once cash flows are established on the property, to do some on-site improvements. With respect to parking, as the site becomes more successful, there is the opportunity to purchase, I believe at this long-term site, parking places for employees to free up people who come in on a drop-in basis, to make the parking that's already available there even more accessible to the public by having the opportunity to move your longer-term parking into City parking rental space. So I'm in support of this proposal.

Ms. Feeney Roser: Chairman, you need to have a public comment.

Mr. Silverman: Okay. Do we hear anything from the public? Ms. White?

Ms. White: Jean White.

Ms. Feeney Roser: It's not on. I think it's just a matter of turning it on.

Mr. Silverman: It may be the on switch.

Ms. Feeney Roser: Try that.

Ms. White: Is it on?

Ms. Feeney Roser: There you go.

Ms. White: Okay, Jean White, Radcliffe Drive. I'm uncomfortable with having a rezoning without a development plan. Oftentimes conditions are discussed and negotiated when there is a rezoning, especially an up-zoning that is requested, and that isn't happening here. This is not to say that a waffle shop wouldn't be a nice thing to have, even if it's a take out, but it seems to me there might be other places in town for the person that's interested in it, and it seems like there might be other things this 1,000 square feet could be rented in the meantime. That's my general thoughts. That I think that a whole rezoning of the whole property just for 1,000 square feet is something that shouldn't be done at this time. Thank you.

Mr. Silverman: As I suggested in my comments, we aren't rezoning for just 1,000 square feet. We're rezoning the property to make it contemporary with the existing zoning around it. So it's bringing it into conformance with the general zoning.

Ms. White: No, I understand that. I know that's the position of many of the people on the Planning Commission, but it's being done so that a shop that is only going to take up 1,000 square feet, which is much less than the full acreage of it. And so, it's just my opinion. My opinion may not be, sway with those of you on the Planning Commission.

Mr. Silverman: Mr. Prettyman, you and your investors are, you just acquired this property?

Mr. Hal Prettyman: That's correct.

Mr. Silverman: Okay. So this is a new owner coming in, looking at a potential for the future on that property, as opposed to an existing owner just trying to make the zoning fit a tenant.

Mr. Hal Prettyman: Right, exactly. When we took over the property, one of the issues was that it's actually not just 1,000 square feet. The back property has a vacancy in it also, and this would open it up to more tenants for the first, the ground floor. I mean, our other option is, we were a little bit torn by this because our other option, under BLR, we really could turn the first floor vacant spot into an apartment and we would be able to have an apartment there. With this zoning, to some degree, it ties our hands, although the front building which faces Main Street, and the 1,000 square feet that we're talking about, or Ms. White was talking about, is the most appealing because it's on Main Street. It means that if we go to BB zoning, we can't convert any of the first floor in any of the other buildings to an apartment. So it's a catch 22 for us. We aren't looking at, right now at this property as a redevelopment. We want to go ahead and maintain this property and get it filled. At some point in time, like Mr. Johnson said, there will be a redevelopment plan, but then that will come before you, and I'm sure there will be a lot of negotiation that occurs at that point in time and still needs to be approved, of course, by Council.

Mr. Silverman: Okay. Did you have a comment?

Mr. Firestone: I would just say that I thought the public comment was well-taken. Thank you.

Mr. Silverman: Any other public comments? Okay. Let's move directly to the motion, then, if we hear no more comments. I'm going to refer to the report prepared by the Planning and Development Department. The Chair entertains a motion that the Planning Commission recommend that the City Council approve the proposed rezoning of the 0.735 acre property at 249 East Main Street as shown on the attached Planning and Development Department Exhibit A, dated January 5, 2006.

Ms. Feeney Roser: 2016.

Mr. Silverman: 2016. Sorry about that, January 2016, yes. I was thinking about the last time this site was developed. 2016. Do I hear a motion?

Mr. Johnson: I so move.

Mr. Silverman: Do I hear a second?

Mr. McIntosh: Second.

Mr. Silverman: Okay, it has been moved and seconded. Are there any additional comments? Okay, hearing none, we will move directly to the question. All those in favor of the recommendation, signify by saying Aye. All those opposed signify by saying Nay. The motion carries.

MOTION BY JOHNSON, SECONDED BY MCINTOSH, THAT THE PLANNING COMMISSION MAKE THE FOLLOWING RECOMMENDATION TO CITY COUNCIL:

THAT CITY COUNCIL APPROVE THE REZONING OF THE 0.735 ACRE PROPERTY LOCATED AT 249 EAST MAIN STREET FROM BLR TO BB, AS SHOWN ON THE ATTACHED PLANNING AND DEVELOPMENT DEPARTMENT REPORT EXHIBIT A, DATED JANUARY 5, 2016.

VOTE: 6-1

AYE: CRONIN, HURD, JOHNSON, MCINTOSH, SILVERMAN, STOZEK

NAY: FIRESTONE

MOTION PASSED

4. REVIEW AND CONSIDERATION OF THE REZONING OF 47 WEST CLEVELAND AVENUE FROM BN (BUSINESS NEIGHBORHOOD) TO RM (RESIDENTIAL MULTI-FAMILY/GARDEN APARTMENTS) AND MINOR SUBDIVISION APPROVAL TO CONSTRUCT FOUR TOWNHOUSE-STYLE APARTMENTS WITH ASSOCIATED PARKING AT THE SITE. A COMPREHENSIVE DEVELOPMENT PLAN AMENDMENT AND SITE PLAN APPROVAL IS ALSO REQUESTED.

Ms. Feeney Roser: This the same applicant so we might as well...

Mr. Silverman: Okay. Moving on to Item 4 on the agenda.

Ms. Feeney Roser: Thank you, Chairman Silverman. This is a request for a comprehensive development plan amendment, rezoning, minor subdivision and site plan approval for 47 West Cleveland Avenue.

On October 28, 2015, the Planning and Development Department received an application from Harold B. Prettyman IV for rezoning and minor subdivision approval for the .31 acres at 47 West Cleveland Avenue, adjacent to the recently approved Cleveland Station project. The applicant is requesting rezoning from BN (neighborhood shopping) to RM (residential multi-family/garden apartments) and subdivision approval to construct four townhouse-style apartments with associated parking on the property. A Comprehensive Development Plan amendment is also requested to accommodate the proposed development, as well as site plan approval.

Property Description and Related Data

1. Location:

The property is located on the south side of Cleveland Avenue and is adjacent on the west to the Cleveland Station site. The property fronts on Cleveland Avenue and is approximately 520 feet east of the intersection of New London Road and Cleveland Avenue and 960 feet west of the intersection of North College and Cleveland Avenues.

2. Size:

.31+/- acres

3. Existing Land Use:

47 West Cleveland Avenue contains a single family dwelling currently used as a non-conforming rental unit.

4. Physical Condition of the Site:

47 West Cleveland Avenue is a relatively flat property which slopes gently from north to south, and from east to west. It contains a 2 ½ story vinyl sided residential dwelling used as

a four person rental unit, which is a non-conforming use in the BN zoning classification. A large tree is located at the northwest corner, as well as scrubby growth and trees along the southern border. The lot is partially paved with some gravel, which serves as a parking area. The parcel has a derelict chain link fence along the former Elks Club property line, which is adjacent to the west, and along the backyards of Church Street properties to the south. Access to the property is via curb cut from Cleveland Avenue.

Regarding soils, according to the subdivision plan and the United States Department of Agriculture's Natural Resources Conservation Service, the site consists of Mattapex – Urban Land Complex Series, 0-5% slopes. No development limitations for these soils are proposed or indicated.

5. Planning and Zoning:

47 West Cleveland Avenue is zoned BN (neighborhood shopping). BN is a neighborhood shopping light commercial zone that permits the following:

- A. Parking spaces, off-street.
- B. Public transportation facilities, including bus or transit stops, stations, and depots.
- C. Street right-of-way.
- D. Utility transmission and distribution lines.
- E. Water tower, water reservoir, water storage tanks, pumping station, and sewer.
- F. Social club, fraternal, social service, union, and civic organization.
- G. Community recreation center, for nonprofit use only.
- H. Studio for artists, designers, photographers, musicians, and sculptors. The maximum floor area for any one establishment shall be 5,000 square feet.
- I. Instructional, business, or trade schools. The maximum floor area for any one establishment shall be 5,000 square feet.
- J. Offices for professional services and administrative activities. Finance institutions, banks, loan companies.
- K. Retail stores, which shall be limited to the sale of gifts, antiques, flowers, jewelry, newspapers, books, hobbies, stationery, art supplies, radio or television, hardware, variety, clothing, drugstores, beverages, or liquors. The maximum floor area of any one establishment shall be 5,000 square feet.
- L. Personal service establishments, limited to a maximum floor area of 5,000 square feet.
- M. Laundromats.
- N. Restaurants, excluding fast-food and drive-in restaurants.
- O. Retail food stores such as bakeries, bakery-restaurants, candy, convenience grocery, meat markets, delicatessens, and excluding the preparation of goods for sale off the premises.
- P. Neighborhood shopping center.
- Q. Related indoor storage facilities are permitted as an accessory use to any of the permitted uses in this district, excluding the storage of highly combustible or explosive products or materials which are likely to burn with extreme rapidity, or which may produce poisonous fumes or explosions, or products and materials which involve highly corrosive, toxic, or noxious alkalies, acids, or other liquids or chemicals producing flames, fumes, poisonous, irritant, or corrosive gases.
- R. Accessory uses and accessory buildings, excluding semi-trailers and similar vehicles, for storage of property.
- S. Repair and servicing, indoor on-site and off-site, of any article for sale which is permitted in this district. A 20 foot setback is required with no vehicular parking permitted in the required front yard area.
- T. Photo developing and finishing.

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

- A. Police and fire station.
- B. Substation, electric and gas, and telephone central office.

- C. Church, or other place of worship, seminary or convent, parish house, or Sunday school building.
- D. Library, museum, art gallery.
- E. Drive-in and curb service for other than eating establishments, with a minimum setback from all street lines of 65 feet.
- F. Restaurants, with alcoholic beverages, except as otherwise regulated in this chapter.

Regarding area regulations, BN requires the following:

- (1) *Minimum lot area.* 5,000 square feet, with exceptions.
- (2) *Lot coverage.* 30%, with exceptions.
- (3) *Minimum lot width.* 75 feet.
- (4) *Height of buildings.* Max three stories or 35 feet.
- (5) *Building setback lines.* 20 feet.
- (6) *Rear yards.* 15 feet, but in no case less than ½ the height of the building.
- (7) *Side yards.* Ten feet/minimum aggregate 25 feet, with exceptions.

The applicant is requesting the parcel be rezoned to RM. RM zoning is our residential Multi-Family/Garden Apartment zone that permits the following:

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

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

- A. Conversion of a one-family dwelling into dwelling units for two or more families, if such dwelling is structurally sound but too large to be in demand for one-family use, and that conversion for the use of two or more families would not impair the character of the neighborhood, subject to special requirements.

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

Regarding area regulations, a summary of RM requirements for apartments is found below:

- A. *Dwelling units per gross acre.* 16.
- B. *Lot coverage.* 20%.
- C. *Number of dwelling units per building.* 12
- D. *Distance between buildings or groups of attached buildings.* No part of any building, or groups of attached buildings, shall be nearer than 25 feet to any other building, or groups of attached buildings, and no portion of the front or rear of any buildings, or groups of attached buildings, shall be nearer than 50 feet to the front and rear of another building or groups of attached buildings. No more than three buildings shall be attached to one another.
- E. *Street frontage.* 50 feet.
- F. *Minimum lot size.* One acre.
- G. *Open area.* 40%.
- H. *Parking and loading spaces.* All uncovered parking and loading spaces shall be located at least ten feet from all abutting perimeter streets and property lines.
- I. *Minimum lot area.* 2,725 square feet per family for garden apartments, unless certain density bonuses are granted, but in no case shall the minimum lot area be less than 2,350 square feet per family for a garden apartment.
- J. *Minimum lot width.* 50 feet.
- K. *Height of buildings.* Three stories or 35 feet.
- L. *Building setback lines.* 30 feet from the line of all perimeter streets; 25 feet from the line of all interior streets; and 25 feet from all exterior lot lines.
- M. *Rear yards.* 25 feet.
- N. *Side yards.* 20 feet. In case of a building more than two and one-half stories in height, each side yard shall be not less than one-third the height of the building.

Regarding area requirements, please note that the applicant is requesting Site Plan Approval for the 47 West Cleveland Avenue development. Code Section 32-97 provides for “alternatives for new development and redevelopment proposals to encourage variety and flexibility, and to provide the opportunity for energy efficient land use by permitting reasonable variations from the use and area regulations. Site plan approval shall be based upon distinctiveness and excellence of site arrangement and design and including, but not limited to:

- (1) Common open space;
- (2) Unique treatment of parking facilities;
- (3) Outstanding architectural design;
- (4) Association with the natural environment including landscaping;
- (5) Relationship to neighborhood and community and/or;
- (6) Energy conservation defined as site and/or construction design that the building department has certified meets or exceeds the 'certified' level as stipulated in the LEED (Leadership in Energy and Environmental Design) United States Green

Building Council Program or a comparable building department approved energy conservation program.”

In this case, the applicant is requesting Site Plan Approval for several area requirements. Specifically, the plan requests relief from the requirements for:

<u>Section</u>	<u>Code</u>	<u>Plan Shows</u>	<u>Difference</u>
32-11(c)(1) – Minimum lot area	1.0 acres	.31 acres	- .69 acres
32-11(a)(1)d – Max lot coverage	20%	27.8%	+ 7.8%
32-11(a)(1)j – Location of parking spaces	10’ setback	4.8’	- 5.2’
32-11(c)(5)c – Setback from ext. lot lines	25’	3-23.7’	- 22’
32-11(c)(7)b – Side yards	20’	3’	-17’

In addition, the buildings have a front setback of only 16’, when 30’ would normally be required. However, because Cleveland Station was recently approved by City Council with a front yard setback of 16’, Code Section 32-56.2(d) allowing for the average setback applies. Therefore, the 16’ setback meets Code and should be removed from the site plan approval data column.

As noted above, the plan is, therefore, non-compliant in terms of minimum lot size, maximum lot coverage, location of parking spaces, and at varying measurements for setbacks from exterior lot lines. Obviously, the Commission will need to consider these requested area regulation exceptions against the standards of distinctiveness and excellence of site design outlined in Section 32-97, and the developer’s site plan approval submission.

In terms of comprehensive planning, the Comprehensive Development Plan IV calls for “light commercial (local shopping)” uses at the site, which conforms to the existing BN zoning. Light commercial (local shopping) uses are defined in the Plan as “administrative and professional offices, personal services and retails stores, restaurants and similar kinds of neighborhood shopping uses which may be found in limited business, business – residential, or neighborhood shopping districts.”

The requested Comp Plan amendment calls for “multi-family residential (medium to high density)” uses for the site, which are defined as “areas designated for dwellings designed for and occupied for more than one family, living independently of each other in apartments, condominiums, townhouses, with a density of 11 to 36 dwelling units per acre.” The plan calls for 12.9 dwelling units per acre.

Regarding this requested amendment, please note that Comprehensive Development Plan IV indicates “residential” uses 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.” Further, please note that the purposes and plan design section of the Plan, 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 5-10 years.” As you know, we are currently in the process of updating Comprehensive Development Plan IV, which was adopted in 2008, and Comp Plan V is on your agenda for consideration on the same evening as this development. Please note: a Comp Plan amendment would still be necessary to accommodate this proposal if Comp Plan V were already adopted as the land use designation in it reflects the commercial zoning of the property.

Regarding adjacent and nearby properties, to the north across Cleveland Avenue from this site are vacant lands owned by the University of Delaware. Immediately adjacent and west of the property is the RM zoned Cleveland Station project, which was recently approved and is yet to be constructed. To the east is a single family dwelling zoned RD and owned by the Newark Housing Authority and beyond that property to the intersection of North College Avenue is a University of Delaware surface parking lot. To the south are the RD zoned

properties along Church Street and the recently rezoned to RM 56 Church Street property, which is part of the Cleveland Station development.

As noted above, regarding density, the 47 West Cleveland Avenue site proposes 12.9 dwelling units per acre. This density mirrors the average density of 12.5 units per acre in the immediate area and is less dense than the Cleveland Station project, which was approved at 16.32 units per acre. Another somewhat recently approved RM development in the general vicinity, Campus Walk on New London Road, is also more dense than the 47 West Cleveland Avenue application at 15.36 units per acre.

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 24 proposed bedrooms associated with the 47 West Cleveland Avenue project calculate to 77.42 bedrooms per acre. The adjacent Cleveland Station project calculated to 69 bedrooms per acre. While the same bedroom information for the immediate area is not readily available for comparison purposes, recent Council RM zoned, approved developments’ bedroom densities calculate as follows:

Rupp Farm (Chambers and Benny Streets):	88
South Main Commons:	61
Campus Walk:	77

Based on Council imposed restrictions on residency in these projects, bedroom counts translate into the following number of unrelated individuals permitted to reside in them:

Cleveland Station:	85
Rupp Farm:	48
South Main Commons:	78
Campus Walk:	72

Status of Site Design

Please note that at this stage in the Newark subdivision review process, applicants need only show the general site design and the architectural character of the project. For the site design, specific details taking into account topographic and other natural features must be included in the Construction Improvement Plan. For architectural character, the applicants must submit, at the subdivision plan stage of the process, color scale elevations of all proposed buildings, showing the kind, color and texture of materials to be used, proposed signs, lighting, related exterior features, and existing utility lines. If the Construction Improvement Plan, which is reviewed and approved by the operating departments, does not conform substantially to the approved subdivision site and architectural plan, the Construction Improvement Plan is referred back to City Council for its further review and approval. That is, initial Council subdivision plan approval means that the general site concept and more specific architectural design has received City endorsement, with the developer left with some limited flexibility in working out the details of the plan – within Code determined and approved subdivision set parameters – to respond in a limited way to changing needs and circumstances. This does not mean, however, that the Planning Commission cannot make site design or related recommendations that City Council could include in the subdivision agreement for the project.

Be that as it may, the 47 West Cleveland Avenue Comprehensive Development Plan amendment, rezoning, minor subdivision and site plan approval plan calls the demolition of the existing structure and the construction of 4 townhouse-style apartments in a 4-pack. Each building is proposed to be 3 stories in height and, according to the developer, will contain 6 bedrooms each. The plan shows 16 parking spaces to be provided, 8 in garages and 8 in open parking spaces in the lot, which exceeds the requirements for 4 townhome apartments with more than 3 bedrooms (12) by 4 spaces. Access to the site will be through the Cleveland Station project via a 24 foot wide fire lane. This will result in the removal of one curb cut along Cleveland Avenue.

Fiscal Impact Study

The Planning and Development Department has evaluated the 47 West Cleveland Avenue development plan on Newark's finances. The estimates of net return are based on the Planning and Development Department's Fiscal Impact Model. The Model projects that the 47 West Cleveland Avenue fiscal impact, that is, total anticipated municipal revenues generated, less total cost of municipal services provided. The Planning and Development Department estimate of annual revenue for the project is \$2,545. Please note that there is no difference between the first and future years net revenue as the applicant already owns the property and, therefore, there will be no benefit of real estate transfer tax in the first year.

Traffic

Because the 47 West Cleveland Avenue property is on Cleveland Avenue, which is a State owned and maintained roadway, the Planning and Development Department requested DelDOT's review of the 47 West Cleveland Avenue Comprehensive Development Plan amendment, rezoning and minor subdivision with site plan approval plan. The Department indicates that the proposed development does not meet the warrants for a Traffic Impact Study (TIS), which are 500 trips per day and 50 peak hour trips. Having said that, however, DelDOT has comments which will need to be incorporated into the plan.

- The developer should make an initial stage submission to the Department with a trip generation diagram. This trip generation diagram should also be shown on the plan;
- A minimum right-of-way dedication totaling 40 feet from the center line of Cleveland Avenue is necessary, and should be shown on the plan;
- A 3 foot grass buffer from back of curb and sidewalk should be provided.

Subdivision Advisory Committee

The City's Subdivision Advisory Committee – consisting of the Management, Planning and Development and Operating Departments – has reviewed the proposed 47 West Cleveland Avenue development plan and has the comments below. Where appropriate, the subdivision plan should be revised prior to its review by City Council. The Subdivision Advisory Committee comments are as follows:

Electric

1. The Electric Department had a series of comments, which have all been addressed with notes on Sheet 1 under General Notes.

Parks and Recreation

1. The plan shows an existing Norway Maple tree and Black Walnut tree along the southern property line to remain. Both trees are in decline and should be removed. As they are located on the property line, the developer may need to make arrangements with the adjacent property owner for their removal.
2. The Department will have additional comments during the CIP process.

Police Department

1. The Department expressed concern about the entrance/exit onto Cleveland Avenue, specifically making left turns from westbound Cleveland Avenue into the complex, and suggested DelDOT review. DelDOT has reviewed the plan and had no comments regarding the turn. The entrance/exit, of course, is via the approved Cleveland Station project adjacent to the west. At the Council meeting during which the Cleveland Station project was discussed, the left turn into the development was questioned, and Public Works and Water Resources has requested DelDOT re-review of the left turn in and is waiting for a response. The outcome of DelDOT review will be applied to both projects.
2. The Department also provided a series of comments regarding good design for crime prevention strategies, which have been shared with the developer.

Public Works and Water Resources

1. A 6” gate valve where the main transitions from public to private at the right-of-way line is required.
2. A perpetual easement granting access to operate valves on private property is required. (Note 13 addresses this comment.)
3. The preliminary stormwater report has been approved, but the Department still has concerns about the method of discharge. Sediment and Stormwater Regulations require volume reduction, and because infiltration is not obtainable, the system will have to be oversized to release RPV event at the equivalent 24 hour pre-peak detention rate. A downstream analysis to demonstrate adequate conveyance and no adverse impact to the neighboring properties will be required. The Department will work with the applicant during the CIP process to accomplish the above.
4. Garage spaces must be adequately sized to accommodate trash and recycling containers in addition to required vehicle parking.
5. Bicycle storage for a minimum of three bicycles is required. While a bike rack detail is included on the plan, it does not indicate the number of spaces provided. This matter can be addressed through the CIP.

Planning and Development

Code Enforcement

1. The architectural plans will need to match the architectural rendering/elevations submitted for the project. The Division suggests that draft floor plans be presented to avoid issues during site plan review.
2. The proposed new units must meet all applicable Building and Fire Code requirements.
3. Sprinklers are required.
4. The parking area in the rear should be considered a fire lane and should be marked accordingly.

Planning

1. The Planning and Development Department believes that the architecture associated with the 47 West Cleveland Avenue development to be superior and acknowledges that, with the approval of the Cleveland Station project next door, the development will promote continuity between the two projects. Having said that, the Department has concerns regarding the nearly 13 units per acre density of the development and the associated deviations from Code area requirements necessary to accommodate the four units requested. Specifically, while we believe that the development, as proposed, will significantly improve the aesthetic appeal of this section of Cleveland Avenue, the Department suggests that the plan could be improved by reducing the number of units requested. For example, one less unit would bring the plan into closer conformity with the RM area requirements such as lot coverage, side yard and distance from exterior lot lines. The Commission may wish to discuss this suggestion with the applicant at the meeting.

As an alternative to reducing the number of units, the Department suggests that the applicant enhance the distinctiveness and excellence of the site arrangement and design of the project. While the size of the property may make it difficult to meet some of the suggested criteria for site plan approval, the energy conservation measures, defined as site or construction design to exceed the certified level as stipulated in the City’s LEED-

like requirements, may help the project meet the distinctiveness and excellence in site arrangement and design anticipated by the site plan approval Code section.

2. The Planning and Development Department indicates that four townhome apartments at a site of one large, nonconforming single family rental unit will significantly increase population in the area. Therefore, should the Commission wish to recommend four townhouse apartment units at the site, to minimize the overall impact of the development, the Department believes that the applicant should voluntarily reduce the number of bedrooms from 6 per unit to 5, and/or voluntarily deed restrict the property to a total maximum number of unrelated tenants permitted to reside in the development to one per bedroom. The Commission may wish to discuss this restriction with the developer at the meeting as well.
3. The Planning and Development Department indicates that the Comprehensive Development Plan amendment from light commercial (neighborhood shopping) to residential multi-family is appropriate for the area and conforms to the development pattern and zoning of parcels in the area. The Department also indicates that rezoning the Cleveland Avenue parcel from BN (neighborhood shopping) to RM (residential multi-family/garden apartments) is suitable for the location, considering the residential uses in the immediate area.
4. The Department notes that the reduction of a curb cut along Cleveland Avenue is a benefit of the project.
5. The Planning and Development Department indicates:
 - 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.
 - Lighting should be designed to limit impact on adjoining and nearby properties.
 - The buildings should be designed to allow for future conversion to condominiums, should market conditions change.

(Please note: the above comments are addressed in General Notes 7, 9 and 12 on Sheet 1. Note 7 should be revised to delete the word “front” and the words “visible from the public way” added.)

6. Finally, the Department notes that subdivision approval does not guarantee CIP or building permit approval, and therefore, a note should be added to the plan indicating that the project is not constructible unless all Code requirements are met at the CIP and building permit stages, and that changes to the subdivision plan may be required from issues arising at the CIP stage.

Recommendation

Because with the proposed Comprehensive Development Plan amendment, the 47 West Cleveland Avenue rezoning, major subdivision and site plan approval plan will conform to the requirements of the Comprehensive Development Plan IV, and because the rezoning, minor subdivision and site plan approval plan, with the Subdivision Advisory Committee recommended conditions, should not have a negative impact on adjacent and nearby properties, 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 Comprehensive Development Plan IV Land Use Guidelines for this location from “light commercial (local shopping)” to “multi-family residential (medium to high density);” and,

B. Recommend that City Council approve the rezoning of .31 acres from the current BN (neighborhood shopping) zoning to RM (residential multi-family/garden apartment) zoning as shown on the Planning and Development Department Exhibit A, dated January 5, 2016; and

C. Recommend that City Council approve the 47 West Cleveland Avenue minor subdivision and site plan approval plan as shown on the Hillcrest Associates, Inc. plan dated October 28, 2015, with revisions through December 2, 2015, with the Subdivision Advisory Committee conditions.

So that's the summary of the report. I'll be happy to entertain any questions that the Commissioners may have for me and, of course, Mr. Prettyman is here to make his presentation.

Mr. Silverman: And you did all that in one breath.

Ms. Feeney Roser: I did.

Mr. Silverman: That was remarkable. Okay. Are there any questions from the Commissioners? No particular order.

Mr. Hurd: Maureen, can you clarify about the side yard, because it sounds like you're saying they're seeking an actual variance from the Board of Adjustments on that.

Ms. Feeney Roser: No, I'm sorry. There's a 17 foot side yard variation from the west property line, because a side yard should be 20 feet and only three feet are provided. But that is the same as the setback from exterior lot lines, so it's not necessary to have it approved twice.

Mr. Hurd: Okay, because on page 5, where it says setback from exterior lot lines 25 feet, that's just the rear lot and it's okay on the rear? It's the side yard at 20 feet that's actually in conflict?

Ms. Feeney Roser: Right. What we did when we listed them was we listed the biggest deviation.

Mr. Hurd: But it's not actually 22 feet deviation, because it's, 3 feet from 20 is 17. That's the biggest, right?

Ms. Feeney Roser: No, there is a, hang on.

Mr. Silverman: Take a second to look at that. I know it's involved.

Mr. Hurd: Not that it matters much. I think the plan is pretty clear. It's just I think the written words are maybe, I don't see anywhere that the building is encroaching or is making the rear setback...

Ms. Feeney Roser: So you're saying the side yard setback is 20 feet, so the three foot is only from the side yard.

Mr. Hurd: Right.

Ms. Feeney Roser: We can change that.

Mr. Hurd: Right, so that's a difference of 17, as you said, not 22.

Ms. Feeney Roser: Okay. We can change that and add that back. I appreciate that.

Mr. Hurd: It's just because when I read the next page and it's like "Oh, we're not looking at that because there's a variance being sought." It didn't sound like it as, sound like it was separate, was not part of the site plan.

Ms. Feeney Roser: Okay. We can have that updated.

Mr. Hurd: I think that's the only thing I was unclear on in the report, so I'm good.

Ms. Feeney Roser: Thank you.

Mr. Johnson: Maureen.

Ms. Feeney Roser: Yes?

Mr. Johnson: This is Edgar Johnson. You talk about the Planning Commission wanting to reduce the units from six bedrooms to five. What is the adjacent RM property that was just...

Ms. Feeney Roser: The Cleveland Station property? I think its five bedrooms per unit.

Mr. Johnson: Five bedrooms per unit. Okay. Thank you.

Mr. Firestone: In the report, Maureen, you talked about some energy conservation measures, but I wasn't clear what they are.

Ms. Feeney Roser: Okay. The City has LEED-like requirements that projects are required to meet, and I believe that there are ways for this project, or any project, to improve upon that and that might be reason enough for you to think it's distinctive in design. For example, I don't know that it's possible for this one, but you might be able to put solar panels on the roof, or you may be able to do a green roof in some cases. And I think that it's an option for the developer to consider and to talk with you about to see if there aren't some improvements that can be made to the energy conservation measures for this particular project.

Mr. Firestone: So similar to that would be putting in, say, Energy Star rated appliances. Things along those lines.

Ms. Feeney Roser: Yes, absolutely.

Mr. Firestone: Okay, thank you. My other question is about some of the properties other than Cleveland Station. There seems to be a couple of houses to the east and then there's several houses, I'm not sure of the name of the street, that are right behind that.

Mr. Silverman: Church Street.

Mr. Firestone: Church Street, that are right behind that parcel as well. Because I didn't hear much discussion about, there's a lot about consistency with Cleveland Station, but obviously if you're in one of these other houses that are between the parking lot, the University parking lot, and this property, you're losing some of your buffer between that and the apartment area. It's obviously changing this whole area more than just the earlier Cleveland Station. So could you just talk to that aspect?

Ms. Feeney Roser: The Church Street properties are zoned RD for the most part, except for the part of Cleveland Station that actually goes down into Church Street. I can't remember the actual number, it might be 56 Church Street, is now zoned RM as well. And there are residences back there and there are some folks in the audience that may want to speak to you about that. I know Mr. Word has been here before and he may have something to say with you. There are some people who live there year-round. Most of them are rentals for the main part. But you're right, when we talked about consistency, we were looking at along Cleveland Avenue.

Mr. Firestone: When you say some people live there year-round, there are some people who live there seasonally?

Ms. Feeney Roser: No, I'm sorry. What I was trying to say is there are some owner occupants still there. I don't know how many there are.

Mr. Firestone: Okay, and there are some rental units?

Ms. Feeney Roser: Yes.

Mr. Firestone: Okay.

Ms. Feeney Roser: The majority of them are rentals.

Mr. Firestone: Okay. Well, I'll save my other questions for the applicant and wait to hear from the members of the public too. Thank you.

Mr. Silverman: Frank?

Mr. McIntosh: No, I'm okay for the time being.

Mr. Silverman: Okay. Mr. Cronin?

Mr. Cronin: Nothing at this time.

Mr. Silverman: Okay. With respect to your report, Maureen, in referring to page 1 of 5, the applicant's drawings that we have before us, it appears that the parcels to the west of the subject parcel, I see reference to 19 West Cleveland and then other lands. These lands belong to Newark Housing Authority according to this survey.

Ms. Feeney Roser: They do.

Mr. Silverman: Were they contacted as any other property owner?

Ms. Feeney Roser: Yes.

Mr. Silverman: Okay. So they have been contacted. They have not communicated to you in writing?

Ms. Feeney Roser: No.

Mr. Silverman: Okay. Is there anyone here from Newark Housing Authority tonight? Okay, so there is no one here from Newark Housing Authority. I just wanted to make that clear. With respect to the recommendations on the part of the Department of Transportation, what's the purpose of their 3 foot buffer?

Ms. Feeney Roser: Snow removal.

Mr. Silverman: So this is a State-plowed street?

Ms. Feeney Roser: I believe our Public Works and Water Resources Department is also a proponent of having a place where they can pile snow.

Mr. Silverman: Okay. They also requested additional right-of-way?

Ms. Feeney Roser: Yes.

Mr. Silverman: And that would be a voluntary giving up of land by the applicant? Where I'm heading with all this is the subject area is very confused. Highways, DelDOT seems to be taking a very large, hands-off, "I'm sorry, it's not our problem if it doesn't generate x-number of automobile trips," la, la, la, "It doesn't exist." It's been my experience with DelDOT that they only respond to crisis. Things get moved to tops of priorities for development and redevelopment. Here they're asking for private sector individuals to donate land for future widenings. Is there any way we can put a caveat, or at least tell Council that within the WILMAPCO system and some of the special highways studies, transportation street studies that are being done, that this entire area at Cleveland Avenue and Rose Street be given very high priority for reworking. The University owns substantial land along there, so takings of true private property would be minimal. The University property, which provides hundreds and

hundreds of parking spaces off and on [inaudible], was not required to put in left turn lanes into their parking area that we're imposing second-hand through transportation restrictions on the part of Newark taxpayer property owners. I know I don't want to hold this plan up, but I think this is another example of DelDOT not doing its job with respect to the Newark community.

Again, with automobile trips, since it was mentioned in your report, it was argued last time, and I think when we get to the point of dealing with parking, we'll demonstrate that the walkability of a unit like this is one the attractive features of that unit. The kids don't get in cars to drive three blocks to pay \$600 a year for parking space. There are University buses and the City Unicity bus that drive along this area. So I don't think parking and automobile trips are a major issue, even though Highways doesn't discuss it within a broader context of the cumulative effort of traffic. So this business of restricting left turns during certain hours, it's very hard to get people not to block the intersection of Rose Street let alone find the small parking sign that says, "No left turns between the hours..." or parking lot sign saying, "No left turns." So this area has to be looked at in a comprehensive basis by DelDOT. I hope in the City's dealing with WILMAPCO, particularly the Planning Department, this kind of thing can be brought forward. That's my soapbox on that particular thing.

Let's open up discussion to the applicant.

Ms. Feeney Roser: Is it on?

Mr. Ben Prettyman: Now it's on. I want to start off by saying good evening, Commission, and Happy New Year. I am Ben Prettyman of 212 Beverly Road. I'm here today with Alan Hill from Hillcrest Associates, my mom, Ruthann Prettyman, and my dad, Hal Prettyman. We're here to discuss our property located at 47 West Cleveland Avenue and our proposed development for it. Currently this is what's on the site now. It's a single family rental unit built in the 1930s. It is currently a non-conforming use, as Maureen has stated, being that it's a BN zoning and doesn't permit residential, and we do have a grandfathered rental permit that is currently active on the property. This is a parcel map just showing exactly where it is located on the west end of Cleveland Avenue. I just would like to point out that it is, if you're unfamiliar with the location, it is right next to the former Elks Lodge and the new and improved Cleveland Station.

This is a neighbor zoning map of what currently zoning is around this particular parcel which is outlined in yellow. As you can see, it definitely is residential area surrounding this parcel, a mixture of RD and RM. The blue is the University of Delaware. Again, we'd like to point out that it is adjacent to Cleveland Station, which had a parcel in it that was zoned BN and it was rezoned to RM.

This is a map that we put ourselves just showing the composition of the surrounding area of how close in proximity it is to the University of Delaware and the rental permits that are on the surrounding parcels. So it is primarily a rental space. There are some owner occupants in the area, but being that it's that close to the University of Delaware really does make it optimal for rental use, which is why they all have rental permits.

This is the project that we're proposing for you. This is our four unit, six bedroom townhouse apartment building. It is worth noting that we are less dense than the previously approved Cleveland Station, which is right next door, and we are less dense than Campus Walk, which is the second closest RM zoned, most recent approved project. It is also worth noting that, as I've stated before, RM zoning does permit anywhere between 11 to 36 dwelling units per acre, and we are at the low end of that spectrum at 12.9. Being that we are at the low end of the spectrum at 12.9, not only in RM zoning but on the two previously approved project within 200 yards of this particular parcel and project, we will voluntarily deed restrict the property to one person per bedroom.

This is a quick overview of the site plan for the project. As you can see, we have an entrance and exit through Cleveland Station. We feel as though this is a very unique opportunity. We had to work with Cleveland Station during their redevelopment phase and the very unique site design we have here currently. We were able to develop this parcel with them

and, in doing so, alleviating one of the curb cuts on Cleveland Avenue, which should relieve some stress from the street. As we all know, it's a very busy street at times. It also allowed for the parking to be pulled completely to the rear of the property, almost invisible from the street, and it further allowed us to obtain about 5-6% over what's required for open space.

Again, what we are hoping to do with this project is to create a sister project, an adjoining project to Cleveland Station. We went above and beyond to try to mimic the architecture of Rick Longo. We used him to come in and create a building that was similar yet different and, in doing so, he added different architectural elements, but we used like materials to bring the two buildings, two projects, together to almost look as one unified project. We've seen this elsewhere on Cleveland Avenue. These are our townhouses on Cleveland Avenue. After we were done building these, our neighbors, the Krohes, came in before you guys with a plan to build their own particular project next door to ours. In doing so they mirrored our project. They contacted Rick Longo and had him create a different yet similar building using like materials and created a very nice streetscape to continue the redevelopment of the area down the street.

So to recap, we ask that you approve this project, as it does not have any negative impact on adjacent or nearby parcels and doesn't not conflict with the development pattern in the nearby area. Thank you for your time. I'll be happy to answer any questions you might have.

Mr. Silverman: Okay. Do the Commissioners have any questions for the applicant? Bob?

Mr. Stozek: Am I correct there are two more properties to the east?

Mr. Ben Prettyman: That is correct.

Mr. Stozek: Okay.

Mr. Silverman: And they're owned by the Newark Housing Authority.

Mr. Ben Prettyman: And the University of Delaware.

Mr. Silverman: And the University.

Mr. Stozek: Maybe this comment isn't strictly relevant to those two, but this again is my concern about how the City is being developed with, what I call, creeping incrementalism. We have the Cleveland Station. Now we've got this. And my thinking was, "Well, what's going to happen next month or a couple months from now? Is there going to be something in the next parcel?" Maybe it's not, considering who owns it. I have some concerns about the density and the City, the Planning Department, has already addressed that. But my main concern goes to the traffic. The fact that you're getting accessed to Cleveland Avenue through the Cleveland Station property. I already expressed concern when that project came forward, the traffic going in and out, and we've talked about the left turns off of Cleveland and the proximity to that intersection of New London Road. My concern is you're going to increase traffic coming out of that driveway. Any day you go up there, that's a semi-blind curve going east on Cleveland Avenue crossing New London. Every day, you can see as the light changes, cars speed up to get through the intersection and they head into that curve. I just am concerned they're not going to have the reaction time, because they don't have the line of sight of what might be coming out of the Cleveland Station parking lot. I had that concern when that project came forward and now we're potentially adding incrementally more traffic coming into that intersection. That's my principal concern.

Mr. Hal Prettyman: We were...

Mr. Ben Prettyman: You've got a low battery. With regard to your incremental growth, that's why we feel as though we had a unique opportunity to work with Cleveland Station being that it doesn't look like incremental growth. We're making use of their entrance. If they certainly had the ability to buy our parcel, they would certainly add the same amount of units and they'd be using that same entrance.

With regards to your comments on the density, the reason why we had 6 bedrooms on here is kind of a marketing ploy we use. We've used it in several different areas, South Main Street and on Cleveland Avenue to give you two specific ones. It allows us to adjust depending on the groups that come to us, because we don't have just individual students coming to us to rent the units, we have groups of people.

Mr. Hal Prettyman: There would be...

Mr. Johnson: It wouldn't be a Planning Commission meeting if the microphones all worked.

Mr. Silverman: Let's call the IT guy at home.

Mr. Ben Prettyman: So in an effort to attract the most amount of, be able to rent to the most amount of groups, we have six rooms, but if they are a group of five, we will certainly rent the unit to a group of five. On South Main Street, we do the same thing and right now we're probably right around 55%, if not a little bit more, 5-person groups even though they are 6-bedroom units. I know the density, again, when you put it on a per acre scale is 77. Wow, but it's an additional four people. It's not an additional eight or anything like that.

Mr. Silverman: What are you permitted for now? How many individuals do you...

Ms. Feeney Roser: Four.

Mr. Ben Prettyman: Right now we're on square footage and I believe you could, the house itself could probably have seven.

Ms. Feeney Roser: There are four in there now, right?

Mr. Ben Prettyman: No, there's six in there currently.

Ms. Feeney Roser: Well then my report is wrong on that as well because the Code Division told me your permit was for four.

Mr. Hal Prettyman: I'm sorry. It's a commercial zoning and commercial zoning is done by square footage. And so it's done by square footage. On that particular room, there has been as many as seven, but there are not seven there now.

Mr. Silverman: So we're not talking about a tremendous net increase here.

Mr. Ben Prettyman: No.

Mr. Firestone: Isn't the concern with six bedrooms that you're just going to have, you know, every time you add a young person to a dwelling, it seems that you run the risk of bad behavior. I think that's part of the concern with sort of six versus five versus four.

Mr. Ben Prettyman: We have a pretty rigorous screening process for our tenants. You could probably scroll through our portfolio. We don't really have too many, I hope, menace units. We try to screen out who is going to be causing problems and who is not. But whether that problem person is in a 3-bedroom, 1-bedroom, 2-bedroom, I mean they're going to be causing the issue. Rarely do you get all six, or all five, or all four or everybody out of cahoots.

Mr. Firestone: Have there been any issues at South Main Street?

Mr. Ben Prettyman: I do not believe so, not that I've been made aware of. I haven't received a letter yet saying that there has been a disorderly premise or noise violation or anything like that.

Mr. Firestone: Okay, because that's not my understanding.

Mr. Hal Prettyman: I'm sorry for jumping up here. Hal Prettyman III, this is the fourth. I guess that's how we'll explain the second. We normally get a letter generated to us. It doesn't mean

that there hasn't been a police call there, there could be a police call there, but if there is an arrest, then we get a letter generated to us. We have not received any letters on Chimney Ridge. Now the Police Department, I generally don't think they hold them back, but unless there's been one recently and they haven't sent it to us, that usually is not the case.

I think that Maureen was head of the Building Department there for quite a time, and this is not our first rodeo, as you could say. I think she could vouch that we manage our properties and keep an eye as far as what exactly is going on. I don't mean to point out other people or landlords or whatever, but if you look at North Chapel Street where you see that row of townhouses that are there, they're all four, and that place is a mess. Constantly, police are there all the time. So it's not always the number of people. I think it has a lot to do with management and the reaction to what might happen there.

It's also a common known policy that if you get arrested by the City, we personally fine you from the ownership and we will not renew your lease. There's an incentive there if they want to stay, to not have arrests.

Ms. Feeney Roser: Just to add to that. I know that there was an issue like the opening weekend of school or something there was some concern from the neighbors, but I haven't heard anything in my department about it since then.

Mr. Hal Prettyman: Yeah, I mean that's to be expected. What I mean by that is that for as long as I can remember, where Chimney Ridge is located was an open field. People were not used to the first weekend of having doors slammed and hearing anything from that particular area. I met with the Council member, Marge Hadden, and she and I sat down and came up with a plan and we went to the Newark Police. Some landlords don't give permission for the Newark Police to come on their properties, and that's not the case with us. We invite them on our properties.

We met with them and came up with a plan. They actually came down and went around and talked to a large number of the tenants. After that weekend, everything got quiet. I don't think there's been anything of late that we've been notified. When we do the new projects, they all have cameras on them now so...

Mr. Ben Prettyman: So we can find out descriptions in situations that we need to investigate. I guess my time's up!

Mr. Silverman: There's nothing pressing with respect to time at the moment anyway. Any other questions?

Mr. Firestone: I don't think he was done.

Mr. Silverman: Oh, I'm sorry.

Mr. Firestone: I don't think Edgar was done.

Mr. Johnson: I have a couple questions. In the memo from October 28th from Hillcrest, down at the bottom they said they want to remove the existing structure and construct a garden apartment. What's the definition of a garden apartment? I have no idea. On the next page, they say it's going to be townhouses, so is there a difference between garden apartment and townhouse?

Ms. Feeney Roser: Right. Yes and no. Yes, in that when you think of garden apartments, you generally think of a main entrance and apartments that are on corridors. These are townhouse-style apartments, which in our Code are allowable but considered garden apartments. So when we review them for area requirements, we review them as garden apartments not individual single family units. They are built as town homes, but because they are apartments, one lot, one owner, they fall into the garden apartment category.

Mr. Johnson: Okay. Mr. Prettyman, you talk about the densities and even though you have suggested it 6 bedrooms, you say your density is less than Cleveland Station which was limited

to 5 bedrooms. I can't wrap my mind around that. Can you explain why you have less density with ...?

Mr. Ben Prettyman: Just for clarification, on the per acre, we are 12.9. Cleveland Station is, I think, 16.67 and Campus Walk is, like, 15.6 just units per acre. If you had an acre of land, how many units are on it? Bedrooms per acre is the same principle. So if we have 24 bedrooms, if we were to have a full acre, how many bedrooms would we have? That's how those are generated.

Mr. Johnson: It wouldn't be a planning commission meeting if the microphone had worked.

Unidentified Speaker: Put a quarter in it.

Mr. Ben Prettyman: When looking at bedrooms, which is not mentioned at all in the Code, we, at six bedrooms, are at the high spectrum of those last two projects at 77 bedrooms per acre. If we were to mix and match, so like I said we use six bedrooms as a marketing ploy. Some of them may be five, some of them may be six. If I did my math correct, if one of the units had five people in it, our density would drop to that of equal to next door. If we had a full acre, they had a full acre, we will never have close to 69 people on that premise.

Mr. Firestone: But we can't analyze it based on that you may have five instead of six. We could analyze theirs based on they may have four, instead of five. All you can look at really is either a unit per acre basis or a bedroom per acre basis, and not look at that you may be shy one person because they may be shy two people.

Ms. Feeney Roser: Commissioner Firestone, just to reiterate what Mr. Prettyman said, the only requirement in the Code is for units per acre. There is no bedroom per acre requirement. When we were going through other projects, the Commissioners asked that question, as did our Council because what I was told it was not the number of units, it's the number of bedrooms that are in the unit that drives the concern. That's provided for informational purposes. But it is true that for the Code required units per acre, they are less dense than Campus Walk or Cleveland Station.

Mr. Firestone: Thank you. I appreciated that, but it's good to reiterate it.

Mr. Johnson: So the total number of people you're talking about is 24, correct?

Mr. Ben Prettyman: Yes, that's correct.

Mr. Johnson: And Cleveland Station has 85?

Mr. Ben Prettyman: I believe they have more.

Ms. Feeney Roser: Yes. No, they have 85 based on the residency restrictions. They have 85 bedrooms because they went for 1 per bedroom.

Mr. Johnson: How big of a piece of property is Cleveland Station, Maureen? Do you know off hand?

Ms. Feeney Roser: It was 1...

Mr. Ben Prettyman: I think it was 1.01 or...

Mr. Johnson: Hal?

Mr. Hal Prettyman: 1.02.

Mr. Johnson: Thank you. That's all I had.

Mr. Hurd: Hi, Will Hurd. I guess I had, sort of, a general architectural-type question because that's my area, and that was why the building is so tight to the western property line. It seems

like you've got space to move it east slightly and then still stay away from the setback and give a little more space between the buildings. Because that elevation is deceptive because they're built on an angle, and while they're about 9 feet apart at the front, they're about 3 feet or less or 6 feet maybe, at the backend. There's a wedge, kind of, that you're looking through. It just seems to me that, visually, I'd like a little more space between those two buildings. I was just wondering why it's so tight and if there was another consideration that drove that?

Mr. Hal Prettyman: Like was mentioned previously, Ben had mentioned previously, we had actually met with Cleveland Station before they came and moved their project through. We would have come through at the same time that they did, but unfortunately they had a land contract with Mr. Roy on Church Street and it had time constraints on it and they could not wait for Hillcrest to finish drawings and get everything taken care of. So we may have even connected those two buildings because eight would have been allowed to have gone across the front. So as they presented in their presentation, we did not object to them coming within 3 feet of our line and the 10 feet that you see at the back with the parking space, there are parking spaces that go across the back, and in turn, they were not going to contest us being within 3 feet. That allowed for the neighbor, whoever the neighbor may be someday, and right now it is Newark Housing Authority, but it gives them a 22 foot buffer off of that side.

That is why we didn't center the property. We wanted to give the buffer from that side as much as possible in the event that it would become an owner occupant, although, I'm sure the University of Delaware or ourselves would jump at the chance to buy that property. The other thing was that it allows us to meet our setbacks for the resident that we have behind us. Like you had stated and looked earlier, we need our setbacks at the rear. So we were trying to keep our neighbors in mind when we were doing this and give them as much as a buffer zone as required.

Mr. Hurd: Okay. I can proceed with that. I think my only other thing is I will, sort of, echo the concerns about traffic and left turns and such, but recognize that people are sometimes adaptive and if a left turn is really difficult thing to do because of traffic, people will just come up the other road and come in the in road and not try to make left turns. I think it may be something that settles itself out to a reasonable thing based on convenience.

Mr. Johnson: I have a question. Mr. Prettyman, could you put up the slide of your other property down by, across from Herman's Meat Market?

Mr. Hal Prettyman: Right there?

Mr. Johnson: Yeah. What is the setback there?

Mr. Hal Prettyman: That's a good question. It is probably going to be about the same as what these will be set back.

Mr. Johnson: I was hoping that was what you would say.

Mr. Hal Prettyman: I think it's about 15-16 feet. Somewhere in there in that vicinity.

Mr. Johnson: But DelDOT didn't require you to have 3 feet between the curb and the sidewalk?

Mr. Hal Prettyman: That's a whole other issue. To be quite honest with you, we're having problems, not only myself but other developers, because they're now putting this into everything in the City. So what that means is, our last project that we brought in front of you on South Chapel Street, they're requiring that. Well, that means you're going to walk down the streets of Newark and all of a sudden it's going to have a juggle, or whatever you want to call it, in it.

Mr. Johnson: [inaudible]

Mr. Hal Prettyman: Yeah, and not everyone in the entire street... Are you taking that away from me, Bob? Not everyone on that street is going to redevelop or whatever you're going to do. So the sidewalks in Newark are going to start going like this.

It popped up in the last one. It's popped up now. It's in this one. It was in Cleveland Station. What happened in the past is Public Works, because it's really an option for the City, we looked into it, and if the Public Works Department says that they do not want to have that, they're able to say that. It's a recommendation. This is what they would like to see. But, Rich Lapointe retired and we have a new Public Works director and he's telling us now that he wants to see the 3 feet.

Mr. Silverman: That's one of the reasons I brought it up. The landscape keeps changing. The targets keep changing. As far as I'm concerned DelDOT is simply cost shifting its snow removal problems onto the private individual. The City requires sidewalks to be cleared, I believe, within 24 hours.

I know I fight my little driveway of clearing it and it gets plowed in, then clearing it and it gets plowed in, and then somebody finishes off the plowing and it gets plowed in again. What to do with Delaware snow fall does become an issue. I'd rather see multipurpose areas. The City now requires a 5 foot sidewalk, I believe, a handicapped accessible sidewalk. You would think that would be enough to handle the relatively little bit of snow we have to get it out of the road to clear the roadway and then, unfortunately, the landlord would have to go back in and re-clear the sidewalk. But there's some discussion that needs to be done on that.

Mr. Hal Prettyman: What we find is that the DelDOT trucks are doing about 30 miles an hour when they go by and it's not going to land on 3 feet of grass between the two. We have a problem here on South Main Street. These trucks that run up and down through here, they plow our sidewalks in several times, but they go by and, I mean, you know, I think last year we had a problems with some broken windows because they're going so fast.

Ms. Feeney Roser: They take out banners, too.

Mr. Hal Prettyman: Yeah, and the other issue with DelDOT is that they put in to have this right-of-way that you were talking about and in this particular property, and what happens is we meet with them. So we'll go down to Dover and we'll take our plan with them and they will look at it and say, "Oh, we can't..." and Alan can attest to this because he goes to Dover all the time to meet with them. If we gave them the amount of land that they're requiring on this project, they're in our house.

Mr. Silverman: That's correct.

Mr. Hal Prettyman: You know, we only have a 16 foot front yard. I think it was 40 feet or something that they wanted. Now I understand what they're doing on some of the properties because some of these deeds are so old that they go to the middle of the road. So what they're really having you do is give them back the road, and the City does that too. We had a property on North Street that we developed and part of that requirement was it was measured from the middle of the road, so we were required to give that to the City. So I can understand when that occurs, but that doesn't always occur on every property. When we meet with them in Dover, they will back off on that, but in the meantime, you know...

Mr. Silverman: The Dover component in development for easements and right-of-ways is a very, very interesting group and I'll just leave it at that.

Mr. Hal Prettyman: Right.

Mr. Silverman: Are there any other questions? Bob?

Mr. Stozek: I just have a question, just for clarification, to make sure I'm not misunderstanding something. In the Hillcrest letter, the last paragraph, it says, "With a density of about 13 units per acre, this project is not in compliance with the City's vision of future land use for this area." What is that referring to?

Mr. Hal Prettyman: I believe what that is, has to deal with, is the fact that in this situation there is a need for a Comp Plan amendment. It does not meet with the City because of the BN zoning and it needs a Comp Plan amendment.

Mr. Stozek: Is that your understanding, Maureen?

Ms. Feeney Roser: Yes. That's how, that's how I read it.

Mr. Silverman: The reason that comes about is the State law requires that properties be rezoned in conformance with the Comp Plan. This has been a commercial property for a very long time and was zoned commercial for the City. Had the City overlaid the residential district on it, it would have had to back-zone, down-zone, the business property to a residential property, making it non-conforming, which causes a whole lot of problems and that's one of the issues in my mind, in my opinion, with the way the State operates their Comprehensive Plan and the required rezoning. So this use is actually bringing the site into conformance, even though it says it's not.

Mr. Stozek: Yeah, that's what I assumed it meant, but I just wanted to be sure because it was kind of nebulous as to what they were referring to.

Mr. Silverman: Any other questions?

Mr. Firestone: Yeah.

Mr. Silverman: Jeremy?

Mr. Firestone: Yeah. A couple questions. First, the neighbors behind, are you taking out that treeline that's behind you?

Mr. Hal Prettyman: We've had no conversations with the neighbors behind us. I'm not sure on the City's comments if they're requiring that to be done or if it just says that they're recommending it. I believe that tree is on the line. Can I address someone in the audience?

Mr. Silverman: Please, go ahead Mr. Prettyman.

Mr. Hal Prettyman: Mr. Word, is there...

Ms. Feeney Roser: It's not his property.

Mr. Hal Prettyman: No? I thought...

Ms. Feeney Roser: No, it's Mr...

Unidentified Speaker: [inaudible]

Mr. Hal Prettyman: I thought it was part...

Unidentified Speaker: [inaudible]

Mr. Silverman: Yes, go ahead, let's...

Mr. Hal Prettyman: Doesn't that, it belongs to your family though, doesn't it?

Unidentified Speaker: Yes it does. Yes it does. [inaudible]

Mr. Hal Prettyman: Okay, so...

Unidentified Speaker: [inaudible]

Mr. Hal Prettyman: So is that...

Ms. Feeney Roser: You need to come to the microphone.

Mr. Silverman: Sir, please come to the microphone and give your name and your address, if you choose to. If we provide you a microphone.

Ms. Feeney Roser: If we have a microphone.

Mr. McIntosh: He can use mine.

Ms. Feeney Roser: Is that working now?

Mr. Joseph Word: My name is Joseph Word. I own 55 Church Street and 46 Church Street property where I grew up and it was owned by my grandparents and by my cousin who occupies that property right presently.

We have a few concerns with buffer zones and things like that. We have some questions about water infiltration because the other two properties that you have there, there was a problem with infiltration of water. That's why they put a retention basin between the two properties there between Cleveland Avenue and Church Street. We have kind of a question to that.

We also have property separation. If I recall correctly, I thought that there was going to be 17 units placed in there with only four and one with five in the Cleveland Station, but now you're telling me that it was five and one with six. So that just even...

Ms. Feeney Roser: I'd have to go back and check that.

Mr. Word: Yeah, but that's what I thought it was. I thought it was four, with one with five. Okay.

Ms. Feeney Roser: The report only says how many people it is permitted.

Mr. Word: Yeah. Then when you start thinking about, I mean I'll tell you, I grew up there, been there all my life. You put some people in one of these buildings, and I'm telling you if it's four, it's going to be six. Guaranteed. Guaranteed. It's something that you need to think about or should have been thought about.

The other thing is about property separation. I can tell you with an increase of anywhere from 93-110 people, there are going to be people that are going to want to cut through those properties, to cut through that fence to go to the University, to go to that Arts building, to go down there to the campus down right there off of Main Street. It happens every day. I want some consideration to be given about that.

And the other thing is, you know, I hear some discussion about giving a 22 buffer for our neighbors, but what about our property? It's not a 22 buffer in the back there from the parking, well 25, whatever the minimum is. I mean I think that equal consideration should be given to everybody.

Mr. Firestone: Thank you. Just, sort of, following up on my questions and the comment. Is there any intention to put any barriers to access to these properties on Center Street?

Mr. Hal Prettyman: Right now there's a fence that goes around the property. It's an old chain-link fence. We haven't had a problem with our tenants right now cutting through the property at the rear.

As far as stormwater goes, it had to be reviewed by the latest Stormwater Management Codes and we had to do things. Actually, Alan, do you want to talk about that a little bit?

Mr. Alan Hill: Yes.

Mr. Hal Prettyman: Hillcrest Associates will talk about it. That wasn't something that was ignored or overlooked. There was a criteria there and we had to meet that, and Mr. Hill will talk about that a little bit from Hillcrest.

Mr. Hill: Yeah. Alan Hill with Hillcrest. With stormwater management, we know from Cleveland Station that the infiltration was very, very poor, and we've designed the stormwater as underground retention to actually comply with the Delaware, the new 2014 regulations to hold all that water back, which is why that infiltration trench is not an infiltration trench, it just looks like one. If we get some infiltration, we get a little bit, it helps the situation with design to withhold the whole storm and that's why it's so big.

Mr. Silverman: Okay, we're talking techno-speak here for Mr. Word's question.

Mr. Hill: We're holding more water back longer so we'll have less flooding downstream.

Mr. Silverman: And the new Code that they're complying with says that the water that comes off that property has to be reduced by 30%, I believe?

Mr. Hill: Yes. It has to be reduced.

Mr. Silverman: So they will not only solve whatever drainage is coming off that property now onto your property or property of your neighbor's, you're going to withhold 30% of that. So they're actually reducing the amount of water that will come off that property.

Mr. Word: [inaudible]

Mr. Hill: Yeah. Based on the calculations on the plan, we're retaining more water on the site and relieving it.

Mr. Word: [inaudible] on the University side, you have ponding over there.

Mr. Hill: Right, and we're just releasing it at a much slower rate across the properties so that you don't get the, the water has to go somewhere, it just gets there later.

Mr. Hal Prettyman: Underneath that entire parking area, that whole thing is going to be completely dug up and there will be this big, round...

Mr. Hill: The arch chambers. The storm tight chambers. The arch chambers.

Mr. Hal Prettyman: So right now, everything, you're right, it's running right off the Elks Club because it's got a hump there. It runs off the Elks Club [inaudible].

Mr. Word: You're also talking about cutting down those trees, so what's going to be the barricade, but that fence doesn't, that's a chain-link fence. That provides the buffer now. They do whatever they do over there when they have different parties. I don't see them because of those trees. You're cutting all those trees down?

Mr. Hal Prettyman: Yeah, concerning the trees, I think we'd have to meet with Parks and Recreation, but the last time I was back there, which I have to admit has not been recently, but that walnut tree seemed to be fine.

Ms. Feeney Roser: There is a landscape plan.

Mr. Word: But according to the plan that's coming down.

Mr. Hal Prettyman: Right.

Mr. Firestone: You may need some additional landscaping. You're putting in a much wider structure, a much taller structure. We really can't compare to what might be working now to what might be working after you build your structure.

Mr. Hal Prettyman: I understand that. I was addressing the question about the tree. There's a landscaping plan for the property. There will be landscaping all added across the back of the property.

Mr. Firestone: My next thing is more of a comment and this isn't solely addressed to you, Mr. Prettyman. In my short experience in Council, it seems that developers could do a better job of engaging all of the neighbors around them and, perhaps, resolve some of these issues in advance of coming to the Commission.

Mr. Ben Prettyman: With regards to these particular comments, they, in essence, were not comments that we necessarily need in our plan. Parks and Rec, you know, we originally had to keep the buffer and we were completely fine with it and then they came back and said, "Hey, look. We think everything's dying along there. Why don't you just clear it all out?" We're kind of at their will. If they come to us and say, "Oh, you know, on South Chapel Street they required us to put a fence and fence the whole property." We were more than obliged to put in a fence. I can sit here and do it right now. We have no problem with putting in a fence or anything like that.

Ms. Feeney Roser: Would you consider adding a fence that would address Mr. Word's issue about people cutting through his property?

Mr. Ben Prettyman: Certainly, as long as you realize that I cannot place the fence on Cleveland Station's property, so my fence will end at that corner. If they choose to go around the edge of it, there's not much I can really do. I can certainly talk to Cleveland Station to see if they'll put one in, but I can't speak on their behalf.

Mr. Firestone: Agreed, and I understand you're under some conflicting pressure. My only suggestion is that it would be prudent and good neighborly to not only get information from the City bodies and the State bodies, but as you're getting information to then communicate with the neighbors and make sure that we've got a plan that works for everybody.

Mr. Hal Prettyman: Okay, but that's what we're doing tonight.

Mr. Firestone: Yeah. No, I appreciate that.

Mr. Hal Prettyman: Because I would like to say, and I'm proud of this, is that I'm one of the first developers that met with all the people who lived on Beverly Road, people who lived on Winslow. We had a meeting in this room that was over 50 people that were here. We addressed their concerns and made changes and did a lot of things, but some of these people work and everything and they can't come. If we call a meeting, we might not get a very good attendance, you know what I mean? When you have a meeting here with the Planning Commission, the concerned citizens generally are showed up and it's advertised and all that kind of stuff.

Mr. Firestone: Yeah. I'm actually, Mr. Prettyman, I live on Winslow and Beverly, so I even supported your variance and I do know you have a history of working with neighbors.

Mr. Hal Prettyman: Thank you.

Mr. Firestone: It's just in this case, it seemed that some of the neighbors were not brought in beforehand. Meetings don't always work for everybody and sometimes you need to go door to door and we need to figure out different ways, and I agree we can all work it out at the meeting.

Mr. Hal Prettyman: Right.

Mr. Firestone: But if we can work some of these things out in advance, I just think it's all for the better, just as you did on South Main Street. Just more of a comment.

Mr. Hal Prettyman: Thank you for your support.

Mr. Silverman: Go ahead.

Mr. Firestone: I don't know if we want to continue on these issues, I've got just one other, sort of, different issue that I wanted to ask about.

Mr. Silverman: Okay, let me just fill in a gap here. Mr. Word, while you were reviewing the landscape material there with Mr. Prettyman, there was some discussion going on at the table that the applicant, the developer, is quite willing to put some kind of chain-link security fence across the back of that property. He also pointed out that there's no guarantee that Cleveland Station would continue that fence.

Mr. Word: We're not concerned, they're on [inaudible] property. That's right, they back to behind the other rental properties next door. If he can maintain that chain-link fence there, that's alright.

Mr. Silverman: And that's...

Mr. Word: [inaudible] that's what we have, that's what's there now.

Mr. Ben Prettyman: Yes. That will be fine.

Mr. Silverman: Okay, so hopefully, improve or modernize whatever was requiring the fence.

Mr. Word: [inaudible]

Mr. Silverman: Okay. I just wanted to make sure that you heard that because that was brought up in your comments about the security with the students cutting back and forth.

Mr. Word: [inaudible] parking lot, it's probably pretty mucky back there now [inaudible]. With you guys bringing that back, that's why [inaudible].

Mr. Ben Prettyman: That tank that they have in that ground I can assure you is a very large tank and it will hold most of that water and there shouldn't be very much muck at all.

Mr. Hal Prettyman: The other thing I think that's important, it doesn't show it...

Ms. Feeney Roser: I'm sorry, Hal, you have to try to get to a microphone.

Mr. Hal Prettyman: The other thing that's sometimes difficult to look at a drawing, I've looked at it myself, but there is a curb that runs around that entire parking, so that water is not going to run down there and then run off a parking blacktop or anything. There will be an 8-inch curb, or is it a 6-inch, it's an 8-inch curb that will go all the way around and all the way up to that building. So that water is going to be directed down into an area and into the tank.

Mr. Word: Okay, and that's where that tank is, on the corner, right?

Mr. Hal Prettyman: That tank, I believe, is under what?

Mr. Hill: [inaudible]

Mr. Hal Prettyman: There's an inlet on the corner, yeah.

Mr. Silverman: The tank is underneath the parking, under the asphalt.

Ms. Feeney Roser: And the inlet's in the corner?

Mr. Silverman: And the inlet for that underground tank is in the corner of the parking lot.

Mr. Hurd: There's an inlet in the corner?

Mr. Silverman: Catch basin. Okay, we're squared away on that. Jeremy go ahead with your last comment.

Mr. Firestone: The other question and this went to my earlier conversation and this relates to energy conservation measures. Certainly one concern that we all have with, again, this is landlords in general, it's not necessarily you and I haven't been in your buildings and I can't say, but one of the concerns that there are is that with landlords and tenants, there's a market failure as far as putting in efficient appliances and efficient electrical devices, and that's because landlords have an incentive to put in the least expensive up front, whereas the tenant would desire to have the most efficient. From an energy conservation standpoint and sort of consistency with the Comprehensive Plan V that we just pushed forward today, it seems that having efficient appliances, like Energy Star rated appliances, would be valuable. You'll also have less water discharge to address, not just the stormwater, but you'll have less water discharged into the sewer systems. So the question is, is there an intention and/or a willingness to put in energy efficient appliances?

Mr. Ben Prettyman: With this project we're going to be seeking as many LEED points as we possibly can. I think the City of Newark requires 24. We're going to be doing our best to reach the maximum of 32. That will range everything from trying to separate debris that leaves the site to different sod techniques on the surface, to it goes all the way to spray-foam insulation to, I think, there's some mention of some solar stuff in there. We're committed to trying to reach definitely above 24, but as close to 32 as we can receive.

I can tell you right now on our South Main Street properties, we did not skimp out on appliances. Yes, they are a commercial-grade appliance, but they all are an Energy Star. They all have LED lights in them. All the washers take high efficiency detergents for less water usage on the loads. The dryers are high-efficiency dryers. We do take that into consideration.

I can't tell you that we're definitely going to do it on this project or there would be any on it, but we've angled the rear roof to a 4/12, which is the optimal degree for solar.

Mr. Firestone: Yeah, well you've got a nice south facing roof.

Mr. Ben Prettyman: Yes, so I can't tell you we're actually going to do it, we're looking into it, but we are equipping the building that if it was feasible, we would be able to capture the most efficient solar rays.

Mr. Firestone: Okay. Thank you.

Mr. Silverman: Frank?

Mr. McIntosh: My first question, Mr. Word, is it Word?

Mr. Word: Word.

Mr. McIntosh: Have your issues been addressed to your satisfaction?

Mr. Word: Yes, sir.

Mr. McIntosh: Thank you. I have an issue that I would, thank you. I have something about chain-link fences. I kind of feel like I'm in a prison or something. Do you think you could put some greenery around them too?

Mr. Ben Prettyman: There will be plantings in front of them on our side.

Mr. McIntosh: What's in front?

Mr. Ben Prettyman: There will be plantings.

Mr. McIntosh: Plantings? What does that mean?

Mr. Ben Prettyman: Shrubs. And then we'll probably opt, since it is on a parking lot end of things, we'll probably choose the green slats that'll go through the chain-link fence to block of some of the sound, noise, and light.

Mr. McIntosh Okay.

Mr. Hal Prettyman: This is them, so all these plants.

Mr. McIntosh: Okay. I'm not really good with drawings, but that's nice. I like those circles. Very good. Alright, that's all. If you're going to do something and a few plants can dress up things and make them look better and more livable, then why not.

Mr. Silverman: Bob Cronin, any comments? As soon as you can retrieve your microphone.

Mr. Cronin: First of all, I always like to see as close a ratio as possible of one parking space per bedroom or per bed. I think the kids who come all have cars to put some place, but having said that, with the absence of a curb cut on this design, the access to the property and the parking is with the Cleveland Station owner and while you folks might be on good terms with him now, I think you need to have this memorialized in some fashion that it's going to be 100% forever.

Perhaps as an alternative, with any consideration given to this setback you have on the east side of the property, making that a lane out to Cleveland, a paved surface out to Cleveland Avenue and making what's now a shared entrance to Cleveland Station, making that like one way in and making one way out on the east side of your project, which I think would put the people going onto Cleveland further away from any stacked up traffic at the New London Road traffic light and might make it a little better flow overall for everybody. People on the street and people that are residents of the two complexes. With your setback and the siting you have now, it seems to me that would just about allow that sort of an arrangement and I'm just wondering if you would consider that?

Mr. Ben Prettyman: With regards to that, that would probably put us over on our lot coverage or total lot coverage.

Mr. Silverman: You get into impervious surface.

Mr. Ben Prettyman: Having addressed that, I understand the issue of traffic is kind of like stop in your head. It's a red stop sign, but the logic of it is if you go even to our largest complex down here on South Main Street, people are coming and going, but rarely will there be a backup or two cars in line to leave or three cars in line to come in. I think the traffic as far as in and out congestion, I don't think that's really going to be there, but I certainly understand your point.

Mr. Cronin: You might have traffic stacked up on Cleveland Avenue. It could be a rush hour, people coming home at the end of the day and it would back up in front of...

Mr. Ben Prettyman: I think you may have one car and then you have your row of traffic that isn't the one car that's turning into the complex is the one that's causing the traffic after it goes and you go to the light. Because we're out there, believe it or not, picking up trash and checking on things and rarely do we encounter two people coming in at the same time or two people leaving at the exact same time, even with our large numbered complexes. It might be five minutes in between, it might be a minute in between, but that minute is enough to move that vehicle out onto the street.

Mr. Cronin: Well I just thought the idea of a one way in, one way out was nice and it would also give a curb cut to this parcel, should anything ever be a falling out between the two property owners.

Mr. Ben Prettyman: We will be memorializing that.

Mr. Cronin: Alright, thank you. That's all Mr. Chairman.

Mr. Silverman: Thank you. So there will be formal cross access agreements as part of your plan?

Mr. Ben Prettyman: Yes, correct.

Mr. Silverman: Okay, and we keep hearing about access Cleveland Avenue. The Cleveland Station site, I believe, also has access to New London Street through a one-way system. Keep in mind that there are alternatives to getting into your property other than off of Cleveland Avenue. I would like the commissioners to keep that in mind. I agree with, I believe it was, Will who said, "When people find they can't make the turning movement they want to, they'll find an alternate." I also said that one of the reasons why I believe the students move into this area is it is walkable and the University commuting buses go by there. So I think that takes some of the pressure off of we're going to see kids get in cars, leave their apartments, drive down on campus, and come back up.

The third point on that is to the disadvantage of the neighborhood, we're talking about a 24-hour lifestyle. These aren't people who are going to be entering and leaving the site between 7:00 in the morning and 9:00, and coming home at 4:00 to 6:00. Whatever peak traffic the automobile generation they have, are going to be spread way out.

Mr. Firestone: I think it will be during the morning rush hour.

Mr. Stozek: I will just say, you know, the number of cars in and out of these two complexes is one issue. What really bothers me is the traffic on Cleveland Avenue and that blind turn.

Mr. Silverman: I agree and that's a DelDOT issue and somehow the lightning has to strike and get their attention.

Mr. Stozek: Well I hope it's not lightning that strikes. And I don't know what we can do to have somebody do some sort of traffic study of this intersection. We probably would wait until hell freezes over to get DelDOT in here to do it.

Ms. Feeney Roser: That is part of what we were talking about doing the TID project that's in the Comp Plan and in your Work Plan to work with DelDOT.

Mr. Stozek: Right, but when would that be done?

Ms. Feeney Roser: We'll have to get back to you on the timelines for that.

Mr. Stozek: Again, that's the biggest negative to this. I'd hate to have an accident and get somebody killed there. We're compressing the traffic. We're putting more traffic there and we're saying, "Okay, we're going to approve this project and hope nothing happens because someday we'll have a traffic study done."

Mr. Silverman: But it's been my experience over a long period of time that the people in Dover and DelDOT only pay attention when there's a pressure or choke point. They don't look down the road like we're charged with, saying let's widen this road because five years from now, we're going to see development. They only respond to a crisis. I'm not saying that we deliberately create crisis, but we've got this, as you say, cumulative kind of effect. It's time to cause them to take a look at this, and maybe we can use this as a springboard.

Mr. Stozek: I think the City is going to have to do something to try to create pressure to do that.

Mr. Silverman: That's correct. We can only recommend. We can only point out. It's a trade-off. Does the City want to lose tax base because Highways won't do what it's supposed to do to even improve flows.

Mr. Stozek: Well, it's tax base and, I'll go back, it's also public safety.

Mr. Silverman: And public safety, yes. Does the applicant have any more comments? Any other comments from the people who've turned out tonight? Residents? Ms. White? And we will get you a microphone.

Ms. Feeney Roser: Do we have a microphone over there that's working?

Mr. Ben Prettyman: No, I think they're all, the batteries are dead.

Mr. McIntosh: Use this one.

Mr. Silverman: Right here, Ms. White.

Mr. McIntosh: Use mine. Use mine.

Mr. Ben Prettyman: This one probably works.

Ms. White: This close to you all?

Mr. McIntosh: It only works for two minutes.

Mr. Silverman: We'll move back.

Mr. Hurd: Our brilliance can be overpowering.

Mr. McIntosh: Which has got an advantage.

Ms. White: I realize now that you are going to have a cross agreement between Cleveland Station and this project. I had attended the meetings for the Cleveland Station, both the Planning Commission and City Council and I guess because your project wasn't public yet, but all the time this was being talking, at least I don't remember anything about saying that there would be an additional 24 people, 24 cars possibly, coming in from New London Road, which is one-way that way, and then coming in, and then exiting when they needed to by Cleveland Avenue. There was a lot of discussion about traffic, cars, people, and all that, and at that point it was centered on 85 people and how many cars coming along there. It would have been nice if somebody could have said that there is a thought that there will be this additional development right next door that's going to have this many units, this many bedrooms, and this many people.

One of the things I've said at that meeting, which is now affecting the cut-through from New London Road, which is one-way, that there's no sidewalk along there. Cars are going to be coming, but everybody in the City is assuming that these students will be, if they're students, walking along there but some cars will be coming, but they don't even have a sidewalk to walk on because there's parking on that as well on one side if you look, to satisfy the parking for the other.

Okay. Well, let me see. I'm always concerned about the site plan approval and not meeting all the area requirements. I can see, by having this come in from Cleveland Station, then you don't have to have an access yourself from Cleveland Avenue. That means that that is an advantage, I see, because we're getting some more open space or so-called open space. Nevertheless, there still are some area, what do you call that, area regulations that aren't met. Personally, I had argued to be not 17 but 16 units for the neighboring Cleveland Station, but here, I would also argue that instead of so-called four, there would be three. You're already putting five or six bedrooms in there. I feel that would be important. I actually feel that the site plan approval, although it has a purpose, is being used, and perhaps misused, to get greater deviations from area requirements than otherwise might normally be set.

The Code is, the minimum lot area is one acre, and it's only .31 acres. I can accept that because in a way, this development is sort of tied to the other one. It's not a free-standing development. It were free-standing, I would be utterly opposed to have .31 acres instead of one acre. Those are my comments, and thank you. I hope you could understand some of them.

Mr. Silverman: Any other comments from the Commissioners? I think we're ready to move to the question, the recommendation. If you refer to the Department's report, page 12, which is the last page, the back, titled Recommendation. We have paragraphs A, B, C before us. I would like to add a reference to restricting to one person per bedroom, if I heard correctly, and I see a nod from the applicants. I would like to add the paragraph E to deal with the neighbor's issue with respect to the landscaping and some kind of security fence across the back. I see that there has already been some discussion on that. Those site details will continue through the City's review process, so there's an opening for the parties to work together to refine exactly what's going to happen. Maureen, do we have any other?

Ms. Feeney Roser: Well, there's the cross access agreement that you'll want to include, which would be required, but it's not mentioned, so you want to make sure that Council recognizes that that has to be included in the agreement.

Also, the other thing that's not settled would be the number of units because the way the thing is worded, it says, "With Subdivision Advisory Committee conditions" and part of the things that the Planning and Development Department was talking about was reducing the number of units or asking them to seek more LEED-like points, which I think Mr. Prettyman tried to address. You may want to clarify your recommendation beyond when it says the conditions, because it's not clear what you're approving, whether you're approving three or four, whether you're approving four with LEED points that are beyond the minimum required, or something of that sort, depending on what the Commission's pleasure is.

Mr. Silverman: Frankly, I'm personally confused on that, in bedrooms per acre, units per acre, and people per acre. Is it a walk-up or is it a garden apartment kind of thing. Mr. Prettyman has committed to pursuing the LEED avenue. Does that meet the requirements of the...

Ms. Feeney Roser: Well, he would be required to have, I think it's 24 points, and I don't know that you can place how many points you would expect them to get because a lot of that will depend on how the building shakes out when it's built. You may say something like your recommendation is that they be required to exceed the minimum or to get as close to 32 as they could.

Mr. Hal Prettyman: Right, the maximum amount the City, I think in the Code, is 32.

Ms. Feeney Roser: I believe it is, too, but I don't want the Commission to tie you to 32 and have you go through construction and find out you're at 31, then you have to come back.

Mr. Hal Prettyman: Right.

Ms. Feeney Roser: Unless that's what the Commission would like to do.

Mr. Silverman: Jeremy, you've got some thoughts on that.

Mr. Firestone: I would like to just say that, consistent with the representations of the applicant, there's the expectation that the applicant will come as close as feasible to 32 points, the maximum, as possible.

Mr. Silverman: Yeah, that phrase works with me. Does it work for you, Mr. Prettyman?

Mr. Hal Prettyman: I'm sorry. I stepped away from the microphone.

Ms. Feeney Roser: So, the applicant will come as close as feasible to the maximum LEED points?

Mr. Hal Prettyman: Yes, that's fine. I think the discussion was the Star appliances can be done and, we didn't get into it, but we have had conversations with insulation companies, and the new spray foam insulation is a step up on a LEED. It's an up-cost on the building, but there's a lot of benefit to it. That's something that, you know, I'm not sure how many LEED points you get out of that, but you know.

Mr. Firestone: You know, and certainly with the models that are now with solar panels and any of these like Solar City that are owning the panels and just then basically leasing the space and selling you the electricity, those can be done quite easily without financial outlay on your half.

Mr. Hal Prettyman: Yeah, we have looked into that. That's something that I could not commit to, to saying that we would do solar, but we are looking into that. We've had the architect change the design of the building, so that if we are able to, if that's cost-feasible, that we could accommodate that on that roof. They have not given us final prices or anything, so I would be uncomfortable to stand here and tell you that we could do a solar.

Mr. Firestone: Yeah, as long as you use your best efforts, that's sufficient.

Mr. Silverman: Frank?

Mr. McIntosh: For one, I'm not thrilled with doing the best you can. You can do the best you can and get 20, and then, "Oh jeez, it was the best I could." I used to use that a lot, when I was talking to my parents around report card time. But it would seem to me that something, some number beyond 24, would be something that I would be happy with. I don't know what that is because I really don't know a lot about LEEDs.

Mr. Silverman: Maureen mentioned a minimum of 24.

Mr. McIntosh: I understand that, but they've already said that they would do more than that.

Mr. Silverman: Understood.

Mr. McIntosh: So is that 24 or 26? Is it 28? It's not 32. I wouldn't hold you to a standard of that, but something that's beyond, north of 24. Says, "Well, here's the new minimum." We're then challenging you to do something specifically beyond what you might be trying to do.

Mr. Firestone: But if it's as close as feasible to 32, then the burden is on them, really, to...

Mr. McIntosh: But it's un-enforceable. What does it mean? It means nothing. It's, "I worked really hard, and I got 24, and that's as close to 32 as I can get." It just doesn't do much for me. Maybe for the rest of you, and that's okay. I'm just saying that I'd like to see something, hey, look...

Mr. Silverman: Within the City's review process, when it gets down to the nitty-gritty, there is some room for persuasion regarding that 32.

Mr. McIntosh: Yeah, I understand, but we could persuade it right now by just saying something that's definitive.

Mr. Johnson: Come up with a number, Frank. Come up with a number.

Mr. McIntosh: Alright, 27.

Mr. Hal Prettyman: 27?

Mr. McIntosh: Well, look it, you get two for, what did you say, you get two for what?

Mr. Hill: For insulation.

Mr. McIntosh: Insulation. How much could that cost? Insulation.

Mr. Hill: You realize we don't get anything for the Energy Star appliances. We don't get anything for...

Mr. McIntosh: I'll give you one for the Energy Star appliances.

Mr. Hal Prettyman: Would you give us...

Mr. McIntosh: Yeah.

Mr. Hill: We've been going around...

Mr. Johnson: I'll give them two LEED points for putting up with this meeting.

Mr. McIntosh: Well, that's not bad. That's not bad. We'll get you there. We'll get you to 32.

Mr. Silverman: We've generated enough body heat in this meeting to defeat a lot of this.

Mr. McIntosh: No, we haven't generated any body heat in this meeting.

Mr. Hal Prettyman: Alan says there's no LEED points for solar panels. There's no LEED points for solar panels?

Mr. Firestone: It has to do with building efficiency.

Mr. Hal Prettyman: Wow, okay.

Mr. McIntosh: How about 26?

Mr. Silverman: Okay, we're getting kind of crazy here because of the hour. Maureen has been conferring with me and taking some notes and I'm going to impose upon her to flush out the recommendations for us.

Ms. Feeney Roser: The recommendation, the first two, A and B, are the same really. The recommendation was the Comp Plan amendment from light commercial to multi-family residential. The second was the re-zoning from BN to RM. The third is to recommend to City Council that they approve the 47 West Cleveland Avenue minor subdivision for, and I'm adding this to it, for four townhouse-style apartments, so we get past the Planning Department's indication that perhaps it should be reduced because we're going to go back for the LEED points, right? So it will recommend that City Council approve the 47 West Cleveland Avenue minor subdivision for four townhouse-style apartments and site plan approval plan as shown on Hillcrest and Associates' plan dated October 28, 2015, with revisions through December 2, 2015, with the Subdivision Advisory Committee conditions except that the number of units be reduced, and with the additional conditions that the developer agrees to deed restrict the property to one person per bedroom. Are you stopping me?

Mr. Silverman: No, no.

Ms. Feeney Roser: Oh, okay. That fencing and landscaping improvements be made along the southern border in consultation with adjacent property owner. That cross access agreement for parking and traffic is memorialized before the first building permit, and that the developer will seek as many LEED points beyond the minimum as feasible, and we would recommend that they reach the maximum points, if possible. I don't know whether that's what you wanted to say at the end or not.

Mr. McIntosh: It's not what I wanted to say, but that's all right.

Ms. Feeney Roser: Okay? No?

Mr. Silverman: Does that work for everyone?

Ms. Feeney Roser: Not Frank.

Mr. Hal Prettyman: I have a question.

Mr. Silverman: Let me get it in form of a motion, and then we'll do that. The Chair entertains a motion that we follow the recommendations as just described by Director Feeney Roser.

Mr. Firestone: So moved.

Mr. Silverman: Do I hear a second?

Mr. Hurd: Second.

Mr. Silverman: Okay, we have a motion and a second. Are there any questions? Mr. Prettyman?

Mr. Hal Prettyman: I just want to make sure I understand what everybody's voting on. You're voting, for lack of a better term, in favor of our project as it's presented with the four units, and us limiting it to one person per bedroom, with the six bedrooms?

Ms. Feeney Roser: Yes, that's part of it and then, there were conditions for fencing and landscaping and cross access.

Mr. Hal Prettyman: With the conditions that we step up to the LEED process and do that.

Mr. Silverman: Yes.

Mr. Hal Prettyman: Okay. Alright. I just wanted to clarify that. It got pretty long, and I kind of got lost, so thank you.

Mr. Silverman: Okay. Yes, Mr. Cronin?

Mr. Cronin: You know, when Maureen said deed restricted to one person per bedroom, I suppose in the future, we talk about these things that could become individual town-house units in condominium style type thing or something like. You might have a married couple in there or a family in 25 years from now.

Ms. Feeney Roser: These are unrelated.

Mr. Cronin: Well, you didn't say that. You said one person per bedroom.

Ms. Feeney Roser: I'm sorry, that's the way the deed restrictions read.

Mr. Cronin: I think maybe we might want to allow for, when you mean student rentals, when you say that, but there might be a time in the future when it's not student rentals. We'd be happy to have something other than one per bedroom and the bedroom police will come around...

Ms. Feeney Roser: I apologize. I should have said unrelated, and we don't actually determine who's sleeping in what bedroom, just how many people can reside there. It's just a way to base it for records.

Mr. Cronin: Okay, as long as we give some thought to, logical variations.

Mr. Silverman: Okay. Are we ready for the question? All those in favor of the recommendations as described, transcribed, signify by saying Aye. All those opposed, Nay. Motion carries. Thank you.

Ms. Feeney Roser: Thank you.

MOTION BY FIRESTONE, SECONDED BY HURD, THAT THE PLANNING COMMISSION MAKE THE FOLLOWING RECOMMENDATION TO CITY COUNCIL:

A. THAT CITY COUNCIL REVISE THE COMPREHENSIVE DEVELOPMENT PLAN IV LAND USE GUIDELINES FOR THIS LOCATION FROM 'LIGHT

COMMERCIAL (LOCAL SHOPPING)” TO “MULTI-FAMILY RESIDENTIAL (MEDIUM TO HIGH DENSITY);” AND

B. THAT CITY COUNCIL APPROVE THE REZONING OF .31 ACRES FROM THE CURRENT BN (NEIGHBORHOOD SHOPPING) ZONING TO RM (RESIDENTIAL MULTI-FAMILY/GARDEN APARTMENT) ZONING AS SHOWN ON THE PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT A, DATED JANUARY 5, 2016; AND

C. THAT CITY COUNCIL APPROVE THE 47 WEST CLEVELAND AVENUE MINOR SUBDIVISION AND SITE PLAN APPROVAL PLAN AS SHOWN ON THE HILLCREST ASSOCIATES, INC. PLAN DATED OCTOBER 28, 2015, WITH REVISIONS THROUGH DECEMBER 2, 2015, WITH THE SUBDIVISION ADVISORY COMMITTEE CONDITIONS, EXCEPT THE PLANNING AND DEVELOPMENT CONDITION THAT THE NUMBER OF UNITS BE REDUCED, AND WITH THE ADDED CONDITIONS THAT THE DEVELOPER AGREES TO:

- 1) DEED RESTRICT THE PROPERTY TO 6 UNRELATED PEOPLE PER UNIT, 1 PERSON PER BEDROOM; AND
- 2) MAKE FENCING AND LANDSCAPING IMPROVEMENTS ALONG THE SOUTHERN BOUNDARY IN CONSULTATION WITH THE ADJACENT PROPERTY OWNER; AND
- 3) MEMORIALIZE THE CROSS ACCESS AGREEMENT FOR PARKING AND VEHICULAR TRAFFIC BETWEEN CLEVELAND STATION AND 47 WEST CLEVELAND BEFORE THE FIRST BUILDING PERMIT; AND
- 4) SEEK AS MANY LEED-LIKE POINTS BEYOND THE MINIMUM OF 24 REQUIRED AS FEASIBLE, ACKNOWLEDGING THE PLANNING COMMISSION RECOMMENDATION THAT THEY REACH THE MAXIMUM POINTS, IF POSSIBLE.

VOTE: 6-1

AYE: CRONIN, FIRESTONE, HURD, JOHNSON, MCINTOSH, SILVERMAN

NAY: STOZEK

MOTION PASSED

Mr. McIntosh: Go for 29. If you don't have a specific goal to get to, you'll never get there.

5. REPORT ON FREEDOM OF INFORMATION ACT (FOIA) TRAINING.

Mr. Silverman: Now, we have one more item on our agenda.

Mr. Hal Prettyman: I was just shocked to find out that solar panels didn't count as LEED.

Mr. McIntosh: I am a little shocked about that myself. I don't know what the hell a LEED point is but...

Unidentified Speaker: What was the vote?

Ms. Feeney Roser: It was 6-1.

Mr. Silverman: 6-1.

Unidentified Speaker: People say Nay really quick. Did you say no?

Mr. Hal Prettyman: I was closer to the back of the room and I didn't hear what was going on.

Mr. McIntosh: I said yes.

Ms. Feeney Roser: Mr. Stozek.

Unidentified Speaker: I can't tell who is saying it, they're just manly voices.

[inaudible]

Ms. Feeney Roser: There is another agenda item.

Mr. Johnson: We have another agenda item.

Mr. Silverman: Okay. One more agenda item before they turn the electricity out, or in worst case, they turn the heat back to the night setting. Report on the Freedom of Information Act, the FOIA training. This is a carryover from before. There were several of us who went to the training. Pardon?

Ms. Feeney Roser: Please speak into the microphone, Mr. Chairman.

Mr. Hurd: Here, borrow mine.

Mr. Silverman: There were three of us that attended the session. It was put on by the Institute for Public Administration. I personally found it a very valuable session.

Mr. Hurd: It was good.

Mr. Silverman: Will, would you like to comment on anything you brought back from it? And this really isn't, "What did you do last summer?"

Mr. Hurd: I know. No, I think I appreciated understanding some of the driving forces behind it and some of the implementation of it and how it works. It was good.

Mr. Silverman: Bob?

Mr. Cronin: I thought it was time well spent and useful, and to get input from other towns and communities in the State, and some of their, the way they approach things and handle things, and to learn how they look at things through their set of glasses and the discussion that surrounds that is of benefit to us also.

Mr. Silverman: Okay, I found some very interesting things in listening to the attorneys. The FOIA and the Open Meetings law, I had the impression, were brought down by someone in robes and carved in these exotic rocks but I found out that it's just all [inaudible]. That even the State Attorney General's office, when they consider opinions, they are not permitted, internally, to come to a consensus. So if a group in Sussex County asks an opinion, and a group here in Newark asks an opinion, or we ask an opinion, it's quite possible to have two opinions that don't even come close to one another become the official opinion.

I also found out that violating the Open Meetings law does not send anyone to prison. That the only thing that can happen is the courts, not the Attorney General, may tell you, you have to go back to square one and start all over again because you didn't give somebody whatever opportunity. So it's not the dragon that I thought it was. The things that, personally, I respect is, having a background in public administration, when the Supreme Court or the high courts in Delaware say this is the way you do it, that's the way I do it to the best of my ability as a Chair.

When an attorney issues an opinion out of the Attorney General's office, Attorney Generals' opinions are kind of like noses. Everybody has one. I think this, in my mind, as long as we're reasonable and we follow the spirit, let them yell at us. If a court decides that we did something wrong, that's time to pay attention. It's interesting the way it's administered. There's a handbook that's out that if you read the handbook, it says, "This is what we think, this is what we found, it was done over here this way, it was done over here that way." And then, there are these big margin notes, that if you read through the gobbledygook, it says, "Always choose the most conservative interpretation." That's not a way to have an open dialogue. We're not a group that makes final decisions. We're not the Board of Adjustment. We make recommendations.

The talent represented on this board, in my opinion, is incredible. We've got architects. We've got people with design and build backgrounds, with real-world experience that have worked for big institutions. We've got people who've been the fabric of the community, who know the history, and who will ask the, "That's nice, but why are we doing this?" kind of questions, which is valuable. We've got someone who has got a law background, a public administration background, and has worked in the business of holding hearings, identifying problems, working with public groups to really pull out things. We've got someone who worked in an industry where listening and filtering out all the background was important, and who pulls us back on point. We have someone who's been in the real estate community who can answer some of those questions of, "Is there really a market for this? What happens if this changes?" Right now, it appears, under the Open Meetings rule, we can't even sit down informally to – and it's called team think, as opposed to group think – figure out where we're coming from, who has the best expertise, who do I turn to as Chairman, and say, "I know with architecture, Will, you've got a background in this." But I know that Bob Stozek has a heck of a background in design build, and I'd like to be able to turn to Bob and say, "Is this developer dancing us around here about, well, I can't do this, and I can't build that?" Or is it the fact that he doesn't want to build it?

I hesitate to do that really, really publicly. I don't want to embarrass any of my fellow Commissioners by asking a question and them kind of looking at their shoelaces, going, "I'll get back to you." I don't think that's fair. I think, I really believe, the public is not getting the benefit of 100% of what we can provide. There are some pretty good questions.

Mr. Firestone: It's called democracy, and it's not the most efficient system. It wasn't built for efficiency. It was built for democracy. This country, and it's part of what sets us apart, if we go back and we look to the history. We go back to 1946, with the adoption of the Administrative Procedures Act on the federal level, which set forth, and administrative agencies, before that, just sort of acted sort of willy-nilly, and that set forth some really important markers. Then, the states followed that. In 1966, the federal government passed the Freedom of Information Act, which deals not so much with open meetings as it does with the right of the public to get documents so that they can find out what their government is doing.

Mr. Silverman: No problem with that side of it.

Mr. Firestone: Then in 1976 the federal government passed the Sunshine Act, otherwise known as the Open Meetings Act, and it's to put sunshine on what we do. If we do things in private, and it's not necessarily that this group is going to do anything nefarious, but people in groups can do things in a nefarious fashion if they can do it in private. They can have the decisions cooked in advance. The way you protect against that, and the way you maintain credibility so that no one has the belief that that's happening is by only deliberating in public.

It may not be the most efficient. There's pros and cons to any system, but it is our system. It's our country's system, it's our state's system, and we're better for it, even if there are bumps and chinks along the way. We didn't have email 20 years ago. People weren't engaging in, we didn't have party lines, and people, if people wanted to subvert open meetings, they would have to go and meet somewhere. That's what led to this, was occasionally, people would be meeting in restaurants and hashing these things out. It's really, really easy now to subvert, and so it's even more important to guard against that subversion in order to maintain our credibility when we're here in front of the public.

Mr. Silverman: Well, then...

Mr. Firestone: Otherwise, we're not needed. We can just have Maureen and the Commission do anything, and we can just be an advisory body to Maureen. But that's not what we were tasked, we were tasked to be a public body, and as a public body, we deliberate in public.

Mr. Stozek: We can deliberate in public but I still think we can meet and discuss things without making decisions, or we can share information.

Mr. Firestone: Any...

Mr. Silverman: The courts are clear on that. We can't even, they have what's called a serial email. I sent a one-way email to all of you on what I thought about changing the annexation on the Dupont Company property. I can do that, but you can't comment to Bob Cronin, and Edgar can't say something to Will, and then three of you email me. We can't even come to a working consensus on something beforehand.

Mr. Firestone: Right, because our job is to come to a working consensus in the public sphere.

Mr. Stozek: I would just say one thing to think about. If everything had to be done in the sunshine, we would never have this country. We'd never have a Constitution. That was done in closed session until they got together, haggled it out, figured out all of the nuances, and came up with a document. Then they presented it to the public and then it had to be voted on.

Mr. Silverman: For example, I think we have a real issue on parking and parking waivers. We've got some opinions that say there will never be another parking waiver, which may be the correct way to go to force this whole issue of parking off dead center. Or you make the cost so high that somebody says, "You know what, I'd like to build in Newark, but I can't afford to buy the taxi medallion and the parking waiver, so I'm going over, in the next community." Go ahead.

Mr. Johnson: I was going to say that Will, Bob, and I meet every Tuesday at Saxby's and talk about the agenda and get everything all worked out ahead of time, so we're not sending emails, but we're enjoying each other's company.

Mr. Stozek: We're texting.

Mr. Johnson: I'm kidding.

Mr. Silverman: If I understand it, as long as it's, if three of you meet, it's not a quorum, you can do that. But you can't take your three opinions and give it to the other members.

Mr. Johnson: What do you mean I can't?

Mr. Silverman: You're not allowed to.

Mr. Johnson: I have freedom of speech.

Mr. Silverman: No, you don't.

Mr. Firestone: No, you...

Mr. Silverman: No, you don't

Ms. Feeney Roser: You can do it in a public meeting.

Mr. Firestone: You can do it in a public meeting.

Mr. Silverman: You can do it in a public meeting.

Mr. McIntosh: Can I suggest we carry this conversation on...

Mr. Johnson: At Saxby's.

Mr. McIntosh: Some other time, please?

Mr. Stozek: Let's get together in small groups.

Mr. McIntosh: Yeah, why don't we just get together, three of us, and then three more, and Alan, you stay home because you're our 7th guy. We three will get together, and you three down there, you know. Edgar, you're in charge. And then we'll report back to you, and then you tell us how to vote. It's simple.

Mr. Stozek: As long as we don't have a gavel, we're not having a meeting.

Mr. Silverman: Okay, before the hats go on and the scarves get tightened, Maureen has a final report that's going to close this out and then we will adjourn the meeting.

Ms. Feeney Roser: Well, there are two things. One, Will had sent around an email advising of new training sessions that were going to be available through the IPA. If you're interested in going to them, let me know. We do have some money in the budget. We can handle the registrations for you.

Also, one of the things in your Work Plan was to have a training session for yourselves on, sort of, the roles and responsibilities of the Planning Commission. We had talked about having Max Walton do it. We talked about having Roy Lopata do it because he had done it previously. They have agreed to do it together, both of them, pro-bono for us. They have suggested two nights. Unfortunately, they're Wednesdays, but that seems to work for both of them. On the 30th of March or on April 13th. I'm wondering if you couldn't help me out, check your calendar, and let me know so that I can get back to them because we have some room juggling that has to be done and advance notice to people.

Mr. McIntosh: Time?

Ms. Feeney Roser: It was up to you what time. We could start at 6 instead of 7, if you'd like, or we can start at 7, 7:30, whatever.

Mr. Silverman: Your April date?

Ms. Feeney Roser: April 13th or March 30th.

Mr. Firestone: And how long is this going to go?

Ms. Feeney Roser: The last time it was done, it went about an hour and half with questions. I imagine it'd be two hours with two presenters. They are pretty entertaining though, I have to say.

Mr. Silverman: This will be particularly valuable because I hope they will go back through what legislation says we have to do, and also give us some idea how the law circumscribes what we can do, even though we may have opinions and strong feelings outside of that. It's kind of like getting a charge from the judge, if you've ever been on jury duty. You want to do something, but the judge says you don't have that choice, you have to pick from my menu. That's a lot of what we're involved with here.

Ms. Feeney Rose: Can you pick the date? Can you pick the date, or no?

Mr. McIntosh: Not right now.

Mr. Silverman: I'll have to get back to you.

Ms. Feeney Roser: Okay. Well, then, I'll send you an email tomorrow.

Mr. Silverman: Okay, if there is no objection, this meeting stands adjourned.

There being no further business, the Planning Commission adjourned at 10:08 p.m.

Respectfully submitted,

Michelle Vispi
Planning Commission Secretary

/mv